

THE  
VERMONT BAR JOURNAL

225

Spring 2021, Volume 47, No. 1





## Complex Legal Challenges require legal teamwork

### **Legal Complexity Requires Legal Teamwork**

---

It's only common sense: the more complex the legal challenge, the larger and more coordinated a team required to solve it; more minds working in concert; more expertise brought to the table; more disciplines thoughtfully intertwined.

### **We Are Wherever You Are**

---

Our office locations in Vermont, New Hampshire, and Washington D.C. are just the beginning. All of our attorneys and staff are prepared to meet you where you are. Many of our attorneys work with clients throughout the country and the globe. Long before the global pandemic forced many to work from home, we equipped our attorneys and staff with remote office capabilities to ensure that our client service is never neglected, no matter where we are.



**PRIMMER PIPER  
EGGLESTON &  
CRAMER PC**

802.864.0880

[primmer.com](http://primmer.com)

# VERMONT BAR JOURNAL

## DEPARTMENTS

5 PRESIDENT'S COLUMN

PURSUIITS OF HAPPINESS  
10 — *What's Your NEW Line?*

RUMINATIONS  
12 — *Kent's Comment*

24 WHAT'S NEW

BE WELL  
25 — *Happiness Hacks*

38 BOOK REVIEWS

40 IN MEMORIAM

41 CLASSIFIEDS



*In Memory of the*  
Honorable Peter W. Hall  
11/9/1948 – 3/11/2021

## FEATURES

8 Tribute to Judge Hall  
*Chief Justice Paul L. Reiber*

26 Access to Justice Campaign 20/21

30 A View of Pro Bono Work in Vermont  
*Ellie Gebarowski-Shafer, D.Phil.*

32 College Behind Bars: Putting the Second Chance Act to Work in Vermont  
*David F. Kelley, Esq.*

36 Why Failing to Provide Mandatory Security Awareness Training is a Huge Misstep  
*Mark Basingthwaight, Esq.*

37 A Tool in Your Trust-Drafting Toolbox: The Trust Company of Vermont  
*Hon. George K. Belcher*



# VERMONT BAR JOURNAL

Vol. 47, No. 1

Spring 2021

The Vermont Bar Association  
 35-37 Court St, PO Box 100  
 Montpelier, Vermont 05601-0100  
 802-223-2020 • 1-800-639-7036  
 Fax: 802-223-1573  
 E-Mail: [jeb@vtbar.org](mailto:jeb@vtbar.org)  
 On the Web: [www.vtbar.org](http://www.vtbar.org)

**President**  
 Elizabeth Kruska

**Past President**  
 Elizabeth Novotny

**Secretary**  
 Edward J. Tyler III

**Treasurer**  
 Matthew F. Valerio

**Board of Managers**  
 Katelyn Atwood  
 David Carpenter  
 Amy E. Davis  
 Joshua Diamond  
 Judith L. Dillon  
 Hon. Thomas S. Durkin  
 Robert E. Fletcher  
 Molly Gray  
 Andrew Manitsky  
 James Rodgers  
 Ben Traverse  
 James Valente  
 Alfonso Villegas

**Executive Director**  
 Therese M. Corsones, Esq.

**Director of Education & Communication**  
 Jennifer Emens-Butler, Esq.

**CFO / Member Benefits**  
 Lisa M. Maxfield

**Programs Coordinator**  
 Laura Welcome

**Lawyer Referral Service/Membership**  
 Michelle Abajian

**Legal Access Coordinator**  
 Mary C. Ashcroft, Esq.

**Layout/Design**  
 Alicia Anthony

Published four times a year by the  
 Vermont Bar Association  
 Subscription rates: 1 year \$35. 2 years \$65.  
 Printed by Stillwater Graphics  
 VBA assumes no responsibility for claims  
 arising in connection with products or services  
 advertised in the *Vermont Bar Journal*.

## ADVERTISERS INDEX

ALPS .....	9
Army National Guard .....	42
BCM Environmental & Land Law, PLLC .....	6
Berman & Simmons.....	31
Biggam Fox & Skinner.....	4
Caffry Law, PLLC.....	28
Cleary Shahi & Aicher, P.C.....	25
Dinse .....	7
Economic & Policy Resources .....	28
James A. Johnson, Jr.....	16
Law Pay .....	11
Marks Powers LLP .....	21
Medicare & Life Care Consultants .....	10
National Academy of Distinguished Neutrals.....	15
Northeast Delta Dental .....	16
Pajcic & Pajcic.....	17
Preferred Properties.....	33
Primmer Piper Eggleston & Cramer PC.....	Inside Front Cover
TCi Technology Consultants, Inc. ....	Inside Back Cover
Trust Company of Vermont .....	Back Cover
Unsworth LaPlante, PLLC .....	27
Vermont Attorneys Title Corporation .....	13
Vermont Lawyers Assistance Program .....	23
Vermont Legal Food Hub.....	29

To advertise in the *Journal*, call Lisa Maxfield at 802.223.2020

## Our Montpelier office has moved to 535 Stone Cutters Way, Suite 204, Montpelier, VT 05602

With more than 40 years of experience,  
 we know how to handle complex Workers' Compensation issues  
 that can significantly alter the outcome of a case.

Local | Caring | Experienced



Ron Fox

Kelly Massicotte

Heidi Groff

Pat Biggam



**BIGGAM FOX SKINNER**  
 LLP

Attorneys Representing Injured People

**802-229-5146**

Montpelier | Burlington | [www.bfslaw.com](http://www.bfslaw.com)

# PRESIDENT'S COLUMN

## Writer's Block and Rewards

I have writer's block. For the first time in my life, I actually don't know what to say (or write). I could write about some major issue of the day. But the issues on the national level are too huge and divisive, while the issues on local level are... huge and divisive. Also, my office-mate is a 14-year-old cat named Lucille, and when I ask her advice about what to write she doesn't understand the question and she won't respond to it. (This is not the cat who I wrote about in my last column and who brought me a live squirrel; that cat's only advice is, "focus on the squirrel." He is the happiest creature I know.)

I don't want to turn this into another column about the pandemic. But because it's taken over our lives for the last year, it's both hard to avoid and very tiring all at the same time. It reminds me of the Sunday after Thanksgiving every year where I'm tired of eating leftover turkey but that's all I have in the house. COVID-19: The Turkey Burrito You Made But Don't Want.

I recently read an article in the *New York Times* about the concept of languishing, and it occurred to me that the concept probably describes a lot of us right now, at least to some degree. "It's the void between depression and flourishing – the absence of well-being. You don't have symptoms of mental illness, but you're not the picture of mental health, either. You're not functioning at full capacity."<sup>1</sup> It seems as if languishing was a color it would be beige. If it was food it would be oatmeal (or the aforementioned turkey burrito you don't really want). If it was a word it would be "meh." Not bad. Not the best. It just is.

This *Times* article suggests that one way to combat the feeling of languishing is to figure out what gets us into a flow that doesn't get interrupted. Divided attention is the enemy of flow. It suggests focusing on a small goal, where there will be a sense of joy from the reward for attaining the goal.

Arguably, sitting down to work on a project, getting into the groove of the project, and achieving part of that project, feels good to us. Distractions (I'm looking at you, email) disrupt the flow and make it hard to focus. My prior attempts at writing this column went like this:

Write six words>check email that just popped up>jot down something on my to-do list>call that client who I needed to speak to about whatever>start response to earlier email>halfway through a word in that email get up and go get some unrelat-

ed file out of the drawer>pet the cat (non-negotiable in this sequence)>write something else on the to-do list>forget where I put that file>pet the other cat>check email again>play a round of Two Dots on my phone>mince about the fact I'm not getting my column done>make tea.

I'm no behavior specialist, but even I can tell this isn't an especially rewarding way to get things done. There's no joy in that sequence. For those of us who read the languishing article and thought it seemed descriptive of parts of our own lives, how do we figure out how to surrender to the flow, so to speak, so that we can get things done?

The languishing article was published in April 2021, which is the same month the Vermont Judiciary launched its new Bar Assistance Program. Michael Kennedy, who leads the program, blogged<sup>2</sup> recently that the program will work on a spectrum. While there will be assistance available for attorneys with very serious addiction, mental health, or other issues, there will also be assistance for attorneys who need some other help. And maybe, if people are able to get some other assistance early, it can help before any minor issues become major issues.

So, I'll turn back to languishing, because it seems like languishing might be one of those minor things that could become a major thing if left unattended.

I contacted Ariel Cahn-Flores, a friend of mine who is a licensed clinical social worker<sup>3</sup> in Wilder, Vermont, to ask about the concept of languishing and what to do about it. She responded that she was glad there's a word and a concept for what so many people are feeling these days beyond saying someone is a high-functioning person with depression. That doesn't exactly seem to fit the bill. I also asked about how to handle this particular feeling. She thought the article in the *Times* had a "good blueprint to start to get out of the funk: focused and intentional time chunks spent on smaller goals to create a sense of accomplishment, and being authentic in social interactions."

People like rewards. Remember the episode of *Seinfeld* where Elaine accidentally wrote and gave away her (fake) phone number on the back of her Atomic Subs rewards card, and she was bummed out that she was two sandwiches away from a free sub?<sup>4</sup> In the grand scheme of things, a free sub is no big deal, but it does feel like a sense of accomplishment to get the re-



ward.

This is likely why fitness apps are able to keep certain users engaged with their various programs. It's a little bit of a thrill to get the 10,000 steps buzz on a Fitbit, and it's fun to get an electronic badge for working out however many days in a row. Peloton unexpectedly sent me a t-shirt for completing 100 yoga classes through its app. Intellectually I know it's a relatively cheap way for the company to get me to keep using (and paying for) their app. Emotionally I was over the moon for my new shirt.

Translating this into work: sometimes it's hard to feel like there's a reward when there's always more work. Practicing law can feel like a bit of a slog sometimes. Odyssey doesn't send a "Congratulations! You e-filed ten documents!" badge. On the other hand, it does feel good to go to court and win something for a client. It feels good to see a case work out in a way that's beneficial. It's fabulous when a client sends an email or a note of thanks.

But those aren't things we can predict. While it feels great to have a successful outcome and a happy client, it isn't a given those things will happen. And between the happy outcomes, there's a lot more work that gets done.

There's been a larger conversation in the bar over the last several years about the concept of lawyers' well-being. It's been a long time in coming for the profession to acknowledge mental health and substance abuse issues. While those issues are incredibly important, we also should focus on how to structure our work so it feels more authentic and rewarding. Nobody goes into a profession hoping it will feel like an

endless treadmill of work. But if we're not careful about how we manage, it can turn into exactly that, which can lead to more serious issues. This last year has gotten to be a grind. Many people felt like every day was exactly the same as the one before. And there have been days when it felt like a long day of work and the only reward at the end was the equivalent of my metaphorical turkey burrito, which was really no reward at all.<sup>5</sup>

The other problem, of course, is that with our inability to travel much, many of us cancelled vacations and trips, which are really necessary to help refresh our minds. It's also helpful to look forward to something: without that the days all sort of bleed into one another with no real long-term goal or reward in sight. I've heard more than one lawyer make comments that long as they're stuck at home they might as well work. That's fine, but for most of us, it's too much of the same to go for over a year without a break. There most definitely isn't a badge for "You've done lawyer work for 400 days in a row!"

It seems like one way to combat the potential for languishing is to set achiev-

able goals and work toward those goals. It might mean setting rules for myself, like I get to make more tea if I finish three tasks on the list. Or if I have a hearing at a particular time, I set a goal to do a certain number of tasks before the hearing. The built-in reward is the sense of accomplishment, even in the short term.

I'm also going to try to focus more on creating intentional blocks of time where I focus and limit distractions. This might mean closing my email for an hour or so at a time so my attention doesn't get diverted to incoming messages.<sup>6</sup> It might mean starting my work day a little bit earlier and using that time for a specific purpose.

I'd be interested to hear what others have done to manage time and workflow in order to keep your practice efficient and rewarding. What works? What doesn't work? What tricks can you share? Let's put our collective minds together and share what works so we – and our clients – all benefit in the long run. It might also mean we prop each other up and help combat this languishing feeling so many of us might have.

*Elizabeth Kruska, Esq. is current Presi-*

*dent of the Vermont Bar Association. She maintains a solo practice in Woodstock, concentrating in the areas of criminal defense, family and juvenile law and is an adjunct professor at Vermont Law School.*

<sup>1</sup> Grant, Adam. "There's a Name for the Blah You're Feeling: It's Called Languishing." *New York Times*, April 19, 2021.

<sup>2</sup> Kennedy, Michael. "Wellness...umm, Thursday?" *Ethical Grounds*, April 22, 2021.

<sup>3</sup> She is also an incredibly talented classically trained flutist. I took flute lessons from her several years ago, which is how we met.

<sup>4</sup> "The Strike." *Seinfeld*, Season 9, Episode 10, originally aired December 18, 1997. Also known as the Festivus episode.

<sup>5</sup> I do want to remain open-minded. If you have a leftover turkey burrito recipe or technique that you think will change my mind from "meh" to "I might eat that again," feel free to send it my way.

<sup>6</sup> I am not making this up: while I was editing this piece an email popped up. I read the subject line and said, "oh [subject]. That's important. I better read that." But it isn't so important that I couldn't read it in ten minutes when I got done doing something else. I am already not doing very well focusing on the flow. I need to be more like the cat who focuses on the squirrel.



## Three Northern New England Locations, One Exceptional Firm

Preserving the beauty of Northern New England through innovative and sustainable solutions to conserve land, working farms, and open spaces. BCM Environmental & Land Law remains at-the-ready to assist you with all of your environmental and land use needs.

3 Maple Street  
Concord, NH 03301

41 School Street  
Keene, NH 03431

2 Union Street  
Portland, ME 04101



603.225.2585

bcmenvirolaw.com

THE LAW OF  
**straight  
talk**

Legal solutions for  
managing your employee  
benefits and executive  
compensation plans.



**dinse**

A LAW FIRM SERVING THE EMPLOYEE  
NEEDS OF BUSINESSES AND INSTITUTIONS.

Please visit [dinse.com](http://dinse.com)  
or call us at 802.864.5751



# Tribute to Judge Hall

We mourn the loss and celebrate the life of the Honorable Peter W. Hall. Almost everyone knew him through his distinguished career as a trial attorney in private practice, a U.S. Attorney for the District of Vermont, and a judge on the U.S. Court of Appeals for the Second Circuit. But many were lucky enough to know him as a beloved father and husband, a caring and generous friend, and a public servant deeply devoted to Vermont.

I first met Pete in my kitchen at a neighborhood party. We immediately connected, talking about our personal histories and vision for the future—for our children and families and the profession. And what struck me more than anything was Pete's profound decency, good humor, and gentle aspect. He was not a take-no-prisoners kind of a guy, but the type who relished thinking about the other side of life, the gentler side, and about others who were not on top but struggling. I loved that about him and still do.

Later we worked together, after we sort of figured out how to do that, but it was a plan we had in the mix since that first meeting. And through the years, as we were neighbors and law partners with families growing up together, he instilled values and taught lessons to his children and to mine that resonate today. He taught them that "us-versus-them" is a negative life perspective, a burdened, hackneyed approach to how we see and treat people. And there was this one: on a day when good luck comes to you, it means: I must be doing something right. He set the example that the best way to do well for yourself was to do good for others.

Pete's interest in construction and woodwork was perhaps not as heralded. But I knew his skill well. Working with him on his barn, I learned Parson's Rule, I think it was called, that says when two ropes or lengths of hose are lying on the ground they will tangle in a knot. I didn't know that rule, but I quickly found it to be true. Then there was the "soft sole shoes" rule. When we were working on the metal, sloped roof of his barn, Pete said if you have enough faith in Providence, you will not slip and fall 20 feet to the ground—and by golly I witnessed it and he was right! Kidding aside, he was a guy with great faith

in the positive side of life.

Pete and I served together in town government. When I was first elected moderator of our small town, unsolicited he turned a gavel for me on the lathe in his basement. I still have it at the Court. I think he was serving on the Selectboard at the time, and when he gave it to me, I joked that he was probably looking for a "good ruling" at Town Meeting.

We also served together on the Board of our Chapter of Inns of Court. Pete was a founder of the Chapter and I recall him inviting me to participate. I never did as a practicing lawyer but after I went on the

pulling him away as Kyle yelled, "the man, the man!" Everyone at the Inns dinner got a big kick out of that, and it was quintessential Pete: a self-effacing, good humored federal judge.

When he was appointed to the Second Circuit, there was no better person for the job. As a judge, Pete's dedication to the rule of law was matched only by his integrity and humility. Although the court is in New York City, he loved Rutland, which he affectionately called the "center of the universe," and kept his chambers there. When the job took him to New York, he made sure to bring his Vermont values with him

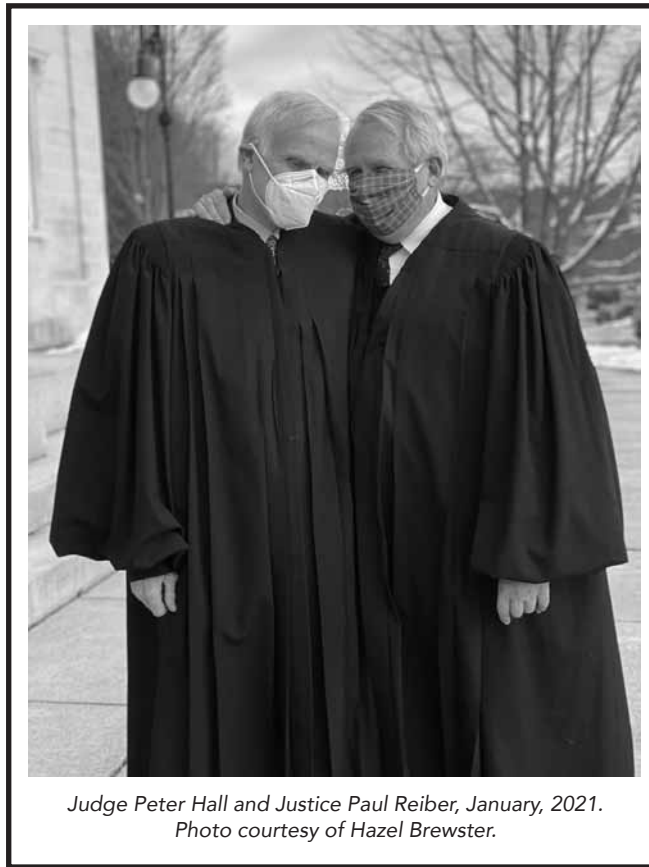
even if he left his flannels at home. He had an impressive ability to transition between chopping wood and tending horses on the weekend to sitting on the bench in New York, as his law clerks can attest.

Pete left a lasting impression on his colleagues. His fellow judges on the Second Circuit lauded him as a "thoughtful and humane jurist [who] was generous with his colleagues and ever considerate in matters both big and small." His law clerks admired him deeply, praising his example as an even-handed jurist who sought to find the just and legally correct approach in every case he heard. Their words highlight his dedication to mentorship – through his clerks, some of whom we shared in succession, he cultivated a generation of lawyers committed to honesty, humility, and justice.

As his law partner and friend, I coveted his input on matters I struggled with. He was always skilled in his approach, with a willing ear, ready quip, and sound direction. And from that day we met in my kitchen through his time on the bench, his stalwart decency and positive outlook never wavered.

In his years as an attorney and as a judge, Pete enriched the Vermont legal community. He embodied the principles and values that instill faith in the justice system. He served as a mentor and a role model to many, and he cared deeply about giving back to his community. The legacy he leaves behind is truly great.

My heart goes out to his children, his spouse, his surviving brother and sisters, and all who knew and loved him. Our loss is great but the memories pure joy.



Judge Peter Hall and Justice Paul Reiber, January, 2021.  
Photo courtesy of Hazel Brewster.

Court, I saw the strength of that organization: lawyers gathered for dinner together who curry high principles in the practice of law. Involvement in the Joan Wing Chapter had been a mainstay for us both over the years, and we derived great reward from working with good friends in the bar and VLS students. In one skit we did, Pete agreed to join in as a demonstrator in a depiction to have taken place outside the Supreme Court on the front steps, and I was the counter-demonstrator. In the last scene, my law clerk at the time, Kyle Landis-Marinello, feigned to hit me over the head with his cardboard sign with Pete





# SO HAPPY THEY HAVE OUR BACKS

*“ALPS has been our E&O insurer since the first day they came to VT. Outstanding customer service, reasonable premiums, top notch resources for small firms. So happy they have our backs.”*

▶ **Massucco & Stern, P.C., Bellows Falls, VT**

★ Trustpilot



Vermont law firms can connect directly with ALPS Insurance Specialist, Robin Kendall, at [rkendall@alpsinsurance.com](mailto:rkendall@alpsinsurance.com) or by calling (800) 367-2577.

Learn more about how ALPS can benefit your firm at

[www.alpsinsurance.com/vtbarjournal](http://www.alpsinsurance.com/vtbarjournal)

PROUDLY ENDORSED BY



**ALPS** The Nation's Largest Direct Writer  
of Lawyers' Malpractice Insurance.

# PURSUIITS OF HAPPINESS

## What's your NEW Line?



Calling all renaissance folks! Loyal readers (there are some, right?) are undoubtedly wondering whose pursuit of happiness will be highlighted this quarter. This Spring, there is no interview to be found because this quarter's honoree is...everyone! During Bar Counsel Mike Kennedy's Lawyer Well-Being Week series, specifically the Engage and Grow day, we found that this pandemic has caused an uptick in said happiness pursuers, so we know you are out there.

Sure, a renaissance person is anyone who acquires proficiency or knowledge in more than one field, but the term stems from the Renaissance Period, a period of cultural rebirth or growth after the Middle Ages. It's not that classical philosophy, science, art and culture did not exist before, it's just that the period marked a returned focus on such things. And if this pandemic has taught us anything, it's how to shift priorities. Followers of Mike's blog, *Ethical Grounds*, will notice a more pointed shift of focus during the pandemic toward wellness, civility, balance and pursuits of happiness. While we are, of course, still focused on our clients, outstanding work-product,

intellectual focus and our bottom line, so many of us have found ways to balance these efforts with more creative or physical pursuits.

Whether the pandemic has left you with more time on your hands or finding yourself busier than ever (we see you, real estate practitioners!), this shift in priorities has caused so many of our members to either try new things or take the time for more cultural pursuits. During Mike's Well-Being Week zoom and elsewhere, we learned of just a few: learning how to play the guitar from scratch, excelling, and buying a few more guitars; learning how to do the electric slide or shuffle running man & Charleston; perfecting difficult recipes or learning how to make that perfect sourdough bread; re-learning French or other languages using language apps; remodeling an office building or home; teaching oneself how to decoupage, and then decorating a kitchen with joyful images; doing volunteer work in a new area of law and undoubtedly so many others.

So if you are finding yourself learning a new skill, enjoying a new project, setting new goals for yourself or just re-discover-

ing the great outdoors in Vermont, drop me a line. Even if you do not wish to be interviewed, maybe we can at least publish a list of all the fun, crazy, athletic, creative or unique things we've been doing this past year. We'd love to hear from you!

In speaking with potential interviewees, one common theme is that the potential interviewee, having not run a marathon up a mountain or having not been on stage, felt unworthy of being highlighted in the journal. But the column is neither called 'super lawyers' nor 'in pursuit of those with extraordinary talents.' On this, the five-year anniversary of the Pursuits of Happiness column, the title remains true to its mission, double-entendre intended: finding members with 'pursuits' (activities, of a recreational, creative or athletic kind) that bring them personal happiness, which pursuit, as we all know, is also a certain, unalienable right.

*Do you want to nominate yourself or a fellow VBA member to be interviewed for Pursuits of Happiness? Email me at [jeb@vt-bar.org](mailto:jeb@vt-bar.org).*



**HAVE A  
CATASTROPHIC  
INJURY OR  
ILLNESS CASE?**

Connect with certified  
and experienced  
Nurse Life Care Planners at  
Medical and Life Care Consulting today!

Medical and Life Care Consulting  
[www.medicalandlifecare.com](http://www.medicalandlifecare.com)  
Tel. (413) 323 - 9705

**Stay Current.**

**vba**

**Visit**

**WWW.VTBAR.ORG**

# LAWPAY<sup>®</sup>

AN AFFINIPAY SOLUTION

## POWERING PAYMENTS FOR THE LEGAL INDUSTRY

The easiest way to accept credit,  
debit, and eCheck payments

The ability to accept payments online has become vital for all firms. When you need to get it right, trust LawPay's proven solution.

As the industry standard in legal payments, LawPay is the only payment solution vetted and approved by all 50 state bar associations, 60+ local and specialty bars, the ABA, and the ALA.

Developed specifically for the legal industry to ensure trust account compliance and deliver the most secure, PCI-compliant technology, LawPay is proud to be the preferred, long-term payment partner for more than 50,000 law firms.



ACCEPT MORE PAYMENTS WITH LAWPAY  
866-238-9282 | [lawpay.com/vtbar](http://lawpay.com/vtbar)



LawPay is a registered agent of Wells Fargo Bank N.A., Concord, CA and Synovus Bank, Columbus, GA



# RUMINATIONS

## Kent's Comment



James Kent



Samuel Prentiss



Joseph Story

"Judge Story, the only man to be thought of in the comparison, is certainly a very learned and able man; but I cannot help regarding Judge Prentiss as the best jurist in New England."<sup>1</sup>

This compliment, given by the highly regarded Chancellor James Kent of New York, author of *Commentaries on American Law* (1826-1830), is probably the nicest thing ever said about a Vermont judge or justice. It was also something that stuck to the memory of Samuel Prentiss, Vermont Supreme Court Judge and Chief Judge, U.S. Senator, and U.S. District Judge for Vermont, and was repeated in obsequies and memorials of the man each time Prentiss was mentioned. Looking at it closer, it's clear the statement is more than just an acknowledgement of greatness in a judge. It is also a judgment on the comparative merits of Justice Joseph Story, U.S. Supreme Court Justice (1812-1845) and author of *Commentaries on the Constitution of the United States* (1833), among other treatises.

There was and is no formal process of determining who is the best jurist in New England or anywhere else for that matter. But Kent's word carried great weight, as he had become an acknowledged Solon as Chancellor, the American Blackstone, even before he published his *Commentaries*. No one baptized Kent with the power to declare firsts (and seconds). He just said it, in-

tending it to be repeated, particularly in Vermont, and to get back to Prentiss. He likely didn't intend that Story would learn about it, and there is no evidence that it got back to Story.

Superlatives are risky. The intent of the bestower of a compliment may vary. It might be obsequious, attempting to curry favor. It might be used to exalt the standing of the complimenter. Who can judge another but a peer? Kent carefully limited the jurisdiction of his judgment to New England, while he remained in New York, outside of the contest.

Rev. W.H. Lord's 1857 eulogy of Prentiss alluded to the comment. "It is said of him," said Lord, "by the most distinguished lawyer and statesman of his age, that his opinion on a legal question was more reliable than that of any other jurist in the country."<sup>2</sup> Rev. Lord's version had extended the range of Prentiss's authority beyond New England to the entire United States.

Kent's use of the honorific "finest jurist" was first reported by Daniel Pierce Thompson in his *History of the Town of Montpelier* (1860), prefaced by what appears to be the reason for the judgment. Thompson writes,

Sometime during Judge Prentiss' Chief Justiceship of this State, Sir Charles Bell, of the Common Bench of England, made, in an important case, a decision which was wholly new law in that country; and it was after-

wards discovered, when the reports of the year, on both sides of the water, were published, that Judge Prentiss had, not only in the same year, but in the same week or fortnight, made, in one of *our* important suits, precisely the same decision, which was also then new law here, arriving at his conclusion by a process strikingly similar to that of the English Justice. This remarkable coincidence, involving the origin of then new, but now well established points of law, and involving, at the same time, an inference so flattering to our Chief Justice, at once attracted the notice of the celebrated Chancellor Kent of New York, who soon after, falling into company with several of our most noted Vermonters, cited this singular instance in compliment to the Vermont Chief Justice, and after remarking that there was no possibility that either the American or English Justice could be apprised of the other's views on the point in question, would up by the voluntary tribute:-- ....<sup>3</sup>

Samuel Prentiss was Chief Judge of the Vermont Supreme Court from November 1829 to November 1830. Thompson gives us hints but fails to name the decisions so lauded by Kent. Because Kent's comment was delivered orally, there is no contemporaneous record of his words.

Personal attention. Unmatched support.  
A commitment to our strong attorney network.

Our focus is on  
**you.**

### We're Vermont's top choice in title insurance for a reason.

Vermont Attorneys Title Corporation makes your job easier with responsive service, online resources, timely educational information, and the best claims service in the state.

Partnering with us, you'll enjoy the peace of mind that comes with the financial strength of CATIC. And you'll appreciate knowing that you'll never be cut out of the title insurance process. Our commitment to attorneys will always be our focus.



### CATIC: #1 in Title Insurance in Vermont

Totals may not include policies that national underwriters issued through Direct Operations where no attorneys were involved.

Source: American Land Title Association, Market Share Reports and Position Analysis, 2012



[vermontattorneytitle.com](http://vermontattorneytitle.com)  
802.876.6800 800.649.3366

Thompson published his *History* in 1860, almost thirty years after the comment was made. Thompson knew Prentiss as both were residents of Montpelier, and Prentiss himself is likely the best source of the comment. We have to ask...

### What case?

Despite a valiant search, no "Sir Charles Bell" appears as a judge of the Common Bench in the research for 1829-1830. The Sir Charles Bell who gets most of the attention in these years is the Scottish surgeon who first saw the difference between the posterior and anterior nerve roots in the spinal cord, in 1807. "Bell's palsy" is named for him.<sup>4</sup> Suppose Thompson had that part wrong. What cases, decided during Prentiss's chief judge year might qualify? With that perhaps a coincident decision from the Court of Common Pleas for that year would satisfy the hunt.

Looking at the 23 cases decided by Chief Judge Prentiss in his final year on the court, there are several that fit the description of "new law." One is *State v. Wheeler* (1830). There the defendant had been charged in the information with a felony, while the crime itself, if there was one, was actually a misdemeanor. It seemed to the court to be a private matter, not really a criminal offense. Chief Judge Prentiss wrote, "Whether or not the fact alleged in the information is a misdemeanor, and can be the subject of a criminal proceeding, is a question upon which we have entertained doubts, but upon which we have at length formed an opinion. The distinction between those trespasses for which there is a private remedy only, and those for which there may be a public prosecution, is not laid down in the books with much accuracy or precision. It seems, however, to be clear, that though every trespass, which is a disturbance of the peace, is indictable, a mere trespass, which is the subject of a civil action, cannot be converted into an indictable offense."<sup>5</sup> If the court adopted the reasoning of the appellant, "the doctrine would make almost every trespass or injury to private property the subject of an indictment, and would give to the courts a fearful and alarming jurisdiction, which could be exercised in general to little other purpose than vexation and oppression." *Wheeler* fits the description of the Prentiss decision enunciating a new doctrine of law. A review of the English cases, however, failed to find a coincident case.

In *Bigelow v. Kinney* (1830) Prentiss ruled that an infant's contract was voidable, not void, and that once reaching majority age the former infant had to disavow the contract within a reasonable time. Nine years was too long. Silence is acquiescence. Prentiss relied in part on English law, and

on a "recent work of great excellence and value, the production of an accomplished and experience jurist, justly distinguished for sound discriminating judgement, and surpassed by none in extensive and accurate erudition," Chancellor James Kent. Kent's *Commentaries*, recently published, settled that a minor's rights to void a contract were "laid down, after he had been of age a reasonable time, either from his positive acts in favor of the contract, or from his tacit assent under circumstances not to excuse his silence."<sup>6</sup>

*Johns v. Stevens* (1830) settled the obligation of a dam owner to compensate neighboring owners of land flooded to operate a mill. Prentiss wrote, "If public policy require that encouragement should be given to the building of mills and manufactories, and the liability to frequent actions at common law will discourage the proprietors of mill seats in this state from building in places where they must overflow the land of others, it belongs to the legislature to interpose, and make such provision as policy, consistently with justice, may require."<sup>7</sup> Neither *Johns* nor *Bigelow* have counterparts in the English reports for that year.

The best candidate is *Pomeroy v. Mills* (1830), which settled the question of whether a town can convey a part of a public park on which a public easement has been established. The park, still making news today, is the Burlington City Park. Burlington had not condemned the property for use as a park and courthouse, but dedication and acceptance was conceded given the forty years the land had been used for those purposes. Prentiss called it the creation of a "common highway." He concluded the town had no authority to convey a part of the property for the use of a private business because it owned only an easement, not the underlying fee.<sup>8</sup>

There is a case decided by the Court of Common Pleas that turned on the principles enunciated in *Pomeroy v. Wells*. This was *The King v. Jeremiah Glover*, decided in November of 1830. Mr. Milner, a lawyer representing the purchaser of a footway, argued that English statutes authorized the sale. "But it is not of course the land to be sold," he wrote, "because the public have not the land, but only an easement over it."<sup>9</sup> The Court, in the opinion of Lord Ten-terden, held that an order for stopping up a footway cannot direct that the "footway so stopped should be sold." That may be the best answer. A review of the decisions in the Law Journals for 1829-1830 reveals no better example, although reading the two cases in tandem does not amaze or excite, on grounds of coincidence or reasoning, as it had for Kent.

It's a little concerning that Kent used the coincidence of decisions as the basis for

his compliment of Prentiss. Implied in the judgment is the idea that when an American judge agrees with an English judge on similar facts and comes to the same conclusion on the law, that this constitutes a notable accomplishment for the American judge. Following English common law as a precedent is acceptable; finding the same basis for a legal question at the same exact moment, when as Thompson explained came without any communication between the two judges, is somehow self-justifying. But is it sufficient to justify the compliment?

### Was Prentiss That Good?

It's fair to ask what kind of a judge Samuel Prentiss was. It's beyond our powers to reach the same conclusion as Kent as we cannot know with whom, other than Story, Kent compared Prentiss. Prentiss wrote about 130 decisions while on the Vermont Supreme Court. In those decisions we should know the character of Judge Prentiss.

Samuel Prentiss was born at Stonington, Connecticut in 1782, and moved with his family north to Northfield, Massachusetts, where he was taught classics by the Rev. Samuel C. Allen, read law with lawyer Samuel Vose, and later with John W. Blake in Brattleboro. Prentiss was admitted to the bar at the age of 21, in 1803, and practiced law in Montpelier for the next 23 years. He ran for Congress in 1816, but lost. He was elected to the Vermont Supreme Court in 1822, but declined. He served as Montpelier's town representative to the Vermont House in 1824 and 1825. While in the legislature, Prentiss was responsible for legislation making the Supreme Court largely appellate, eliminating its trial duties. Thereafter, while Supreme Court judges served as presiding officers in the county courts, the full court only sat to hear arguments on challenges to the trial court.<sup>10</sup>

The next year Prentiss was elected an Associate Judge of the Vermont Supreme Court. In his fifth year on the court, the legislature elected him Chief Judge.

Daniel Pierce Thompson described Prentiss in his *History of the Town of Montpelier*: "In person nearly six feet high, well formed, with an unusually expansive forehead, shapely features, and a clear and pleasant countenance, all made the more imposing and agreeable by the affable and courtly bearing of the old-school gentleman. In his domestic system he was a strict economist, but ever gave liberally for religious and benevolent objects."<sup>11</sup> Prentiss was the first President of the Vermont Temperance Society, organized in 1828.<sup>12</sup>

E.J. Phelps, who memorialized Prentiss in an 1882 talk to the Vermont Historical Society, said of him, "Judge Prentiss belonged to his own time. He was the



2020  
MEMBERS



# THE NATIONAL ACADEMY OF DISTINGUISHED NEUTRALS

America's Most Experienced Civil-Trial Mediators & Arbitrators

## VERMONT CHAPTER

# www.VermontMediators.org

*The Academy Recognizes The Following Vermont Chapter Members For  
Excellence In The Practice of Alternative Dispute Resolution*



**Gregory Clayton**  
Montpelier  
(207) 706-4977



**David Cleary**  
Rutland  
(802) 775-8800



**Ellen Coogan**  
Burlington  
(802) 864-4555



**Eric Johnson**  
Burlington  
(802) 863-3494



**Michael Marks**  
Middlebury  
(802) 388-2211



**Phyllis Phillips**  
Williston  
(802) 363-3126



**Tad Powers**  
Middlebury  
(802) 388-2211



**James Spink**  
Burlington  
(802) 864-9891

APRIL 2020						
Su	Mo	Tu	We	Th	Fr	Sa
	1	2 AM	3	4	5 PM	6
7	8 PM	9	10	11	12	13
14	15	16	17 AM	18 AM	19 AM	20
21	22	23 AM	24 AM	25	26	27
28	29	30				

**Check your preferred available dates or  
schedule appointments online, directly  
with Academy Members - for free.**

*VermontMediators.org is funded by local members*

## Polygraph Exams



### James A. Johnson, Jr. Attorney at Law

Lieutenant Colonel,  
USAF, Retired  
Former OSI Special Agent

**603-424-6365**

[www.johnsonpolygraph.com](http://www.johnsonpolygraph.com)

DELTA DENTAL



### Make oral health a priority.

Oral health is a critical component of overall health. Dental insurance encourages preventive habits and procedures that benefit everyone, at every age.

To enroll in the Vermont Bar Association dental plan, call Pinnacle Financial Corporation at 800-200-5434.

Northeast Delta Dental  
[www.nedelta.com](http://www.nedelta.com)

product of the early days of Vermont."<sup>13</sup> Phelps, perhaps the most respected Vermont attorney of the late nineteenth century, described Prentiss's decisions as "distinguished, in the first place, by the most complete knowledge of the science of the law... [t]heir conclusions arrived at by logical deductions from fundamental principles, in a manner that to every capacity becomes perfectly luminous and decisive." They were, he thought, "the subject of the most careful, thoughtful consideration, until nothing that bore upon the conclusions was overlooked, forgotten, or misunderstood."<sup>14</sup> Phelps did not hold back in his appreciation. The judge "deserves to go down to posterity as one of the most highly honored among our New England worthies."<sup>15</sup> Where Kent's comment was retrospective, Phelps's praise wanted Prentiss's name to be telegraphed into the future, so we would never forget him.

Prentiss's decisions were never overruled, wrote Phelps. True in 1882, although at least one was later reversed. Even our "finest jurist" could be wrong. His ruling in *State v. Wilkinson* (1828), relying in part on the theory that the jury is the judge of the facts and the law, was overruled in *State v. Burbee* (1892).<sup>16</sup> That a perfect record somehow justifies the commendation of "finest," is a foolish idea in any case. The best judges are overruled, often long after they have passed away.

One way of knowing a judge's mind is by reviewing dissents, where the judge disagrees with the majority. While on the Supreme Court, Prentiss dissented only four times. In *Strong v. Strong* (1827), he concluded that the question at issue (whether foreclosure of the equity of redemption discharges a debt secured by the mortgage) had long been settled in England for more than half a century, in Massachusetts, New York, and the Circuit Court. The majority was disagreeing with that principle and so mistaken. As "uniformity of decisions in the several courts is much to be desired," he refused to "sanction the doctrine established by the present case."<sup>17</sup> In *Town of Stamford v. Town of Whittingham* (1827), he began his dissent, "I am so unfortunate as not to agree with my brethren in this case." It was a pauper case, and Prentiss thought the court had diverged from the strict construction the court usually applied to settlement cases. He objected to the majority's reliance on a case cited in support of the decision, as it was "a loose note, and not entitled to much credit."<sup>18</sup> He thought sustaining the petition in *Munroe v. Walbridge* (1827) was "indulging the mortgagees in a very useless proceeding," causing him to "inch away" from the majority. The report lists him as *dissentiente*.<sup>19</sup> In one other case Prentiss is listed as dissenting, but the opinion is not included

in the report.<sup>20</sup>

In 1830, the legislature elected Prentiss U.S. Senator. He served one full term, was reelected in 1836 to another, but then resigned just short of the end of his second term in 1842 to accept appointment as U.S. District Judge for Vermont. Prentiss served in that office until his death in 1857.<sup>21</sup> When Prentiss went to the U.S. Senate, he went as "Judge Prentiss." In that chamber he earned a second reputation, bringing his skills on the bench to the legislative process.

#### Senator Prentiss

Samuel Prentiss found the world of politics harsher than his exalted place on the high court. He had been nominated by the Jackson Party, but following his election had written a letter stating "I do not belong to the Jackson party, and that in executing the trust reposed in me, I shall be guided by and act in conformity with the opinions and views, known to be entertained by a large majority of the Legislature and people of this state. On no consideration could I have accepted the appointment conferred, upon me, if my principles required me to act in opposition to the opinions and wishes of the state I was chosen to represent; and if any one gave me his support, under an impression that I should be guided by the views of a minority of the Legislature and of the people in opposition to the sentiments of the majority, it is a matter of regret to me that an such misapprehension should have existed." For this Prentiss was accused of "double dealing, and of a deliberate plan of gaining confidence by false pretenses." "[A]fter mounted to the highest round of the ladder of ambition by arts of dissimulation, [that he] should kick off the friends who trusted in him, and who lifted him to the eminence which he could never have obtained without their aid—is not unexampled—but it is to be hoped that the example will be rare in a government based on the manly and noble virtues of the people."<sup>22</sup>

Senator Prentiss rarely spoke, but when he did Senators listened. Phelps wrote that Prentiss "came to be regarded by many as the best jurist in the Senate, yet no jurist said so little upon the subject."<sup>23</sup> In the Senate history, Prentiss was remembered largely for two speeches.

One encouraged enactment of a law prohibiting dueling, including the giving or receiving a challenge, within the District of Columbia. He introduced the legislation in March of 1838, a month after William Graves, a Kentucky Congressman, killed Maine Representative Jonathan Cilley in a duel. Cilley had accused Graves of bribery on the House floor.

In his Remarks on introducing the bill,

THE LAW FIRM OF  
**Pajcic & Pajcic**  
Since 1974

# DO YOU HAVE A SERIOUSLY INJURED CLIENT AND NEED TO LITIGATE IN FLORIDA?

**We can help. Seth Pajcic is dual licensed in  
Vermont and Florida and is accepting new cases.**

For more than 45 years, The Law Firm of Pajcic & Pajcic has represented individuals and families who have suffered a serious injury or wrongful death because of the fault of others. Some of our practice areas include car, motorcycle and truck crashes; as well as litigation involving medical malpractice, dangerous consumer products and unsafe motor vehicles.



WE HAVE HANDLED MORE  
THAN 10,000 CASES AND  
RECOVERED OVER \$1 BILLION  
FOR OUR CLIENTS.

OUR 13 ATTORNEYS HAVE  
MORE THAN 350 YEARS  
OF COMBINED LEGAL  
EXPERIENCE AND ZEALOUSLY  
REPRESENT INJURED CLIENTS  
IN THEIR TIME OF NEED.

(904) 358.8881 | [WWW.PAJCIC.COM](http://WWW.PAJCIC.COM) | ONE INDEPENDENT DRIVE, SUITE 1900 | JACKSONVILLE, FL 32202



Prentiss said,

Sir, I might here, with no impropriety, speak of the spirit of insubordination and lawless violence that is abroad in the land; infecting and pervading, it would seem, entire communities; threatening the subversion of the established institutions of the country; and which, if not checked and subdued, will, it is to be feared, sooner or later, overthrow all law and all government, and open the way to brutal anarchy and misrule, to scenes of civil strife and disorder, as sanguinary, as terrible, as any which marked the ferocious and bloody annals of revolutionary France.<sup>24</sup>

His speech on the Bankruptcy act in 1840 was classic Prentiss. He was a Whig at this time (having previously been a Federalist) and the Whigs supported the bill. Prentiss opposed it, and his speech was regarded as prescient, as after the bill passed it proved he was right; the law proved to be a disaster. In his remarks, the Senator cited Chancellor Kent, “a distinguished jurist in this country,” for the difference “between bankrupt laws and insolvent laws, and that the constitutional power of Congress does not extend beyond the appropriate objects of a bankrupt law as ascertained from established usage and practice.” Bankruptcy, Kent had written, is “applicable only to unfortunate traders, who do certain acts which afford evidence of an intention to avoid payment of their debts.”<sup>25</sup>

Prentiss revealed himself in that speech. He said, “it appears to me that there is much more of humanity than justice in this measure; humanity, however, which, if it is kindness to a few, is cruelty to the many... that its tendency will be to weaken, greatly to weaken, if not to destroy, the moral obligation hitherto considered as attached to contracts, leaving nothing but the mere naked legal obligation remaining, and that in truth little or nothing.”<sup>26</sup>

. . . [B]ut I am an old-fashioned man, fond of old-fashioned principles and old-fashioned ways, especially when they are right and just, and am not at all predisposed to indulge in new and untried theories at their expense, or to look upon every change as a reform, or every reform as an improvement. I am entirely and altogether conservative in my principles, my habits of thought, and my feelings. I have been educated. I have been taught by my professional reading, by my experiences in judicial life, to respect the obligation of contracts; and I cannot readily yield to any new doctrine growing out of any laxity of

public opinion prevailing any where to their obligation, or out of any necessity supposed to exist in any quarter of the country for unwarrantably interfering with them.<sup>27</sup>

Thompson recalled that when Prentiss ended his remarks, Senator John C. Calhoun called the speech the “clearest and most unanswerable of any, on a debatable question, which he had heard for years.”<sup>28</sup> Calhoun, Webster, Clay—these were Prentiss’s peers. Calhoun once described him as the “best lawyer in the Senate.”<sup>29</sup>

Prentiss spoke about fame in another Senate speech. “I would not be understood as undervaluing popularity, because I disclaim it as a rule of conduct. I am quite too humble and unpretending an individual to count greatly upon it, or to seek for or desire any which does not arise from the pursuit of right ends by right means. Whatever popularity that may bring, will be as grateful to me as to any one. But I neither cover nor am ambitious of any other.”<sup>30</sup>

#### As District Judge

Elijah Paine had served as U.S. District Judge for Vermont for 42 years. He was the third District Judge, after Samuel Hitchcock (1793-1801) and before him Nathaniel Chipman (1791-1793). When Paine retired, President John Tyler appointed Samuel Prentiss to the office in 1842. Prentiss resigned his Senate seat, and Calhoun moved, “that instead of committing the subject, as was usual in similar cases to the Committee on the Judiciary, that the Senate should immediately act upon it on the ground of the perfect fitness of the nomination, and expressed a strong hope that the vote would be unanimous. It was so.”<sup>31</sup>

As District Judge, Prentiss joined U.S. Supreme Court Associate Justice Samuel Nelson as the Circuit Court. E.J. Phelps described how the two worked together. “Prentiss carried the scales and Nelson the sword; Prentiss carried the scales hung upon the diamond pivot, fit to weigh the tenth part of a hair, so conscientious, so thoughtful, so considerate, so complete in his knowledge of every principle and every detail of the law of the land. When he held up the scales, he not only weighed accurately, but everybody felt that he weighed accurately. His very modesty, the distrust of himself and fear less he should go too far or too fast, deprived him to some extent of what might be called the courage of his judicial convictions. Nelson, when they sat together, always took care to assure himself from Judge Prentiss that he was right in his conclusions; they never differed. It would have been very difficult to have brought Judge Nelson to a different conclusion ....”<sup>32</sup>

After Prentiss’s death, D.A. Smalley was appointed to replace him. The *Middlebury Register* wrote, “The office is worth \$2,000 per year and nothing to do, except to keep clean and respectable.”<sup>33</sup> Counting the reported decisions, Prentiss wrote fifteen decisions as District Judge and eight as a member of the Circuit Court, in his fourteen years on the federal court. Judge Prentiss’s name appears only once in the U.S. Supreme Court canon. In *Gassett v. Morse* (1843), Justice John McLean cited Prentiss’s decision in support of the court’s decision on the Bankrupt Act.<sup>34</sup>

#### Kent in Prentiss

In his decisions over the five years he served on the Vermont Supreme Court and the fourteen years he was U.S. District Judge, Prentiss regularly relied on Kent for authority. Prentiss cited and quoted Kent in *Weeks v. Wead* (1826), where the fundamental issue of when ownership of personal property vests is settled by requiring exclusive and entire possession. “The principle,” wrote Prentiss, “has received the sanction of some of the ablest lawyers, and been recognized and adopted as a rule of decision by some of the most enlightened courts, in this country.” He described how Kent, when he was Chief Justice of the New York Supreme Court, had ruled in a similar case, quoting Kent with approval.<sup>35</sup> “‘The law,’ says Chief Justice Kent, ‘in every period of its history, has spoken a uniform language, and has always looked with great jealousy upon a sale or appropriation of goods, without parting with the possession, because it forms so easy and so fruitful a source of deception.’”<sup>36</sup> Kent was also cited as authority by Prentiss in *Hathaway v. Holmes* (1828) in deciding that the discharge of a party upon a writ of *habeas corpus* doesn’t preclude the court from jurisdiction over the cause of confinement.<sup>37</sup> In *Lapham v. Barnes* (1828), Prentiss again relied on Kent as authority, ruling that a surety is equally responsible for a debt with other guarantors, but must be sued alone, and not on the underlying debt.<sup>38</sup> That all three referees must agree in their reports of causes referred to them was the conclusion of Prentiss’s decision in *Howard v. Conro* (1829), in which he sought support from a Kent decision on essentially the same question.<sup>39</sup> The doctrine that more than an answer, under oath, is required to supply proof of a fact, that there must be two witnesses before there can be a decree against the answer was what Kent ruled; Prentiss, in *Pierson v. Catlin* (1830), relied on Kent to come to the same conclusion.<sup>40</sup>

Writing on behalf of the Circuit Court, District Judge Prentiss found succor in Kent and Story. “The doctrine is so laid down in all the adjudged cases, with few



Vermont  
Bar Association

# CONNECT

WITH LEGAL PROFESSIONALS



## inPRINT

### Vermont Bar Journal

The official magazine of the VBA  
Published quarterly - 4 issues a year  
Circulation - 95% of VT licensed attorneys

### VBA Directory

The VBA Directory is a comprehensive listing complete with contact information of Vermont licensed attorneys, judges, and law firms, as well as a complete listing of the Vermont Court system and local, state and federal offices associated with the legal profession.

Published once a year in January  
The VBA Directory is provided complimentary to all Vermont Bar Association members as well as sold to thousands of other legal professionals in and outside of Vermont.



## inPERSON

### VBA Conferences

The Vermont Bar Association offers many unique opportunities to connect with the legal community in Vermont. Our larger events such as our Annual Meeting, Mid-year Meeting and bi-yearly Solo & Small Firm Conference and Tech Conference can connect you or your company with the right people in the legal profession.



## onLINE

### Legal Vendor Directory

The Vermont Bar Association Legal Vendor Directory is a directory of legal vendors that offer a variety of services for lawyers and legal professionals. Vendors may advertise in several categories, such as case management software, time and billing, etc.

Become an affinity benefit partner and grow your clientele!

## Advertise with us!

Contact: Lisa Maxfield p. 802-223-2020 e. [lmaxfield@vtbar.org](mailto:lmaxfield@vtbar.org) w. [www.vtbar.org](http://www.vtbar.org)

exceptions," he wrote, "and is recognized as the true doctrine by Chancellor Kent in his Commentaries, and by Judge Story in his treatise on Agency."<sup>41</sup>

Judge Prentiss never disagreed with the decisions of Kent. The respect is clearly evident. But Prentiss was diligent in his research, looking for answers in the English common law. He could not rely on Vermont decisions. There were only a few volumes of Vermont case law printed and many of the questions the court faced in his time were new to Vermont. In *Gassett v. Morse* (1843), District Judge Prentiss began his decision with a personal statement:

At the hearing of this case I had a very strong opinion upon it, and ordinarily should have pronounced an immediate decision; but as the case was one of a good deal of magnitude, and of great interest, especially to one of the individuals concerned in the transaction, I thought it my duty on that account, more than on account of any real difficulty in the case, to examine it fully. I have taken pains to go through all the cases having any bearing upon the subject, have read them attentively and thoroughly, and the result has been a full confirmation of the opinion I at first entertained.<sup>42</sup>

Samuel Prentiss was a fine jurist, an excellent jurist. Who then was this Kent who thought him "finest"?

### Kent

James Kent was born in Doanesburgh, New York in 1763. He graduated from Yale in 1781 and began practicing law in Poughkeepsie in 1787. He served in the New York State Assembly in 1793, and then moved to New York City where his career in public life began, first as Master of Chancery for the city. He was the first Professor of Law at Columbia College, beginning in 1793, and elected a Justice of the New York Supreme Court in 1804, serving until his appointment as Chancellor in 1814. In 1823, Kent was retired, having reached the mandatory age of 60 years. His four volumes of *Commentaries on American Law* were published, beginning in 1826, based on his lectures at Columbia. Kent retired in 1837.

It was said of Kent that he hated practicing law and was a boring lecturer. No one showed up for some of his lectures. He said he was proud to be "free from all dissipation, and chaste as pure, virgin snow. I had never danced, or played cards, or sported with a gun, or drank anything but water." Kent's decisions were the first to be published in New York, beginning in 1798. Robert S. Smith has written Kent turned the law into a learned profession, and that

his work led to the abandonment of "folk law." Kent prided himself on one essential quality as a judge: "the ability, or willingness, to put one's personal preferences, and one's vanity, aside."<sup>43</sup>

Kent started writing and publishing his opinions on the New York Supreme Court, and is celebrated as the originator of the case reporting system. Justice Story is credited with publishing the first U.S. Supreme Court reports through his work with Henry Wheaton.<sup>44</sup>

James Kent wrote an autobiographical sketch in 1828 that was first printed years after his death. There he revealed the cast of his mind. "I have had nothing more to aid me in all my life than plain method, prudence, temperance, and steady, persevering diligence."

My practice was first to make myself perfectly and accurately (mathematically accurately) acquainted with the facts. It was done by abridging the bill and the answers, and then the depositions; and, by the time I had done this slow and tedious process, I was master of the case, and ready to decide it. I saw where justice lay, and the moral sense decided the case half the time. And then I sat down to search the authorities until I had exhausted my books; and I might, once in a while, be embarrassed by a technical rule, but I almost always found principles suited to my views of the case, and my object was so to discuss the point as never to be teased with it again, and to anticipate an angry and vexatious appeal to a popular tribunal by disappointed counsel.<sup>45</sup>

And finally, who then was Joseph Story, who Kent thought wasn't the finest judge in New England?

### Story

Joseph Story was born in Marblehead Massachusetts in 1779, and was a graduate of Harvard College (1795). He read the law and opened a practice in Salem. In 1805 he represented Salem in the Massachusetts legislature; in 1808 he served part of a term in the U.S. House, and he returned to the legislature in 1810, serving as Speaker of the House in 1811. That year he was 32 years of age, and chosen by President James Madison to serve as an Associate Justice on the Supreme Court. Madison had nominated John Quincy Adams and the Senate had unanimously confirmed him, but Adams declined the office, claiming he was "conscious of too little law." Story became the youngest justice ever to serve on the U.S. Supreme Court.

Charles Warren described the choice as

a surprise and a "legal historical mystery." Story had never held judicial office. Madison had no personal acquaintance with Story.<sup>46</sup> Story proved a good choice. He served nearly 34 years on the Supreme Court. He is remembered for his opinion in *Trustees of Dartmouth College v. Woodward* (1819), in which he wrote, "It is not for judges to listen to the voice of persuasive eloquence or popular appeal. We have nothing to do but pronounce the law as we find it, and having done this, our justification must be left to the imperial judgment of country."<sup>47</sup> His decision in *Martin v. Hunter's Lessee* (1816) established the authority of federal court over state courts when federal constitutional issues were construed by the states.<sup>48</sup> In *Prigg v. Commonwealth of Pennsylvania* (1842), Story upheld the fugitive slave law.<sup>49</sup>

### Story on Kent

Joseph Story dedicated his *Commentaries on the Conflict of Law* (1834) to James Kent, as a "tribute of respect to a distinguished Master from his grateful pupil." He praised Kent for "a maturity of judgment, a depth of learning, a fidelity of purpose, and an enthusiasm for justice, which have laid the solid foundations of an imperishable fame."<sup>50</sup> In *Story's Commentaries on Equity Jurisdiction* (1933), he explained that equity "did not attain its full maturity and masculine vigor until Mr. Chancellor Kent brought to it the fullness of his own extraordinary learning, unconquerable diligence, and brilliant talents."<sup>51</sup>

When he was 25 and a state legislator from Massachusetts, Joseph Story visited the courtroom of the New York Supreme Court in 1807 for the particular purpose of watching Chancellor Kent in action. Story wrote of that day, "His celerity and acuteness stuck me immediately." Perhaps Kent "had a little too much haste." He "has a careless manner of sitting, which, though rather ungraceful, was pleasant to see. On the whole, if he be not a very grate [*sic*] man, I am satisfied he is not humble in his acquirements."<sup>52</sup> Kent would not have seen this comment, as Story's words were never published until after both had died.

Story wrote an article in the *North American Review* in 1820, describing the origins of equity jurisdiction in America and reviewing Johnson's Reports, where Kent's decisions were published. "[P]erhaps," he wrote, "it is not too much to say, that [equity] did not attain its full maturity and masculine vigor, until Mr. Chancellor Kent bought it to the fulness of his own brilliant talents."

Story stated, "It required such a man, with a mind, at once liberal, comprehensive, exact, and methodical; always revering authorities, and bound by decision;



true to the spirit, yet more true to the letter of the law; pursuing principles with a severe and scrupulous equity;—it required such a man, with such a mind, to unfold the doctrines of chancery in our country, and to settle them upon immoveable foundations.”<sup>53</sup>

The article led Kent to write to Story: “I have pretty good reason to believe I am indebted to you for the very flattering notice of my judicial labor, contained in the last number of the North American Review, and I cannot refrain from taking the liberty to assure you that nothing could be more grateful to my feelings, than to be thus honored by your pen. I am deeply grateful for the frank, liberal, and manly sentiments contained in the Review, and it will always continue to be one of the highest objects of my ambition, to cultivate and deserve your esteem and friendship. Nor am I insensible (permit me to say), to the easy and elegant manner in which you display your various learning and cultivated taste, and exhibit the rich treasures of your intellect on every topic connected with jurisprudence.”<sup>54</sup> Raising the delicate issue of competition, Kent added, “I certainly do not pretend to rival you in the rapid and wonderful career of your judicial acquisition.”

Story wrote Kent in return, saying, “In paying you my public tribute of respect and reverence, I have done no more than perform a duty which every professional man owes to the science of jurisprudence, and which I more particularly owe to you, from the abundant instruction I have derived from your labors.”<sup>55</sup>

According to Thompson, Kent called Prentiss the finest jurist in New England in 1830 or 1831. The nice words Kent said of and to Story and Story of and to Kent had come ten years earlier. Of course, what we say in “private,” as opposed to what is written down (and saved), are often two different things. Was Kent dissing Story by putting him second to a Vermont jurist? Or perhaps Story, being such an important jurist, was used by Kent in the same way we might praise a child’s drawing by saying Picasso couldn’t have done better himself. Picasso loses nothing by the comparison, and the child stands taller hearing the comment, and carries that memory with them all the days of their life.

**Gibbons v. Ogden**

As Chancellor, Kent was reversed only once. In *Gibbons v. Ogden* (1824), the year following Kent’s retirement, the high court struck down his ruling. The New York legislature granted Robert R. Livingston and Robert Fulton the “exclusive navigation of all waters” within that state, “with boats moved by fire or steam,” for a term of twenty years. The law authorized immedi-

ate forfeiture of vessels found in violation of the privilege, without hearing or trial. Aaron Ogden had purchased the franchise. Thomas Gibbons, licensed under federal law to carry on the coastal trade, put two steamboats into service between Elizabethtown and New Jersey. Ogden sought an injunction from the New York Court of Chancery, which granted it in 1818. Chancellor James Kent’s opinion concluded the federal constitution was not offended by the New York act. On appeal, the New York Supreme Court affirmed Kent’s decision, explaining, somewhat poetically, “We do not call to our aid *Neptune* with his trident; we invoke only the goddess *Minerva*.”<sup>56</sup>

On appeal to the U.S. Supreme Court, Daniel Webster argued the appellant’s case. He urged reversal on several grounds, in spite of the fact that New York’s judicial tribunals, by Chancellor Kent, “than which there were few, if any, more justly entitled to respect and deference,” had sanctioned the law. The power to regulate commerce was “complete and entire,” he said. Thomas J. Oakley, for Ogden, pointed to the “principle, that the States do not derive their independence and sovereignty from the grant or concession of the British crown, but from their own act in the declaration of independence.” New York state was sovereign and independent. The federal constitution was “one of limited and expressly delegated powers,” and “not a restriction of power previously possessed,” embracing the Tenth Amendment’s express reservation of state power. The power is plenary.

Chief Justice John Marshall wrote the decision, ruling the injunction void. The Contract Clause preempts state legislation regulating commerce that extends beyond the borders of the state. The “power of Congress does not stop at the jurisdictional lines of the several States.”

Associate Justice Joseph Story joined the majority in overturning Chancellor Kent’s order.<sup>57</sup>

This reversal came while Kent was still Chancellor. In Volume 1 of his *Commentaries*, he wrote several pages about the case. His comment sounds defensive. “The only great point on which the Supreme Court of the United States and the courts of New York have differed, is in the construction and effect given to the coasting license.”<sup>58</sup>

**Kent on Story**

After Story died, Kent called him “one of the rarest and best friends I had the honor and happiness to possess. He has done more by his writing and speeches to diffuse my official and professional character (far indeed beyond my deserts) than any living man.”<sup>59</sup>

Compare these warm and mutually sup-

**MARKSPOWERS<sup>LLP</sup>**

**Offering  
ZOOM  
MEDIATION  
and  
ZOOM  
ARBITRATION**



**DONALD (TAD) POWERS, ESQ.<sup>+</sup>**

**MICHAEL MARKS, ESQ.<sup>+</sup>**

**ADAM L. POWERS, ESQ.**

*Prepared. Patient. Persistent.*

**+National Academy of Distinguished Neutrals**

**+Best Lawyers for Mediation & Arbitration**

[www.markspowers.com](http://www.markspowers.com)

1205 THREE MILE BRIDGE ROAD  
MIDDLEBURY, VT

**(802) 388-2211**

*Call Kristin or check website for availability.*

porting words with how Kent treated Aaron Burr when they met on a New York street after Burr had been tried and acquitted of treason. "You are a scoundrel, sir—a scoundrel!" said Kent. Burr raised his hat, made a sweeping bow, and said, "The opinions of the learned Chancellor are always entitled to the highest consideration."<sup>60</sup>

### Nice Words

You're the top. You're the Colosseum.<sup>61</sup> You're the greatest. Pile up the compliments, the plaques, awards, diplomas, licenses, honorary degrees, and memorials, and maybe history remembers you that way. That's also the way history uses you. Vermont, as every state and nation, celebrates its heroes as a way of justifying its integrity. Kent thought Prentiss the "finest jurist in New England." We use the comment to prove that one small rural state can produce people who can compete with the best of those from other states in manifesting brilliance. The comment becomes something to boast about. It gives us a warm feeling that once there were Vermonters who were appreciated, not just here, but nationally.

Lawyers and judges seldom get compliments. Oh, a judge might comment, at the end of a trial, that both attorneys performed well. This is usually said before the verdict. Lawyers seldom congratulate each other, and judges must find their applause in their imaginations. Some lawyers display plaques on office walls, proving their competence. They are Super Lawyers or the "Best Lawyer of 2020" or a "Lawyer of Distinction." These present proof by plaque that your lawyer is one of the finest. Reputations are fragile vessels. We all want to be defined as the best at something, and few would mind a little praise now and again, if only to keep us going through the long and fearful nights.

*Paul S. Gillies, Esq., is a partner in the Montpelier firm of Tarrant, Gillies & Richardson and is a regular contributor to the Vermont Bar Journal. A collection of his columns has been published under the title of Uncommon Law, Ancient Roads, and Other Ruminations on Vermont Legal History by the Vermont Historical Society. Paul is also the author of The Law of the Hills: A Judicial History of Vermont (© 2019, Vermont Historical Society).*

<sup>1</sup> Daniel Pierce Thompson, *History of the Town of Montpelier* (Montpelier, Vt.: E.P. Walton, 1860), 282.

<sup>2</sup> W.H. Lord, "Obituary," *Vermont Chronicle*, June 8, 1857, 4.

<sup>3</sup> Thompson, "Montpelier," 281-282.

<sup>4</sup> See Michael J. Aminoff, *Sir Charles Bell His Life, Art, Neurological Concepts, and Controversial Legacy* (New York: Oxford University Press,

2017).

<sup>5</sup> *State v. Wheeler*, 3 Vt. 344, 347 (1830).

<sup>6</sup> *Bigelow v. Kinney*, 3 Vt. 353, 360 (1830).

<sup>7</sup> *Johns v. Stevens*, 3 Vt. 308, 315 (1830). Later the legislature passed a law authorizing mill owners to sue to condemn land for florage purposes in county court, an act that was struck down as violating Article 2 of the Vermont Constitution, as mills were not "public purposes." *Tyler v. Beacher*, 44 Vt. 648 (1871).

<sup>8</sup> *Pomeroy v. Mills*, 3 Vt. 279 (1830).

<sup>9</sup> *The King v. Jeremiah Glover, The Law Journal for the Year 1831 Comprising Reports of Cases in The Courts of Chancery, King's Bench, Common Pleas, Exchequer of Pleas, and Exchequer Chamber from Michaelmas Term 1830, to Trinity Term 1831, Both Inclusive*, IX (London: James Holmes, 1831), 38-39.

<sup>10</sup> Russell S. Taft, "The Judicial History of Vermont," in *The New England States: Their Constitutional, Judicial, Educational, Commercial, Professional and Industrial History* III, ed. William T. Davis (Boston: D. Hurd, 1897), 1421; "An act constituting the Supreme Court of judicature, and County Courts, defining their powers, and regulating judicial proceedings," March 2, 1797, *Laws of the State of Vermont of a Publick and Permanent Nature* (1825), Sec. 56, 74-75.

<sup>11</sup> Thompson, "Montpelier," 454.

<sup>12</sup> *Walton's Vermont Register and Farmer's Almanac* (Montpelier, Vt.: E.P. Walton, 1829), 142.

<sup>13</sup> E.J. Phelps, "Samuel Prentiss: An Address before the Vermont Historical Society," October 26, 1882 (Montpelier, Vt.: State of Vermont, 1882), 4.

<sup>14</sup> *Ibid.*, 9.

<sup>15</sup> Phelps described the last time he met Prentiss. "He was as charming to look at as a beautiful woman, old as he was. His hair was snow white, his eyes had a gentleness of expression that no painter could do justice to; his face carried on every line of it the impress of thought, of study, of culture, of complete and consummate attainment. His cheek had the color of youth. His figure was as erect and almost as slender as that of a young man. His old fashioned attire, the snowy ruffle, and white cravat, the black velvet waistcoat, and the blue coat with brass buttons, was complete in its neatness and elegance." *Ibid.*, 21.

<sup>16</sup> *State v. Wilkinson*, 2 Vt. 480 (1828); *State v. Burpee*, 65 Vt. 1 (1892).

<sup>17</sup> *Strong v. Strong*, 2 Aik. 373, 380 (1827).

<sup>18</sup> *Town of Stamford v. Town of Whitingham*, 2 Aik. 188, 193 (1827).

<sup>19</sup> *Munroe v. Walbridge*, 2 Aik. 410 (1827).

<sup>20</sup> *Batchelder v. Carter*, 2 Vt. 168 (1829).

<sup>21</sup> Charles James Fox Binney, *The History and Genealogy of the Prentice, Or Prentiss Family, in New England, Etc. from 1631 to 1863* (Boston: Charles James Fox Binney, 1883), 385 "The Late Judge Prentiss of Vt.," *Orleans Independent Standard*, 3 April 1857, 3.

<sup>22</sup> "The Mask Off," *Vermont Gazette*, 30 November 1830, 3.

<sup>23</sup> Phelps, "Samuel Prentiss," 17.

<sup>24</sup> Samuel Prentiss, *Speeches of the Hon. Samuel Prentiss of Vermont upon the Bill to Prohibit the Giving or Accepting Challenges to Duels in the District of Columbia and for the Punishment thereof* (Washington: Gales and Seaton, 1838), 4.

<sup>25</sup> Sen. Samuel Prentiss, *Speech of Mr. Prentiss, of Vermont on the Bankrupt Bill, Delivered in the Senate of the United State, June 23, 1840* (Washington: Gales and Seaton, 1840), 6-7.

<sup>26</sup> *Ibid.*, 11, 13.

<sup>27</sup> *Ibid.*, 17.

<sup>28</sup> Daniel Pierce Thompson, "Montpelier," in Abby Maria Hemenway, ed., *The History of Washington County* (Montpelier, Vt.: Vermont

Watchman and State Journal Press, 1882), 449.

<sup>29</sup> *The National Cyclopædia of American Biography* VIII (New York: James T. White & Company, 1898), 402.

<sup>30</sup> Phelps, "Samuel Prentiss," 18.

<sup>31</sup> "The Late Judge Prentiss of Vt.," *Orleans Independent Standard*, 3 April 1857, 3.

<sup>32</sup> Binney, *The History and Genealogy of the Prentice, Or Prentiss Family*, 391.

<sup>33</sup> *Orleans Independent Standard*, 20 February 1857, 3.

<sup>34</sup> *Buckingham v. McLean*, 54 U.S. 150, 157 (1851); *Gassett v. Morse*, 21 Vt. 625 (1843).

<sup>35</sup> *Weeks v. Wead*, 2 Aik. 54, 68 (1826).

<sup>36</sup> *Ibid.*, 71.

<sup>37</sup> *Hathaway v. Holmes*, 1 Vt. 405, 418 (1828).

<sup>38</sup> *Lapham v. Barnes*, 2 Vt. 213, 219 (1828).

<sup>39</sup> *Howard v. Conro*, 2 Vt. 492 (1829).

<sup>40</sup> *Pierson v. Catlin*, 3 Vt. 272 (1830).

<sup>41</sup> *Bradley v. Richardson*, 23 Vt. 720, 2 Blatchf. 343 (1851).

<sup>42</sup> *Gassett v. Morse*, 21 Vt. 627 (1843).

<sup>43</sup> Robert S. Smith, "Chancellor James Kent: Father of American Jurisprudence," 13 *Jud. Notice* 4, 2018.

<sup>44</sup> Judith S. Kaye, "Commentaries on Chancellor Kent," 74 *Chicago-Kent Law Review* (December 1998) 12, 17, fn. 20.

<sup>45</sup> James Kent, "Autobiographical Sketch," *The Southern Law Review* I:3, July 1872.

<sup>46</sup> Charles Warren, *The Supreme Court in United States History* I (Boston: Little, Brown, and Company, 1922), 415-416.

<sup>47</sup> *Trustees of Dartmouth College v. Woodward*, 17 U.S. 518, 713 (1819).

<sup>48</sup> *Martin v. Hunter's Lessee*, 14 U.S. 304 (1816).

<sup>49</sup> *Prigg v. Commonwealth of Pennsylvania*, 41 U.S. 539, 16 Pet. 529 (1842).

<sup>50</sup> Joseph Story, *Commentaries on the Conflict of Law, Foreign and Domestic, In Regard to Contracts, Rights, and Remedies* (Boston: Billiard, Gray, and Company, 1834), v-vii.

<sup>51</sup> Joseph Story, *Commentaries on Equity Jurisprudence* I (Boston: Hillard, Gray & Company, 1836), 63.

<sup>52</sup> William W. Story, ed., *The Life and Letters of Joseph Story* (Boston: Charles Little & James Brown, 1851), 244-245.

<sup>53</sup> *Ibid.*, 232.

<sup>54</sup> *Ibid.*, 377-378.

<sup>55</sup> *Ibid.*

<sup>56</sup> *Gibbons v. Ogden*, 17 Johns. 488, 508 (1820).

<sup>57</sup> *Gibbons v. Ogden*, 22 U.S. 1, 9 Wheat. 1 (1824).

<sup>58</sup> O.W. Holmes, Jr., ed., James Kent, *Commentaries* I Twelfth Edition (Boston: Little, Brown, 1873), 432-438.

<sup>59</sup> John B. Cassoday, "James Kent and Joseph Story," *Yale Law Journal* XII (Jan. 1903), 146-153.

<sup>60</sup> Judith S. Kaye, "Commentaries on Chancellor Kent," 14.

<sup>61</sup> Cole Porter wrote "You're the top" for *Anything Goes* in 1934.



# Vermont Lawyers Assistance Program

The Vermont Lawyers Assistance Program provides confidential, meaningful assistance to lawyers, judges, law students and their families in coping with alcoholism and other addictions, depression, and other personal or professional crises.

COUNSELING, PEER SUPPORT, AND  
PROFESSIONAL ASSISTANCE

# CALL FOR HELP

Help Line:  
1-800-525-0210  
(the Boston LAP  
can help refer you  
to a Vermont LAP  
Volunteer)

ALL  
COMMUNICATIONS  
ARE CONFIDENTIAL  
UNDER RULE 8.3(C)

Vermont LAP:  
1-800-355-4352  
[www.lapvt.org](http://www.lapvt.org)



# WHAT'S NEW

What's new? Well, everything! At long last, the VBA has completed its migration to a new website and database provider! Our new website is now visible at the same web address, [www.vtbar.org](http://www.vtbar.org). We encourage you to explore the relaunched site which has been redesigned to be more simplified and user-friendly (and mobile-friendly).

The VBA team has been working for several months with IntelLinx, our new membership AMS (Association Management System), to roll out our website and database. Please know we are working diligently to make this experience as easy and smooth as possible for you.

You should have received an auto-generated email in the pre-dawn hours of May 3<sup>rd</sup> with your new login from IntelLinx at your currently registered email address with a temporary password. Please use this to log into your account on IntelLinx and verify that your personal information is correct. This email communication and emails going forward for events and membership updates will come from [communications@intouchondemand.com](mailto:communications@intouchondemand.com), so please whitelist this domain.

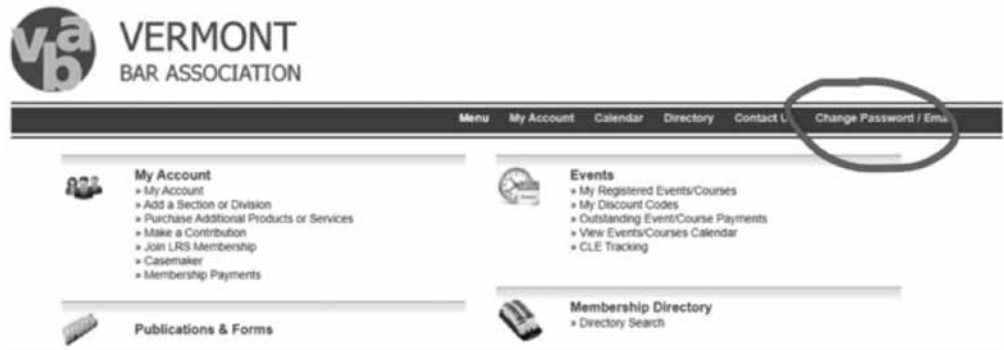
We recommend you change your temporary password to one of your own. The system will allow you to reset it to your old password if you wish, and will give you the ability to reset your own passwords going forward.

If you have any issues or did not receive the email, please call the VBA office at 802-223-2020.

## TIPS:

### • How do I log into my account?

You received an autogenerated email from IntelLinx AMS on May 3 with your UserID and temporary password. Please look for an email from [communications@intouchondemand.com](mailto:communications@intouchondemand.com) and make sure you mark this email address as Safe Sender or Not Spam. Use this to log in and verify your information. You can change your password once you are logged in here:



### • Can I still register online for CLE courses?

Yes. Registration will be much smoother, including the ability to see your own registrations in your portal, track your registrations and have immediate access to zoom webinar links and Certificates of Attendance. You can use the CLE tracker to keep track of your CLE's going forward and also manually add any CLE's.

### • Will this login work for CaseMaker?

Yes. The single sign-on feature for CaseMaker will be the same and the CaseMaker link will still be at the top of our website.

### • Will this login work for VBA Connect?

Not at this time, but we are working diligently on the SSO (single sign-on) for Higher Logic. Your email address and hence your membership will be recognized by Higher Logic and you will merely need to use the "Forgot Password" link to set up your VBA Connect password directly. You may use the same password. You can access VBA Connect the same way you did before, from the top of our website:



### • What are some of the new features?

- The new website, all services, and your membership portal can be accessed via any web enabled device (desktop, laptop, tablet, and smartphones)
- You may review and edit your bio, and upload a photo if you desire
- The Lawyer Referral Service portal will enable you to track your referrals directly, pay online and electronically file your reports
- You will be able to update your membership profile, renew your membership, register for events, track your CLE, access CaseMaker, etc., all from your portal
- The streamlined website is mobile-friendly and has more simplified navigation
- Our webinar service will be converting to Zoom webinars, from Webex events, so that our registrations will integrate with Zoom, providing you with immediate access information at the time of registration.

Please reach out to us at [info@vtbar.org](mailto:info@vtbar.org) with any questions, concerns or feedback you may have about this new launch. We are very excited about our new website and Membership AMS and we know you will find it to be a great improvement!



# BE WELL

## If you have 5 minutes, you can activate your own internal happiness!<sup>1</sup>

As a busy professional, I know that it can be overwhelming to hear a new habit or routine that I should incorporate into my day when it already feels too full. But, increasing your happiness does not take hours out of your day and can be completed in just a few minutes. And even though the time invested may be small, these “happiness hacks” pay dividends all day long.

So, take less than 5 minutes and just try one of these 5 happiness hacks, determining for yourself if the reward outweighs the minimal time invested:

### 1. Tackle Your Hardest Task First Thing in the Day.

Humans can rewire their brains. We have certain “happy chemicals” and we can develop conscious habits that turn those chemicals on. Dopamine, which creates a sense of accomplishment, is stimulated when you start your most difficult task of the day first thing in the morning! If the task is not something you can complete in 5 minutes, break it into smaller chunks. The overall goal is to focus on a specific target, accomplish it and receive the benefits of feeling proud of yourself all day long. For me, it is making sure I exercise or am active first thing in the morning.



Connect and share with us! Post pictures to Instagram, Facebook and Twitter of our events and our members in the news! We're @VTBAR and #VTBAR. CLE's are tagged with #vbacle. Check out our regular posts on Facebook, Instagram, LinkedIn and Twitter and don't forget to share collective wisdom in our online communities at [vbconnect.vtbar.org](http://vbconnect.vtbar.org)!

### 2. Take 10 Deep Breaths.

Researchers have broken down 4 pillars essential to cultivate mental well-being: awareness, connection, insight and purpose. Cultivate awareness through focused breathing. All forms of mindfulness meditations cultivate these aspects of mental well-being, and only take a few minutes each day!

### 3. Listen to a Happy Song (bonus points if you dance too).

Hearing happy music is on par with mindfulness meditation. Studies have shown it improves overall well-being and mood, lowering feelings of stress. Bonus points for dancing or moving your body along with the music, which can help increase energy levels even further!

### 4. For a few minutes, focus on the people who you trust to always be there for you.

Oxytocin is not only a cuddle chemical, it is also associated with feelings of trust. To stimulate it, think of people you trust. Ask yourself “If I need support, who will be there?” You can connect with them by sending a quick text or giving them a call. If in person, give them a hug. These simple moments of social connection with someone you love and admire are a big-time happiness booster. Just thinking about who is in your “herd” can be enough. It stimulates the brain's oxytocin and helps you feel safe and secure.

### 5. Do something kind for someone (or just think kind thoughts).

Daily acts of kindness are a simple way to boost happiness. They can be small, but they must be deliberate. Intentionally set a goal to be kinder to others. You can also spend some time cultivating a sense of kindness toward something in your head.

<sup>1</sup> Reformatted from article, “5 Happiness Hacks that Take 5 Minutes Or Less, by Catherine Pearson (5/12/21), [https://www.huffpost.com/entry/happiness-hacks-five-minutes-or-less\\_1\\_609bf35fe4b0909247fe3f9f](https://www.huffpost.com/entry/happiness-hacks-five-minutes-or-less_1_609bf35fe4b0909247fe3f9f)



**David L. Cleary**  
Cleary Shahi & Aicher, P.C.

**Mediations,  
Arbitrations, and  
Early Neutral  
Evaluations**

National Academy of  
Distinguished Neutrals

American Arbitration  
Association.

Past-President of the  
International Academy  
of Trial Lawyers

Cleary Shahi & Aicher, P.C.  
110 Merchants Row, 3<sup>rd</sup> Floor  
Rutland, Vermont 05701  
(802) 775-8800, ext. 17  
[dlc@clearyshahi.com](mailto:dlc@clearyshahi.com)

**check availability at:**  
[www.nadn.org](http://www.nadn.org)



# Access to Justice Campaign 20/21

The Vermont Bar Foundation's Access to Justice Campaign ended in a grand fashion thanks to almost 400 donors who made this our best campaign ever. Your generosity helped us raise over \$163,000. This money will be used to fund the first year of Emily Kenyon's Poverty Law Fellowship, as well as add to VBF's competitive grants program.

Big donors really stepped up this year as our Partners in Justice contest spurred on some friendly competition between law firms. Ironically, our largest donor wasn't a firm, but Vermont Attorneys Title Corporation. Their \$17,500 gift was the largest donation and garnered VATC the distinction of being the campaign's top donor. There were two prizes awarded to firms who had 100% staff participation in the campaign. Martin, Harding & Mazzotti, LLP and Massucco & Stern P.C. took the honors in this category. We look forward to expanded participation in next year's Partners in Justice.

Bonnie Badgewick and Fritz Langrock co-chaired the campaign. Fritz set a wonderful tone by creating what he referred to as the 10% challenge to get law firms to give a little bit more. Langrock Sperry & Wool, LLP boosted their annual donation from \$10,000 to \$11,000. We were happy to see that two firms, Primmer Piper Eggleston & Cramer PC and Sheehey Furlong & Behm P.C. also rose to the 10% challenge. Bonnie was masterful in getting firm and individual donations in central Vermont.

Big thanks to the rest of the committee: Judge Carlson, James Valente, Will Vasiliou, David Scherr and Renee Mobbs. Everyone worked very hard and reached out to their respective counties, friends and family.

The VBF Board also did a stellar job reaching out to members of the bar. The success of any campaign depends on many people all working for a greater goal. This year's campaign is evidence of that.

Below is the comprehensive list of donors. We thank all of you for your generosity. If you'd like to be part of the Access to Justice Committee, please reach out to Josie Leavitt, [j.leavitt@vtbarfoundation.org](mailto:j.leavitt@vtbarfoundation.org).

## Leadership Donors \$15,000 - \$20,000

- Vermont Attorneys Title Corporation

## Of Counsel Donors \$10,000 - \$14,999

- Dinse P.C.
- Downs Rachlin Martin PLLC
- Langrock Sperry & Wool, LLP
- Primmer Piper Eggleston & Cramer PC

## Director Donors \$5,000 - \$9,999

- Paul Frank + Collins P.C.
- Hon. Beth Robinson and Kym Boyman
- Sheehey Furlong & Behm P.C.
- Vermont Community Foundation

## Partner Donors \$1,000 - \$4,999

- Anonymous
- Tiffany Bluemle and Elizabeth Shayne
- James F. Carroll, Esq. and Nancy
- Hon. John Dooley and Sandra
- Fitts, Olson & Giddings, PLC
- Hershenson, Carter, Scott, & McGee, P.C.
- Ruth Lippincott, Esq.
- Marjorie and Michael Lipson
- J. Stephen Monahan, Esq.
- Jerome O'Neill, Esq.
- Rutland County Bar Association
- VBA Young Lawyers Division
- William Vigdor, Esq.
- Hon. John P. Wesley
- Windham County Bar Association
- Woolmington, Campbell, Bent & Stasny, PC

## Associate Donors Up to \$999

- Anonymous (14)
- Sam Abel-Palmer, Esq.
- Brian M. Amones, PC
- James Anderson, Esq.
- Robert Appel, Esq.
- Bridget C. Asay, Esq.
- Mary C. Ashcroft, Esq.
- David Austin, Esq.
- Deb Austin
- Eric Avildsen, Esq. and Faith Ingulsrud
- Deborah Bailey
- Gretchen S. Bailey, Esq.
- Barber & Waxman
- Amber Barber, Esq.
- Jessa and Justin Barnard, Esqs.
- M. Robin Barone, Esq.
- Barr Sternberg Moss Silver & Munson, P.C.
- Hon. David A. Barra and Barbara
- Sylvia Bartell
- Rachel Batterson, Esq.
- Bauer Gravel Farnham LLP
- Patricia G. Benelli, Esq.
- Christopher M. Bennett, Esq.
- Eugene Bergman, Esq.
- Elijah Bergman, Esq.
- Jeffrey Bernstein, Esq.
- Laura Bierley, Esq.
- Patrick L. Biggam, Esq.
- Leo Bisson, Esq.
- Jennifer Blomback
- Elizabeth Bluemle
- Kathleen M. Boe, Esq.
- Geoffrey Bok
- Raymond Bolton, Esq.
- Hillary Borcharding
- David Borsykowsky, Esq.
- Mary Bouchard, Esq.
- Francesca Bove, Esq.
- Richard K. Bowen, Law Ofc of

- Gavin Boyles, Esq.
- Brady / Donahue
- Cynthia L. Broadfoot, Esq.
- Hon. Colleen A. Brown
- Victory Brown, Esq.
- Vanessa Brown, Esq.
- David B. Brown, Esq.
- Hon. Lawrence H. Bruce
- Susan M. Buckholz, P.C.
- Buehler & Annis, PLC
- Robert Butterfield, Esq.
- Maria Byford, Esq.
- David Cain, Esq.
- Renee Staudinger Calabro, Esq.
- Scott Cameron, Esq.
- Danforth Cardozo, Esq.
- Hon. Tom Carlson and Nancy
- Edward Carroll, Esq.
- Hon. Karen R. Carroll
- Matthew Carter, Esq.
- Linda Cassella
- Jayne Cawthern
- Mark F. Chadurjian, Esq.
- Robert B. Chimileski, Esq.
- Clark, Werner & Flynn, P.C.
- Cleary Shahi & Aicher P.C.
- Julia J. Compagna, Esq.
- Colleen Conti, Esq.
- Hon. Cortland Corsones and Teri Corsones, Esq.
- Anne E. Cramer, Esq.
- Crispe & Crispe
- William E. Dakin, Jr.
- Daly & Daly, P.C.
- Beth Danon, Esq.
- Hon. Amy Davenport
- Dan M. Davis, Law Ofc.
- Tanya Davis
- Amy E. Davis, Esq.
- Anne Day, Esq.
- David Deal, Law Ofc of, PLC
- Angelina Debeaupuis, Esq.



- Christopher D'Elia
- Hon. Thomas J. Devine
- Jay Diaz, Esq.
- Judith F. Dickson, Esq.
- Judith L. Dillon, Esq.
- Mark DiStefano, Esq.
- Timothy Doherty, Esq.
- Anthony Donn
- Mike Donofrio, Esq.
- Vincent J. Dotoli, Esq.
- Bryden Dow, Esq.
- Priscilla B. Dube, Esq.
- James A. Dumont, Law Ofc. Of
- Anthony Duprey
- Kelsey Eberly, Esq.
- Stephen D Ellis, Esq.
- Rebecca Ellis, Esq.
- David Englander, Esq.
- Tim Eustace, Esq.
- John Evers, Esq.
- Jennifer Faillace
- Hon. David Fenster
- Geoffrey M. FitzGerald, Esq.
- Robert Fletcher
- Peg Flory, Esq.
- Danielle Fogarty, Esq.
- Patricia M. Fontaine
- Richard P. Foote, P.C.
- Kim Fountain
- Ronald Fox, Esq.
- Thomas French, Esq.
- James C. Gallagher, Esq. and Susan
- Erin Gallivan, Esq.
- Gay & Lesbian Fund of Vermont, Inc.
- James Gelber, Esq.
- Alan George, Esq.
- Hon. Robert Gerety
- Matthew Getty, Esq.
- Rita Gilbride
- Arnold N. Gottlieb, Esq.
- Benjamin Gould, Esq.
- Emily J. Gould, Esqs.
- Bryan Granger
- Hon. Brian J. Grearson
- Michael Green, Esq.
- Hon. Kevin W. Griffin
- William Griffin, Esq.
- David and Patricia Hallam
- Heather Hammond, Esq.
- George Harwood, Esq.
- Nate Hausman, Esq.
- Hon. Katherine A. Hayes
- Hayes Windish & Badgewick
- Richard Hecht, Esq.
- Erin and Jaimesen Heins, Esqs
- Robert Hemley, Esq.
- Judson E. Hescocock, Esq.
- Hon. David Howard
- Gregory P Howe, Esq.
- Hon. Christine Hoyt
- Hans Hussey
- Joel P. Iannuzzi, Esq.
- Will and Fran Irwin
- Erin Jacobsen, Esq.
- Raymond James, Esq.
- Duffy Jamieson
- Christopher Janeway

- Dan and Shelley Jerman
- Jaye Johnson, Esq.
- Hon. Ben Joseph
- Walter Judge, Jr., Esq.
- Hon. Michael Kainen
- Hon. Howard Kalfus
- Carey Kaplan
- Keith Kasper, Esq.
- Kevin Kelly, Esq.
- Kenny & Gatos, LLP
- Stephen Kiernan
- Jean Kiewel, Esq.
- Michael Kiey, Esq.
- Patricia A. Killigrew, Esq.
- John Kind, Esq.
- Kevin Kite, Esq.
- Hon. Scot Kline and Victoria Brown
- F. L. Kochman, Inc.
- Cindy Koenemann-Warren, Esq.
- W. David Koeninger, Esq.
- Roger Kohn, Esq.
- Jon Kopecky
- Pamela Kraynak, Esq.
- Elizabeth Kruska, Esq.
- Sophia Kruszewski, Esq.
- Bernard D. Lambek, Esq.
- John B. Lamson, Esq.
- Kyle Landis-Marinello, Esq.
- Francis Landrey, Esq.
- Louise Landry
- Fritz Langrock, Esq.
- Peter M. Lawrence, Esq.
- Wesley Lawrence, Esq.
- Josephine Leavitt
- Samantha Lednicki
- Sandra Levine, Esq.
- Hon. Joseph M. Lorman
- Kevin Lumpkin, Esq.
- Ashley Mahoney
- Jacqueline Majoros, Esq.
- John P. and Lynn P. Maley
- Zachary Manganello, Esq.
- Andrew Manitaky, Esq.
- Marsh & Wagner, P.C.
- Marsicovetere & Levine Law Group, P.C.
- William (Trey) Martin, Esq.
- Hon. Stephen B. Martin and Nancy
- Kelly Massicotte, Esq.
- Massucco Law Offices, P.C.
- Raymond Massucco, Esq.
- Gregory V. Mauriello, Esq.
- James C. and Natalia E. May
- John McCamley, Esq.
- Diane McCarthy, Esq.
- McClallen & Associates, P.C.
- McClintock Law Office, PC
- John J. McCullough, III, Esq.
- Hon. Kerry McDonald-Cady and Christopher Cady
- Scott McGee, Esq. and Cathy
- Thomas JP McHenry
- Devin McKnight, Esq.
- McNeil, Leddy & Sheahan, PC
- Christopher McVeigh, Esq.
- Hon. Robert A. Mello
- Amy Menard, Esq.
- Meub Associates, PLC

## Estate Planning, Elder Law & Medicaid Planning

*Peace of mind for families and loved ones*

### **What we do:**

- Protection of assets without spending all down to qualify for Medicaid
- Wills & Living Trusts
- Assistance with Medicaid Applications

**Wendy S. Hillmuth, Esq.,  
Stephen A. Unsworth, Esq.,  
Ellen B. LaPlante, Esq.**

Members of the American Academy of Estate Planning Attorneys & National Association of Elder Law Attorneys.



**UNSWORTH LAPLANTE, PLLC**  
ESTATE PLANNING & ELDER LAW

26 Railroad Avenue  
Essex Junction, VT  
(802) 879-7133

*For FREE consumer reports, articles, and estate planning seminars, please visit us at*

**[www.unsworthlaplante.com](http://www.unsworthlaplante.com)**

## SPECIAL NEEDS & ESTATE PLANNING CAFFRY LAW, PLLC

*Consulting or co-counsel with personal injury, family law and estate planning attorneys across Vermont regarding special needs planning and disability benefit matters*



**JAMES A. CAFFRY, ESQ.**  
**KAITLYN LEWIS KEATING, ESQ.**

- Jim is a parent of a child with special needs
- He is the only member of the Special Needs Alliance – attorneys dedicated to the practice of disability and public benefits law

www.caffrylaw.com • 802.882.8163  
46 South Main Street, Suite 3A  
Waterbury, VT 05676

## Lost in a maze of numbers?



**Our economists can help.**

### Don't Get Lost in the Numbers...

EPR has been providing easy to understand, fact-driven economic analyses of damages in personal injury, wrongful death, medical malpractice, commercial, marital, and employment cases since 1983.



802.878.0346 | 800.765.1377  
info@epreconomics.com  
www.epreconomics.com  
400 Cornerstone Dr., Ste. 310 | P.O. Box 1660  
Williston, VT 05495-1660

- Stuart Meyer, Esq. and Laura Eric and Liz Miller, Esqs.
- Suzanna Miller, Esq.
- Edward A. Miller, Esq.
- Renee Mobbs, Esq.
- Glenn Morgan, Esq. and Betsy
- Jason P. Morrissey, Atty at Law
- Laura Murphy, Esq.
- Hon. J. Garvan Murtha and Nicole
- Bradley D. Myerson, Law Offices
- Mark and Marilyn Neagley
- Karl W. Neuse, Esq.
- William P. Neylon, Esq.
- Sarah North, Esq.
- Elizabeth Novotny, Esq.
- Zarina O'Hagin, Esq.
- Hon. John Pacht
- Sandra Paritz, Esq.
- Harry Parker, Esq.
- Fred Peet, Law Office of
- Constance Pell, Esq.
- Phillips, Dunn, Shriver & Carroll, PC
- Andrew C. Pickett, Esq.
- Hon. Dean Pineles
- Jessica Pollack
- David Pollock, Esq.
- Jeffrey Polubinski, Esq.
- Brian Porto, Esq.
- Charles Powell
- Powers & Powers P.C.
- Kimberly Pritchard, Esq.
- Putnam & Menard, PLC
- David Rath, Esq.
- Jon Readnour, Esq.
- Chief Justice Paul Reiber and Sandi
- Frederick Reich, Esq.
- David G. Reid, Esq.
- Hon. Christina Reiss
- Rice & Riley, PLLC
- Lila M. Richardson, Esq. and Allen Gilbert
- Barbara Rodgers, Esq.
- Alan Rome, Esq.
- Ronan Law Group, PLLC
- Jennifer Rowe, Esq.
- Laurie A. Rowell, Esq.
- Phyllis Rubenstein, Esq.
- Jillian Rudge, Esq.
- Christopher Ruml
- Patricia Sabalis
- Salmon & Nostrand Law Offices
- Samuelson Law Offices
- Shelley Sayward, Esq.
- Hon. D. Justine Scanlon
- Todd Schlossberg, Esq.
- Hon. Kirstin Schoonover and Hon. Brian Valentine
- William Schubart
- S. Mark Sciarrotta, Esq.
- Sonja B. Selami, Law Ofc of, P.C.
- Lila Shapero, Esq.
- Thomas Sherrer, Esq.
- Shillen Mackall & Seldon Law Office, P.C.
- Margaret Shugart, Esq.
- Y. Dave Silberman, Esq. and Eilat Glikman
- Amelia W. Silver, Esq.
- Morris Silver, Esq. and Torrin
- Hon. Eleanor W. Smith
- George E. Spear, II, Esq.
- Navah Spero, Esq.
- James Spink, Esq.
- Joshua Stern, Esq.
- Harold B. Stevens, Esq., P.C.
- David Stewart, Esq.
- Stitzel, Page & Fletcher, PC
- Sarah Swank, Esq.
- Hon. Mary Miles Teachout
- Chris Tebbetts
- Sumru Tekin
- Jonathan Teller-Elsberg
- Charles R. Tetzlaff, Esq.
- Joel Thompson, Esq.
- Erick Titrud, Esq.
- Hon. Timothy B. Tomasi
- Hon. Helen M. Toor
- Benjamin Traverse, Esq.
- Gordon ER Troy, PC
- Micaela Tucker, Esq.
- Patricia Turley, Esq.
- Oliver L. Twombly, Esq.
- Edward J. Tyler, III, Esq.
- Andrew V. Urbanowicz, Esq.
- Julia Uris
- James A. Valente, Esq.
- Thomas Valente, Esq.
- Martha Van Oot, Esq.
- Geoffrey Vitt, Esq.
- Henry Vogt, Esq.
- Kevin Volz, Law Ofc. of
- von Stange Law PLC
- Lenora von Stange, Esq.
- F. J. von Turkovich, P.C., Law Ofc of
- Hon. Nancy Waples
- Wynona I Ward, Esq.
- Caryn Waxman, Esq.
- Welford & Sawyer, P.C.
- Mark Werle, Esq.
- Whalen, Hand & Gilmour, PLC
- Elise Whittlemore
- James H. Wick, Esq.
- Marc E. Wiener Law Offices, PLLC
- John H. Williams, II, Law Ofc. of
- Wilschek Iarrapino Law Office, PLLC
- Sarah E. Wilson, Esq.
- J. Zaw Win, Esq.
- Winburn Law Office
- Anna Windemuth
- Peter Wolfson
- Matthew Woodbury
- BetsyAnn Wrask, Esq.
- Kristin Wright
- Tom Wright, Esq.
- Peter F. Young, Esq.
- Sophie Zdatny, Esq.

## TRIBUTE GIFTS

*In Memory of Pat Barr and Rolf Sternberg*  
Peter M. Lawrence, Esq.

*Dedicated to BIPOC*  
Rita Gilbride

*Dedicated to Rachella (Ruthie) Bolton*  
McClintock Law Office, PC  
Jason P. Morrissey, Esq.

*In Memory of Harvey D. Carter, Jr.*  
Hon. D. Justine Scanlon

*In Memory of S. Stacy Chapman, Esq.*  
John McCamley, Esq.

*In Memory of Richard I. Damalouji*  
Cynthia L. Broadfoot, Esq.

*Dedicated to Elizabeth*  
Jon Kopecky, Esq.

*In Memory of Hon. Annette S. Elstein*  
Patricia A. Killigrew, Esq.

*Dedicated to Tom French, Esq.*  
Raymond Massucco, Esq.

*Gay & Lesbian Fund of Vermont, Inc.*  
Directed by Eileen Blackwood & Lynn  
Goyette

*In Memory of Bob Gensburg*  
F. L. Kochman, Inc.

*In Memory of Hon. Ruth Bader Ginsburg*  
David Englander, Esq.  
Richard Hecht, Esq.  
Phyllis Rubenstein, Esq.

*In Memory of Hon. Peter Hall*  
Zachary Manganello, Esq.  
Hon. Beth Robinson and Kym Boyman  
Shelley Sayward, Esq.  
Thomas Valente, Esq.  
Lenora von Stange, Esq.

*Dedicated to Hedy Harris*  
Jean Kiewel, Esq.

*In Memory of Joe Hasazi*  
Todd Schlossberg, Esq.

*In Memory of Thomas Jacobs*  
Jason P. Morrissey, Esq.

*Dedicated to Hon. Denise R. Johnson*  
Wilschek Iarrapino Law Office, PLLC

*In Memory of Judith Joseph*  
Hon. Ben Joseph  
Dedicated to Elizabeth Kruska, Esq., VBA  
Pres. 20/21  
Wesley Lawrence, Esq.

*In Memory of Professor Gil Kujovich*  
Zachary Manganello, Esq.

*Dedicated to Josie Leavitt*  
Elise Whittemore

*In Memory of Laurie LeClair, Esq.*  
Judith L. Dillon, Esq.

*In Memory of Hon. Theodore S.*  
*Mandeville Jr.*  
Bradley D. Myerson, Law Office

*In Memory of Larry Mandell*  
Alan Rome, Esq.

*Dedicated to Alexis Michelle Martin*  
William (Trey) Martin, Esq.

*Hon. Francis B. McCaffrey*  
Bradley D. Myerson, Law Offices

*Dedicated to Michael Mello*  
Micaela Tucker, Esq.

*Dedicated to Renee Mobbs, Esq.*  
Carey Kaplan

*In Memory of John S. Murtha, Esq.*  
Hon. J. Garvan Murtha and Nicole

*In Memory of Anthony Otis, Esq.*  
Robert Butterfield, Esq.  
Edward A. Miller, Esq.

*In Honor of PFL, Esq.*  
Anonymous

*Dedicated to all Poverty Law Fellows and*  
*their works*  
Robert Appel, Esq.  
M. Robin Barone, Esq.

*In Memory of Phil Saxer*  
Matthew Carter, Esq.

*In Memory of Scott Skinner, Esq.*  
Kelly Massicotte, Esq.

*Vermont Community Foundation*  
Supporters: William L and Debra Lopez  
Gottesman; David P. and Laura J. Stiller

*In Honor of VBA*  
Chief Justice Paul Reiber and Sandi

*In Memory of Joan Loring Wing, Esq.*  
Hon Cortland Corsones and Teri Corsones,  
Esq.



## VERMONT LEGAL FOOD HUB

### Are you an attorney interested in working with farm and food clients?

The new Vermont Legal Food Hub at Vermont Law School connects income-eligible farmers, food entrepreneurs, and food system organizations with skilled attorneys willing to provide pro bono legal services.

### Join the hub for an opportunity to:

- ✓ Get involved in a quickly growing practice area;
- ✓ Access educational resources and networking opportunities; and
- ✓ Help build strong businesses and healthy communities.

# legalfoodhub.org

legalhub@vermontlaw.edu

802.831.1035

**"To know you are providing legal services to a community that nourishes us all is reason alone to get involved and sign up as a volunteer lawyer." - Attorney Elizabeth (Beth) Boepple**



This project is funded by the National Agricultural Library, Agricultural Research Service, U.S. Department of Agriculture.

# A View of Pro Bono Work in Vermont

Many of Vermont's residents depend on the legal community to provide free or low cost services. This year's VBA Pro Bono Award winners, Cristina Mansfield, Esq., Kathleen Rivers Esq., and Janet Van Derpoel-Andrea, Esq. work tirelessly to provide such legal help whenever possible. These three dedicated Vermont attorneys have been recognized for giving low-income clients legal representation at a time when they need it most, prioritizing the rights and concerns of their clients regardless of their ability to pay. I had a chance to speak with each of them recently about their admirable legal work and personal interests.

## Cristina Mansfield, Esq.

At her general law practice in Manchester Center, Cristina handles a variety of cases with a focus on family and juvenile law. She came to a law career after decades working in international development, carrying over interests in advocacy and community education that she explored while completing a Master's Degree in Public Administration from the Kennedy School of Government and a Master's Degree in Agribusiness from Kansas State. Cristina felt at home traveling the world and connecting with people, as she grew up in a multicultural, U.S. Air Force family, moving frequently and learning new languages easily. A career in law suddenly came on Cristina's horizon when a student of hers gave a talk at the Vermont Law School. Cristina attended and by the time she walked out of the talk, she knew she had to attend VLS. Graduating in her 50s, she stayed in Vermont to practice law, participating in the VBA's Incubator Program where she received funding to set up a website and liability insurance as well as receiving mentoring and internship opportunities. Cristina's practice mainly serves struggling families in Bennington County's Family Division, and this is where many of her *pro bono* cases have arisen.

Cristina explains that clients in family law matters greatly need representation

and guidance: "When parents are litigating custody of their children, they have a lot at stake, and people often come into the legal process with no understanding and afraid." Sometimes ready to sign anything out of fear, clients benefit significantly from the guidance that Cristina provides. "The public needs help, especially where there is lack of knowledge in the court system and an imbalance of power," and Cristina strives to educate clients so they can be informed and self-directed in working on their cases. "It's critical in my meetings with clients—they are going to walk out with the statute, the list of factors in their case." She teaches clients how to observe and record facts and how to determine what is in the best interests of children in the case. "The reality is that the client knows the case better than me." She has found that most clients are very appreciative of her *pro bono* and low bono work, and they are "willing to do anything they can to help. Once I had a *pro bono* client come in and organize all their paperwork before I would look at it. It took them five hours sitting in my office. They left with a new appreciation for how hard attorneys work."

Taking *pro bono* cases in a wide variety of legal areas, mentored by senior attorneys, has also helped Cristina learn and broadened her general practice within and beyond family law. With senior attorney assistance, she has taken on asylum and immigration cases as well as a Social Security benefits case. "I had some knowledge from my background but could not have helped clients in these cases without a mentor." Overall she reports that *pro bono* work has been "a tremendous experience...a chance to learn new substantive areas of the law, and it helps with networking."

Technology is playing an increasingly important role in how Cristina connects with people, from clients to registrants in Vermont's Law Office Study (LOS) Program. Cristina uses email and text messages to keep clients informed on the progress of their cases, and she serves them whenever

she files something on Odyssey. "They get an email, read it, and call me with a summary of the entry order; my clients read the order before my staff!" For the past year, Cristina has led a study of Vermont's Rules of Civil Procedure via Zoom among registrants in Vermont's LOS Program where graduates of a bachelor degree program can read for the Vermont administration of the bar exam without attending an accredited law school. With the group tuning in via web cameras, Cristina leads in careful examination of the Rules and inspires attendees to go deeper in their legal learning so that they in turn can help their own clients in the future.

In the years ahead, Cristina and her legal team aim to become more efficient in order to serve clients better and do as much *pro bono* work as possible. In her spare time, she volunteers in the community, spends time with family and her partner, Ed, and trains for competing next year in Scotland's Kindrochit Quadrathlon.

## Kathleen M. Rivers, Esq.

Vermont native Kathleen Rivers is glad to be back to her home town of Brattleboro, serving the needs of clients in her community. Kathleen returned to Brattleboro after living in other parts of the northeast for the better part of a decade. She majored in Government and International Relations while at Clark University. Kathleen went on to graduate from Albany Law School. A year after graduating, she returned to Vermont and has been with Furlan & Associates, PLLC, since 2018. Kathleen primarily practices criminal and juvenile law in Windham County.

In a large portion of her time, Kathleen handles Child in Need of Supervision (CHINS) cases. With the understanding that "there are no bad kids and no bad parents, just families who need more help," Kathleen gives of her time to meet clients where they are and ensure they have a voice when facing overwhelming obstacles. In

# VBA CONNECT

Your Legal Community Resource -- Share, Learn, Stay Connected

## Share Collective Wisdom Today!



addition, she represents clients in probate court and helps parents with divorces and custody matters after there has been DCF involvement. Kathleen doesn't necessarily seek *pro bono* work, but plenty of it comes her way: "How can I not help? There isn't much choice about it." Kathleen has also found an advantage in doing *pro bono* and low bono work in that mentorship is available in new areas of practice. Kathleen is particularly appreciative of her supervising attorney, Mark Furlan, Esq., and public defender Joanne Baltz, Esq.

For troubled clients involved in complex life situations, Kathleen offers compassionate guidance through a court system that is notoriously difficult to navigate. "Law is really hard. For a long time it was designed to be hard." Especially for today's low-income clients facing challenges of addiction, mental health issues, and poverty, Kathleen's dedication and skilled legal services come as a welcome relief to the confusion of the court process. She often finds herself going above and beyond meeting with clients, filing motions, and attending hearings, even at times attending therapy sessions when a client requests that she come along. Any help that clients need navigating the legal system, or the housing system, or when facing a variety of other challenges, Kathleen is there to assist and make a difference for parents and children in the communities she serves.

Kathleen finds ways to communicate effectively with clients in the changing technological landscape and in light of pandemic realities, including a Google Voice account which allows her to text clients. A new brick and mortar office space in Brattleboro has helped Kathleen facilitate meetings during the pandemic, as she previously met clients at the courthouse or in a client's home. Since "it's not always possible to meet clients over the phone, and certain conversation topics, such as relinquishing Parental Rights and Responsibilities, can't be discussed remotely," finding ways to meet clients in person safely continues to be very important in Kathleen's legal work. Finally, she strives to learn new ways to communicate effectively and ethically with clients, many of whom struggle with mental illness or the effects of abuse or addiction.

In her spare time, Kathleen runs and spends time at the local dog park with her golden retriever, a rescue dog named Brady.

#### Janet Van Derpoel-Andrea, Esq.

Janet started her practice in Bennington in 1995 with an emphasis on Family Division cases of all types. She believes that many people in southern Vermont have a desperate need for legal services in all parts of the

court system as well as educational, dental, psychological, medical, veterinary and childcare services. Her goal is to put clients who cannot afford private counsel on an equal footing with those who can. In addition to the demands of people dealing with a complicated legal environment which may be new to them, lawyers can often reduce the immense stress that accompanies court involvement. While some people already qualify for free or partially State-funded representation, others do not because their cases are of a different type. Without *pro bono* lawyers to assist them, they struggle needlessly to understand the nature of their cases and prepare and present themselves in the courtroom effectively, especially if they are illiterate.

Janet graduated from the University of Rochester (Class of '74) with a Bachelor's degree in both Sociology and Political Science. After college, she worked at various jobs. Her favorite was working for a large real estate company in the Capital Region of New York as a broker, sales trainer and technical writer. Realtors ready for a "next step" usually have choices such as the law, banking, accounting, surveying, title searching, property management, etc. Janet received her degree from Vermont Law School (Class of '91) along with a certificate from the General Practice Program.

Janet encourages lawyers of all levels of experience to do *pro bono* work. In their early years in practice, clients devastated by the weight of poverty in addition to legal problems offer newer lawyers the chance to learn a tremendous amount about the mechanics of legal practice. Senior lawyers already have a lifetime of skills to offer. "They can start working knowledgeably right away with people struggling with their case in the context of a country wracked by COVID-19, massive upheaval, shortages of resources, violence of all kinds, overburdened bureaucracies, etc."

While technology use has soared during the pandemic, Janet works daily with people who cannot afford their phones and do not have laptops or printers. This is com-

plicated by a widespread illiteracy problem. Practicing law with people lacking resources has been hard. Government buildings have had to close. Some clients used to depend on public library email access, but not now. The heart of lawyer-client communication – in person meetings – have rarely happened during the winter of 2020-2021. This has been especially hard on clients with cognitive impairment, educational disabilities, no homes and no transportation. Now that it is spring, Janet has resumed meeting with clients outside.

As the pandemic continues, Janet encourages Vermont attorneys to develop ways to "support more people having easier access to the court system more of the time. When people are gathered in food pantries, senior centers, free clinics, and farmer's markets anyway, that's an opportunity for lawyers to offer one or two pieces of information about the court system that people don't know. Short community presentations could help all age groups across all divisions in the court system." Janet has heard many myths about Vermont law over the years. "The first step in representation is to dismantle those. A presentation in a safe, community setting is an excellent site for doing for that type of work. The 'limited appearance' is a wonderful tool, too."

Asked about the post-pandemic legal scene in Vermont, Janet believes that electronic appearances will continue in some circumstances. She hopes that grant money and private donations can provide *pro bono* clients with laptops and printers, even if they are loaners that must be reset between clients.

Janet reads books of all kinds, declining modern alternatives to paper. "The pleasure of holding a book is the whole experience – content, no device between the eye and the written word, the feel of the paper, the end papers – and some books are simply very beautiful." She also rides horses at a local dressage/eventing barn as often as possible.



# College Behind Bars: Putting the Second Chance Act to Work in Vermont

How the most democratic society in history came to have the highest incarceration rate in the world is a question that will trouble us for years to come. But today the authors of the 1994 Crime Bill are among those wringing their hands.<sup>1</sup> The 1994 Crime Bill (the Violent Crime Control and Law Enforcement Act of 1994) allocated \$12.5 billion to states to build new prisons if they passed 'truth-in-sentencing' (TIS) laws. Those laws required inmates to serve at least 85 percent of their sentences. Between 1995 and 1999, nine states adopted TIS laws, and another 21 states changed their TIS laws to comply with the crime bill's requirements and then applied for funding. By 1999, a total of 42 states had adopted TIS laws.<sup>2</sup> In addition to the billions spent building new prisons, one of the most ill-conceived aspects of the 1994 Crime Bill was the termination of Pell Grant eligibility for those in prison.

As a result of the termination of Pell Grant eligibility, by 2005 the number of "college in prison" programs had shrunk to less than a few dozen, with four of them being in New York State. The programs in New York were largely the work of one student, Max Kenner. Kenner graduated from Bard College in 2001, and he and a few others gave proof to Margaret Mead's aphorism about how "a small group of people can change the world."<sup>3</sup> Today there are approximately 300 programs across the country offering post-secondary education in prisons.<sup>4</sup> Most of these programs were born after the passage of the Second Chance Act in 2015.

To his credit, Vermont's senior Senator was one of the leaders in seeking course correction. Along with Senator Rob Portman of Ohio, Senator Patrick Leahy became a co-sponsor of the Second Chance Act, restoring Pell Grant eligibility to prisoners. The Second Chance Act was expanded further in 2020. Today incarcerated students can use Federal Pell Grants at 130 colleges in 42 states and the District of Columbia. Technically, Vermont is one of those states. Bennington College and Community College of Vermont have both been selected as part of the Second Chance Act "Experimental Sites Initiative."<sup>5</sup> But to date, in Vermont, it has been a steep hill to climb.

One of the heroes in this effort has been Kathy Fox, a sociology professor at the University of Vermont.

Professor Fox developed a program be-

tween UVM and the Chittenden Regional Correctional Center by doing her own private fund raising. With the pandemic and no internet access, the program stopped in the spring of 2020. Professor Fox describes her students at the Chittenden Regional Correctional Center as the hardest working students she ever had. Admission required a GED or high school diploma and an interview process. Professor Fox remarks about how students in the program read ahead, did multiple drafts of papers, and never took the program for granted. She says the future depends on Pell Grants and internet access.

Funded with private donations, primarily from the J. Warren and Lois McClure Foundation, Community College of Vermont (CCV) has begun a similar effort at Newport's Northern State Correctional Facility (NSCF). In the fall of 2018, CCV offered three college classes to inmates, as well as its Introduction to College and Careers class to Community High School of Vermont students housed at NSCF. Since inception, they have offered 12 classes at NSCF, resulting in 100 students taking over 150 course placements. According to Heather Weinstein, Dean of Strategic Initiatives and Student Affairs at CCV: "A team of CCV and DOC staff are working closely to plan the expansion of CCV classes to additional Vermont facilities." She says planning is still in its early stages. As of January 2020, there were 32 active participants. This small, embryonic initiative shows signs of being as important as other similar projects around the country.<sup>6</sup>

In the age of mass incarceration, it is an important ray of hope. The recidivism rate for inmates receiving an associates or bachelor's degree through the Bard Prison Initiative in upstate New York is a low 4%.<sup>7</sup> A review of other "college in prison" programs done by the Rand Corporation showed that those programs produced similarly dramatic reductions in recidivism rates.<sup>8</sup>

The most often repeated argument against college in prison programs is that they skim off the "top" of the prison system's inmates. That turns out to be false. Comparing official state data with student databases from the Bard initiative (BPI), the general characteristics of all 700 students admitted to the BPI program is very much representative of the characteristics of the general New York prison population.<sup>9</sup>

Those BPI graduates have gone on to become lawyers, ministers, professors and business owners. And that data begs the question—if indeed the students in these programs are representative of the broader prison population, how much talent, energy and contribution is thrown away and gone to waste for want of opportunity and availability of more programs like BPI?

The case for expanding these programs meets the "beyond a reasonable doubt" standard.

## Incarceration by the Numbers

There are approximately 328 million people in the United States and 2.3 million of those people are now in prison.<sup>10</sup> We have another 4.5 million people on probation or parole.<sup>11</sup> To put those numbers in perspective, for every 100,000 people, overall, in the United States, there are now 698 people in prison. In the United Kingdom there are 139. In France there are 104. In Denmark there are 59.<sup>12</sup> In Russia, there are 386 people in prison per 100,000 population.<sup>13</sup> Today's imprisonment rate in the United States is nearly seven times what it was in 1972.<sup>14</sup>

Vermont's average daily sentenced population is about two thirds of what it was ten years ago.<sup>15</sup> As of March 19, 2021 Vermont's sentenced population was 1,239.<sup>16</sup> The Covid pandemic likely played a substantial role in that reduced number. On the other hand, in 2010 Vermont budgeted \$137 million for our Department of Corrections.<sup>17</sup> Despite almost a one third decrease in the key incarceration rate, the 2021 budget is \$167 million, a 22% increase over 2010.<sup>18</sup> The annual daily average detained, but not sentenced, population in Vermont prisons has actually increased over the last ten years—from 357 to 443, however on March 19, 2021 that population was down to 282.<sup>19</sup> Again, the pandemic may be playing a role in shaping these numbers.

Nevertheless, Vermont's recidivism rate is currently increasing. According to the most recent data, set out in DOC's 2021 budget presentation, the percentage of prisoners who were sentenced to at least one year and who were returned to prison within three years has risen from 43% in 2005 to 53% in 2015.<sup>20</sup> Though bleak, Vermont's recidivism rates are somewhat better than much of the rest of the country. According to a study of 30 state correc-

tional facilities done by the U.S. Bureau of Justice Statistics, 30% of inmates released from those facilities were rearrested within six months after being released. Within three years 68% were rearrested, and within six years 79% were rearrested.<sup>21</sup>

### Shifting Spending Priorities

These numbers become especially disconcerting when we juxtapose prison costs with spending for public education. In 1977 the United States was allocating 26 percent of general expenditures to elementary and secondary education. By 2017 that allocation was reduced to 21 percent.<sup>22</sup> In real, inflation adjusted dollars state funding for public two and four-year colleges in 2018 was more than \$6.6 billion below what it was in 2008.<sup>23</sup> Between 1980 and 2011 California spent 13% less on its college and university system, but spent 436% more on its corrections system.<sup>24</sup> California now spends more on correctional institutions than it does on its university, state colleges and community colleges systems combined.

Vermont's commitment to higher education has been equally alarming in many respects. Facing a crisis in our State college system, with the serious possibility of closing some campuses, the Vermont Legislature has been trying to remedy the problem of underfunding. But historically we do not compare well to other states. Slightly more than 2% of our State's tax revenues have been allocated to higher education. That is the second lowest in New England and one half of the national average.<sup>25</sup> Our public tuition charged to in state students is the highest in the country, and twice the national average.<sup>26</sup> It is hard to find data that correlates that commitment to incarceration rates. However there certainly appears to be a link between standard schools and incarceration rates.

A close look at the poorest communities in cities like Philadelphia and Los Angeles with the most substandard K-12 schools reveals that those are the same communities with the highest incarceration rates.<sup>27</sup> While we don't have similar data for Vermont, it is clear that our communities with the most disadvantaged economies also confront an education funding formula that leaves their students even more disadvantaged.<sup>28</sup> More research needs to be done on how this correlates to incarceration rates in Vermont, but every indication from other places is that there is a direct relationship.

These educational disparities are like a fire that feeds itself. Incarceration rates have barely increased among those who have attended college; nearly all the growth in incarceration is concentrated among those with no college education. 29 Among white male high school dropouts



As a Certified Divorce Real Estate Expert™ (CDRE) through the Divorce Real Estate Institute and a Senior Real Estate Specialist® (SRES), Barb Trousdale, REALTOR® serves the family law community by offering: *expertise on all real estate matters affecting family law cases, expert court testimony, fair market valuation, and the marketing of real property, and specialized services for the aging population.*

Trained in mediation through the National Association of Realtors, and with over 10 years chairing the Professional Standards Committee for her local REALTOR® Association, Barb is skilled in successfully facilitating complex real estate transactions.



**Barb Trousdale, REALTOR®**  
 Certified Divorce Real Estate Expert™  
 Senior Real Estate Specialist®  
 Owner/Broker, Preferred Properties

802.233.5590  
 barb@preferredpropertiesvt.com  
 147 Knight Lane | Williston, VT  
 www.preferredpropertiesvt.com

born in the late 1970s, about one-third are estimated to have served time in prison by their mid-30s. Among black male high school dropouts, about two-thirds have a prison record by that same age.<sup>30</sup> And, of course, poverty always plays a role. Incarcerated people have a median annual income that is 41% less than non-incarcerated people of similar ages.<sup>31</sup> In Vermont 75% of those that are incarcerated read at below the 9<sup>th</sup> grade level.<sup>32</sup> On the other hand, according to the U.S. Census, 93% of Vermonters have at least a high school degree.<sup>33</sup> Our prison population is heavily weighted in a single demographic.

### The Economics of College Behind Bars

A simple cost benefit analysis is so compelling that, if this were the private sector, investors would be begging to buy stock. The obvious returns on providing college courses in prisons make the returns on an early investment in Google or Amazon look paltry. There are more than 650,000 men and women released from U.S. Prisons every year. Many of those former inmates wind up unemployed. One estimate puts this cost alone at as much as \$65 billion a year.<sup>34</sup> But the cost to our criminal justice system of current recidivism rates is almost immeasurable. According to the Vera Institute, the annual cost of housing an inmate in Vermont in 2015 was \$57,615.<sup>35</sup> Today that cost is closer to \$63,000 per inmate per year—more than enough to cover room, board, tuition and fees for an out of state student at UVM. When the cost of administration, probation and parole are all taken into account, the savings for every prisoner who doesn't return to jail is closer to \$100,000 per inmate. A recent study by the Rand Corporation indicated that with only a 13% reduction in recidivism rates, one dollar invested in prison education programs saves between four and five dollars in three-year reincarceration costs.<sup>36</sup>

The economics of mass incarceration overlap with issues of humanity. In 2010 there were 2.7 million children with a parent behind bars—1 in every 28 children. That was up from 1 in 125 just 25 years ear-

lier. Two-thirds of these children's parents were incarcerated for non-violent offenses.<sup>37</sup> One in 9 African American children (11.4 percent), 1 in 28 Hispanic children (3.5 percent) and 1 in 57 white children (1.8 percent) have an incarcerated parent. More than half of imprisoned parents (52 percent of mothers and 54 percent of fathers) were the primary earners for their children.<sup>38</sup>

### The Morality and the Politics of College Behind Bars

While the economic case for providing greater access to higher education in prison is compelling, David Karpowitz, who has spent over a decade teaching in the Bard Prison Initiative (BPI) makes a compelling moral and political case for these programs as well. In his book *College in Prison: Reading in the Age of Mass Incarceration* Karpowitz writes: "Our best justifications for much criminal and civil law rest on the belief that free people can and must be held morally accountable for their actions. If this is so then our systems of accountability... should strengthen both agency and dignity."

Karpowitz claims that conservatives generally turn to notions of personal responsibility for solutions, while liberals look to institutions and social responsibility for solutions. He says college in prison provides a systemic opportunity for individual empowerment, bridging both theories. He argues that: "In no sense can college in prison resolve this tension, but it does live on the fault line of these contradictions, and is thus the sort of action that helps make our public institutions, like prisons, ethically worthy of the republic they sustain."<sup>39</sup>

Karpowitz quotes Winston Churchill, whose eloquent logic frequently bridged the gap between liberals and conservatives:

*The mood and temper of the public in regard to the treatment of crime and criminals is one of the most unfailing tests of the civilization of any country. A calm and dispassionate recognition of the rights of the accused against the state, and even of convicted criminals against the state...tire-*



less efforts toward the discovery of curative and regenerating processes and an unfaltering faith that there is a treasure, if only you can find it, in the heart of every person--these are the symbols which in the treatment of crime and criminals mark and measure the stored up strength of a nation and are the sign and proof of the living virtue in it.<sup>40</sup>

There is an irrefutable cost benefit analysis favoring our financial investment in expanded college in prison programs. But more important than the economics of this issue is whether or not we have the collective strength and character to build a criminal justice system that offers prison inmates a genuine opportunity to finally become full members of a free society.

### New Opportunities for College Behind Bars

The Second Chance Act is now supplemented by the FAFSA Simplification Act (Free Application for Federal Student Aid). FAFSA is "sentence-blind"—meaning all incarcerated people, regardless of sentence length or conviction, can qualify—and includes people with certain drug-related convictions who could not previously apply for Pell Grants. It covers people in jails, prisons, and juvenile and civil commitment settings. When the Act takes effect—no later than July 1, 2023—up to 463,000 people who are currently incarcerated will be eligible for this financial aid.<sup>41</sup>

Undoubtedly there will be various entities seeking to profit from this opportunity, and it will be incumbent upon Departments of Correction to ensure the quality of programs being offered. The Prison University Project and the Alliance for Higher Education in Prison among others have developed a template to help guide Departments of Corrections and educational institutions in assuring high levels of quality in the programs that are being used.<sup>42</sup> Likewise, the Justice Center of the Council of State Governments has laid out the essen-

tial building blocks of a successful program which Vermont can benefit from.<sup>43</sup>

The time and opportunity to provide expanded post-secondary education in Vermont would seem to be now. Incarcerated students now have access to Pell Grants at CCV via the Second Chance Act and through FAFSA. The Department of Corrections can also access approximately a half million dollars to support a meaningful post-secondary education program. First it can access funds through the Carl Perkins Career and Technical Training Act.<sup>44</sup> Second, it can access funds through the Workforce Innovation and Opportunity Act to support post-secondary programs in Prison.<sup>45</sup> The Department of Corrections budgets \$3,503,773 to pay 35 teachers. Salaries are listed as \$2,284,128 plus "fringe benefits" of \$1,044,910—substantially more than the average high school teacher in Vermont is making today.<sup>46</sup> Nonetheless, the Department's 2021 budget request speaks only to secondary education allocating only \$103,949 to supplies, equipment, space, IT and operating expenses.<sup>47</sup>

### The Future of College Behind Bars in Vermont

While DOC and CCV are "actively and collaboratively planning to expand the access to college behind bars," the nuts and bolts of a meaningful program have yet to be put in place. There still isn't any method to identify who might benefit from the program, much less who might be interested in the program. When asked what needs to be put in place before Vermont prisoners can have greater access to college programs through CCV, a Department of Corrections official stated: "...until we complete implementation of the wireless access network, it is difficult to identify what else would really enhance the access or address systemic barriers."

Professor Fox at UVM agrees. While she says "something magic happens with in person instruction" she also says that in-

ternet access is essential to a meaningful State-wide program. She points to the Women's Re-entry Center in Maine where women take classes online from the University of Maine and says there are effective ways to put guard rails on internet access. Professor Fox would also urge Vermont to consider use of a State College campus for an expanded Second Chance Experimental Site Initiative.

Few would argue with the fact that education is one of the main roads to a meaningful and productive life in a free society. For those who were denied access to that road, or who got lost along the way, it is not only fair that we give them a chance to find that road. It is plain, simple common sense. The State of Vermont can point to countless initiatives in environmental protection, education and human rights where we have been leaders. College in prison programs is an area where we should start trying to catch up.

*David Kelley grew up in Vermont and went to UVM and Georgetown Law School. He was General Counsel to the Vermont Ski Areas Association for 25 years and co-founder of PH International. He currently works with the Vermont College in Prison Project and the Vermont Wildlife Coalition.*

<sup>1</sup> <https://www.delawareonline.com/story/news/2019/01/21/biden-says-he-regrets-1990-s-crime-bill-calls-big-mistake-mlk-day-event/2639190002/>

<sup>2</sup> <https://www.brennancenter.org/our-work/analysis-opinion/complex-history-controversial-1994-crime-bill>

<sup>3</sup> <https://www.nytimes.com/2005/02/20/magazine/uncaptive-minds.html>

<sup>4</sup> [https://assets-global.website-files.com/5e3dd3cf0b4b54470c8b1be1/5fc42533d043ab47fb826391\\_TheLandscapeofHigherEducationinPrison-2018-2019.pdf](https://assets-global.website-files.com/5e3dd3cf0b4b54470c8b1be1/5fc42533d043ab47fb826391_TheLandscapeofHigherEducationinPrison-2018-2019.pdf)

<sup>5</sup> <https://experimentalsites.ed.gov/exp/pdf/ES-IParticipants.pdf>

<sup>6</sup> <https://vtdigger.org/2019/02/01/community-college-vermont-awarded-funding-inmate-education-program/>

<sup>7</sup> <https://bpi.bard.edu/topics/college-behind-bars/#:~:text=One%20of%20the%20most%20>

## WANTED: LEGAL FICTION

Fancy yourself a fiction writer? The next Grisham?

The *Vermont Bar Journal* is not just for scholarly legal dissertations!

Call it a fiction contest or an active solicitation for your works of fiction, either way, if we love it, we may print it!

Submit your brief works of legal fiction (6,000 words or less) to [jeb@vtbar.org](mailto:jeb@vtbar.org).

**Our next deadline is July 1, 2021**



incredible, rates%20reported%20across%20the%20country.

<sup>8</sup> <https://www.rand.org/pubs/perspectives/PE342.html>

<sup>9</sup> Karpowitz, supra, p. 31.

<sup>10</sup> <https://www.prisonpolicy.org/reports/pie2020.html#:~:text=The%20American%20criminal%20justice%20system,civil%20commitment%20centers%2C%20state%20psychiatric>

<sup>11</sup> [https://www.pewtrusts.org/-/media/assets/2018/09/probation\\_and\\_parole\\_systems\\_marked\\_by\\_high\\_stakes\\_missed\\_opportunities\\_pew.pdf](https://www.pewtrusts.org/-/media/assets/2018/09/probation_and_parole_systems_marked_by_high_stakes_missed_opportunities_pew.pdf)

<sup>12</sup> <https://www.prisonpolicy.org/global/2018.html>

<sup>13</sup> <https://www.statista.com/statistics/1022927/russia-annual-incarceration-rate/>

<sup>14</sup> <https://www.nap.edu/read/18613/chapter/4#34>

<sup>15</sup> <https://ljfo.vermont.gov/assets/Uploads/0b6923e633/DOC-FY21-Budget-Presentation-v3.pdf>

<sup>16</sup> [https://doc.vermont.gov/sites/correct/files/documents/Daily-Population/Pop\\_Count\\_03-19-2021.pdf](https://doc.vermont.gov/sites/correct/files/documents/Daily-Population/Pop_Count_03-19-2021.pdf)

<sup>17</sup> <https://doc.vermont.gov/sites/correct/files/documents/reports/doc-fy19-budget-presentation.pdf> p.28

<sup>18</sup> <https://ljfo.vermont.gov/assets/Uploads/0b6923e633/DOC-FY21-Budget-Presentation-v3.pdf>

<sup>19</sup> [https://doc.vermont.gov/sites/correct/files/documents/Daily-Population/Pop\\_Count\\_03-19-2021.pdf](https://doc.vermont.gov/sites/correct/files/documents/Daily-Population/Pop_Count_03-19-2021.pdf)

<sup>20</sup> <https://ljfo.vermont.gov/assets/Uploads/0b6923e633/DOC-FY21-Budget-Presentation-v3.pdf>

<sup>21</sup> <https://www.bjs.gov/index.cfm?ty=pbdetail&iid=6266>

<sup>22</sup> <https://www.urban.org/policy-centers/cross-center-initiatives/state-and-local-finance-initia->

tive/state-and-local-backgrounders/elementary-and-secondary-education-expenditures

<sup>23</sup> <https://www.cbpp.org/research/state-budget-and-tax/state-higher-education-funding-cuts-have-pushed-costs-to-students>

<sup>24</sup> <http://www.allgov.com/usa/ca/news/top-stories/prisons-capturing-more-state-dollars-than-colleges-120910?news=845259>

<sup>25</sup> <https://ljfo.vermont.gov/assets/Uploads/c47db06469/VSCS-FY21-Budget-Testimony-02-10-20-FINAL.pdf>

<sup>26</sup> <https://ljfo.vermont.gov/assets/Uploads/c47db06469/VSCS-FY21-Budget-Testimony-02-10-20-FINAL.pdf>

<sup>27</sup> <https://prospect.org/special-report/education-vs.-incarceration/>

<sup>28</sup> [https://vtdigger.org/2021/03/15/29-school-board-members-fairness-in-school-funding-cant-wait/?u=\\*%7CUNIQID%7C\\*](https://vtdigger.org/2021/03/15/29-school-board-members-fairness-in-school-funding-cant-wait/?u=*%7CUNIQID%7C*)

<sup>29</sup> <https://www.nap.edu/read/18613/chapter/4#66>

<sup>30</sup> <https://www.nap.edu/read/18613/chapter/2#5>

<sup>31</sup> <https://www.prisonpolicy.org/reports/pie2020.html>

<sup>32</sup> <https://legislature.vermont.gov/Documents/2020/WorkGroups/Senate%20Appropriations/FY%202021%20BUDGET/03%20%20Human%20Services/W-Department%20of%20Corrections~FY%202021%20Budget%20Request%20-%20Presentation%20~3-10-2020.pdf>

<sup>33</sup> <https://censusreporter.org/profiles/04000US50-vermont/>

<sup>34</sup> Michelle Fine et al., Changing Minds, Sept. 2001, 29, [https://www.prisonpolicy.org/scans/changing\\_minds.pdf](https://www.prisonpolicy.org/scans/changing_minds.pdf)

<sup>35</sup> <https://www.vera.org/publications/price-of-prisons-2015-state-spending-trends/price-of-prisons-2015-state-spending-trends/price-of-prisons-2015-state-spending-trends-prison-spending>

<sup>36</sup> <https://www.rand.org/pubs/perspectives/PE342.html>

<sup>37</sup> <https://www.americansforthearts.org/by-program/reports-and-data/legislation-policy/naap-pd/collateral-costs-incarcerations-effect-on-economic-mobility>

<sup>38</sup> <https://www.americansforthearts.org/by-program/reports-and-data/legislation-policy/naap-pd/collateral-costs-incarcerations-effect-on-economic-mobility>

<sup>39</sup> Karpowitz, College in Prison, Rutgers University Press, 2017, p. 162.

<sup>40</sup> Ibid, 163.

<sup>41</sup> <https://www.ed.gov/news/press-releases/secretary-devos-expands-second-chance-pell-experiment-more-doubling-opportunities-incarcerated-students-gain-job-skills-and-earn-post-secondary-credentials>

<sup>42</sup> [https://www.mttamcollege.org/wp-content/uploads/2020/08/Equity\\_Excellence\\_in\\_Practice.pdf](https://www.mttamcollege.org/wp-content/uploads/2020/08/Equity_Excellence_in_Practice.pdf)

<sup>43</sup> [https://csjjusticecenter.org/wp-content/uploads/2020/02/Laying-the-Groundwork\\_Feb2020.pdf](https://csjjusticecenter.org/wp-content/uploads/2020/02/Laying-the-Groundwork_Feb2020.pdf)

<sup>44</sup> [https://s3.amazonaws.com/PCRN/uploads/How\\_States\\_Made\\_Available\\_Perkins\\_Funds\\_for\\_Correctional\\_Ed.pdf](https://s3.amazonaws.com/PCRN/uploads/How_States_Made_Available_Perkins_Funds_for_Correctional_Ed.pdf)

<sup>45</sup> <https://www.dol.gov/agencies/eta/wioa/about#:~:text=The%20Workforce%20Innovation%20and%20Opportunity,compete%20in%20the%20global%20economy.>

<sup>46</sup> [https://finance.vermont.gov/sites/finance/files/documents/Budget/Budget\\_Recomm/FY\\_2022/FY2022\\_Executive\\_Budget\\_Book.pdf](https://finance.vermont.gov/sites/finance/files/documents/Budget/Budget_Recomm/FY_2022/FY2022_Executive_Budget_Book.pdf)

<sup>47</sup> <https://legislature.vermont.gov/Documents/2020/WorkGroups/Senate%20Appropriations/FY%202021%20BUDGET/03%20%20Human%20Services/W-Department%20of%20Corrections~FY%202021%20Budget%20Request%20-%20Presentation%20~3-10-2020.pdf>



## SAVE THE DATE!

*We are back **LIVE** and **IN-PERSON** on **October 8, 2021** for our **VBA Annual Meeting** at the Doubletree in S. Burlington.*

We cannot wait to see you all at our Annual Meeting on Friday October 8, 2021.

Join us for a day of CLE's, membership business meeting, live networking and food on October 8th. Watch our website for more information.

***See you there!***

# Why Failing to Provide Mandatory Security Awareness Training is a Huge Misstep

I will admit that, at times and with topics such as cyber security, I can come across as overbearing to some and as a fearmonger to others. Speaking honestly, however, I never try to come across that way. Cybersecurity is simply a topic I am passionate about. Whenever I speak or write on this topic, my purpose is to try and do all that I can to help others avoid becoming yet another victim of a cybercrime.

I share this because I really do get it. Thinking about my own efforts to keep our home network secure and our personal information private, well, all I can say is it seems like an effort in futility. There really are days where I just want to say the heck with it and stop even trying. I don't know if it's a blessing or a curse; but when those days hit, and for whatever reason, I get angry. You see, I take it personally. The fact that all sorts of bad actors out there want to steal my identity, my money, my passwords, and the list goes on really ticks me off. The reality is I'm not good with that and this is where my motivation to fight back in whatever way I can comes from. It's what keeps me going. Hopefully keeping all this in mind will allow you to hear my message.

In recent years, I have come to realize the true value of mandatory ongoing security awareness training in every business regardless of size, even solo practices. Truth be told, my wife and I often talk about cyber security. I will share breach stories, explain how specific types of malware work, and show her various real-world examples of phishing emails and smishing texts. And while it's one of the ways she is able to enter my work world, as a victim of a cybercrime herself, she's also well aware of the true purpose behind and value of these conversations. So, you see, even in my personal life, I walk the talk because this is one of the ways I learn as well.

Now, to the topic of this post, the purpose of which is to explain one of the many reasons why I believe that a failure to provide mandatory ongoing security awareness training to every lawyer and staff who works at a firm is a huge misstep. I'm going to ask you to trust me when I say that we humans are the weak link when it comes to cyber security and it's all about the art of social engineering. One of my favorite cyber security lines is "Amateurs hack systems, professionals hack humans" because it speaks to the truth. And since humans can't be patched and upgraded the way computers can, all we

can do is educate them. Unfortunately, such efforts are often perfunctory, short lived or never even make it off the "to do" list.

Here's the problem with not following through on training. If it hasn't already happened, at some point, someone, maybe even you, will be tricked into doing something that will allow malware to be installed on your firm's network. It might be clicking on a malicious link, opening an infected attachment, or logging on to a spoofed website, just for starters. Very sophisticated social engineering attacks have been and will remain for the foreseeable future the preferred attack vector because they are so darn effective at getting people to lower their shields when it comes to the actions they take while online.

The interesting question for me is this. What risks do we all face if our own online actions come up short? Allow me to share a few, and I truly mean a few, examples of common types of malware attackers are trying to trick you into installing on your network and/or any device that touches your network.

**Malicious Bots** – A bot is a software application that is typically used to perform simple repetitive tasks much faster than any human ever could. Malicious bots give an attacker control of your computer, often for the purpose of incorporating your computer into a botnet, which is a much larger network of computers infected with bots. Botnets are often used to launch massive attacks on other computers networks or to send out vast amounts of spam email. Malicious bots can also be updated remotely, giving the attacker the ability to change the bot's functionality at any time.

**Ransomware** - a type of malware that uses encryption to permanently block access to the victim's data and/or enables the hacker to steal and then threaten to publish the victim's data unless a ransom is paid.

**Wiperware** - a malicious program whose sole purpose is to destroy all computer files by wiping (think digital erase) the hard drive of every computer it infects. Wipers typically have three targets: files, the boot section of the operating system, and backups. In short,

these programs are highly destructive.

**Keylogger** - a program that records every keystroke made by a computer user and then sends that information to the attacker. Its purpose is to allow the attacker to obtain as much confidential information as possible, to include passwords.

**Remote Access Trojan (RAT)** - a program attackers use to take complete control of a victim's computer for the purpose of performing any number of malicious activities, to include potentially activating a webcam without turning on the active camera light. RATs can reside on systems for extended periods of time before being detected and can be extremely difficult to successfully remove. They operate in a stealth mode and are quite difficult for antivirus software programs to identify.

**Banking Trojan** - Disguised as a legitimate application so that victim's will willingly download and install it to their computers or mobile devices, a banking trojan is actually a malicious program that seeks to capture information that will allow the attacker to gain access a victim's banking and investment accounts.

Perhaps now you have a sense of why I get angry and want to do all I can to fight back. More importantly, however, I hope you can begin to understand why I believe that failing to provide mandatory ongoing security awareness training to everyone who works at a firm, regardless of firm size, is a huge misstep. It's because being hit with any of the above malware examples will prove to be more than a minor inconvenience. For some, such an attack may sound the death knell for the firm. With so much at stake, why risk it? If security awareness training isn't currently in play, it's time to make it a high priority item; because the pros are out to hack your human assets and, like it or not, education is the only way to counter that.

---

*ALPS Risk Manager Mark Bassingthwaighte, Esq. has conducted over 1,000 law firm risk management assessment visits, presented numerous continuing legal education seminars throughout the United States, and written extensively on risk management and*

technology. Check out Mark's recent seminars to assist you with your solo practice by visiting our on-demand CLE library at [alps.inreachce.com](http://alps.inreachce.com). Mark can be contacted at: [mbass@alpsnet.com](mailto:mbass@alpsnet.com).

*Disclaimer: ALPS presents this publication or document as general information only. While ALPS strives to provide accurate information, ALPS expressly disclaims any guarantee or assurance that this publication or document is complete or accurate. Therefore, in providing this publication or document, ALPS expressly disclaims any warranty*

*of any kind, whether express or implied, including, but not limited to, the implied warranties of merchantability, fitness for a particular purpose, or non-infringement.*

*Further, by making this publication or document available, ALPS is not rendering legal or other professional advice or services and this publication or document should not be relied upon as a substitute for such legal or other professional advice or services. ALPS warns that this publication or document should not be used or relied upon as a basis for any decision or action that may af-*

*fect your professional practice, business or personal affairs. Instead, ALPS highly recommends that you consult an attorney or other professional before making any decisions regarding the subject matter of this publication or document. ALPS Corporation and its subsidiaries, affiliates and related entities shall not be responsible for any loss or damage sustained by any person who uses or relies upon the publication or document presented herein.*



by Hon. George K. Belcher

## A Tool in your Trust-Drafting Toolbox: The Trust Company of Vermont

You may have seen a glossy photo of a stately building in this journal or heard a radio advertisement about the Trust Company of Vermont. What is it and how might this company serve you and your clients?

For many years, local lawyers advised clients to use local bankers to act as trustees for testamentary and inter vivos trusts. Most of the local banks had "trust departments" or one or more bank officials who managed trust duties when the bank was named as the trustee. The system often worked well because the smaller, local banks usually had "local knowledge" about the creator of the trust, the beneficiaries, and the extended family. If the trust was created to avoid a difficult family situation, the local bank/trustee was likely familiar with the situation. The local bank often had a personal or business relationship with the family and provided one-stop shopping for trust and other banking services.

As we know, in the 1980's and 1990's the banking industry underwent many consolidations. Often the local bank was bought or consolidated with a larger institution, with management located outside of the community or outside of the State of Vermont. It was not unusual for beneficiaries to learn that the trust administrator who managed their trust for years was no longer the acting trustee, but rather the administrator was now an unfamiliar bank employee from another community or another state. Sometimes, if the beneficiary petitioned to change the trustee to a more local person or institution, the existing trustee would oppose the petition and threaten to charge its costs to the trust for defense of its trusteeship.

It was within that time frame that the Trust Company of Vermont was born. In 1999, Attorney Jack Davidson, who had been the head trust officer of the Vermont National Bank, formed the Trust Company of Ver-

mont (TCV) after VNB was purchased by the Chittenden Bank. Mr. Davidson and the seven other founders wanted to establish a stable, local trust company to serve Vermonters without the risk of consolidation and with consistent employee services. The company was formed as an employee-owned entity, with stock eventually owned by an employee stock ownership plan (ESOP), serving to assure that the company would continue as a Vermont service company with emphasis upon stable ownership, continuity of trust and investment services, and low staff turnover. When the company began, its initial staff consisted of its eight founders. On day one, there was approximately zero in assets under management. Today, the company has fully staffed offices in Brattleboro, Rutland, Burlington, and Manchester, \$2 billion in assets under management, and 41 seasoned trust administrators, portfolio managers, and support staff. The roster now includes former Probate Judge Susan Fowler and an estate-planning attorney, Jennifer Rowe, who joined the company in 2020. The organization is overseen by Vermont's Department of Financial Regulation, and TCV has its own internal auditor.

Over the years, the Trust Company has been active with Vermont Bar Association projects. The company was represented in the joint effort of the Vermont Bar Association and the Vermont Bankers Associations in drafting Vermont's new trust code<sup>1</sup> as well as provisions of the Uniform Principal and Income Act<sup>2</sup> and the ability to convert trusts to "unitrusts"<sup>3</sup>.

Although the company has expanded in scope and size, its commitment to local service and Vermont-based focus remains the same as when it was first formed. This is in large part to the wisdom and vision of the founders of the company and Jack Davidson. Mr. Davidson was President, Chief Ex-

ecutive Officer and Chairman of the company's board of directors for twenty-two years. Recently, Jack Davidson has retired as President to become a part-time trust officer with the company. Succeeding Mr. Davidson as President is Christopher Cassidy, MBA. In Chris' words, "We have developed strong working relationships with many of the estate planning attorneys around the state over the years, and we always welcome new relationships with attorneys and the clients they are serving. We offer consultations without charge for attorneys and/or their clients to explore the services we offer to help in determining whether Trust Company of Vermont might be a good fit for a particular family."

In what way might you use the services of TCV in your practice? Of course, the first question is whether your client needs expertise in administration of a trust or investment management. Often when drafting a trust, questions arise as to whether the proposed trustee (if a family member) has the expertise, time, or objectivity to manage a trust effectively. Likewise, there may be questions whether a family member would have the experience and skill to invest the trust assets in a manner consistent with the needs of the beneficiaries and the overall goals of the trust. The fiduciary obligations imposed on trustees are sometimes foreign and confusing to an inexperienced lay person.<sup>4</sup> Some trust assets require special expertise in management and administration, such as tax-deferred accounts, real estate, and unique partnership investments. Likewise, there may be the need for in-house coordination between a trust's administration and its investments so that changes in investments can be coordinated with required distributions or managed with respect to estate tax planning. Sometimes the trust contemplates special issues to be addressed in

the future, such as special-needs beneficiaries or spendthrift concerns.

If you, as the drafter of the trust document, or the settlor have concerns about the selection of a trustee, it might be worthwhile to consider a professional trustee like the Trust Company of Vermont. An informational meeting with a local representative of the company can answer any questions you or your client may have with no obligation. The Trust Company of Vermont has relationships with many local attorneys, and you might seek references from lawyers who have worked with the Trust Company of Vermont in the past. Speaking to such a colleague is another way to find out how the relationship works.

When giving advice to a settlor about who should serve as trustee, there are many factors to consider, including the scope of the work to be done, the expertise required, the particular problems anticipated in managing the assets, the manner in which the trust interfaces with other components of the es-

tate plan, any peculiar tax problems or anticipated estate tax filings, and the expenses of fiduciary fees.

The fee structure for investment management depends upon the size of the trust assets. The annual fee is usually based upon all assets under management, ranging from 1.00% to .40%, depending upon the size of the account relationship. Perhaps unique in the business of corporate fiduciary work, the Trust Company groups family accounts as one in determining its charges, thus providing an economy of scale in a relationship with multiple accounts. If the company is needed as a fiduciary for estate administration, the fee ranges from 1% to 5%, once again, depending upon the size of the probate estate and time required in the probate process.

Avoiding the pitfalls and meeting the challenges in understanding the details and rules surrounding trust and estate administration can be daunting. Choosing a professional fiduciary with experience and skill may

be the right choice for you and your client. More information about the company, the fee structure, and the staff can be found at TCVermont.com.

*George Belcher succeeded retired Vermont Supreme Court Justice Ernest Gibson as a non-employee director of the Trust Company of Vermont in 2014. He joined the board after retiring as Probate Judge in Washington County, where he served for 21 years.*

<sup>1</sup> Christopher Chapman, CTF, was the TCV representative to the joint committee's work on the Trust Code Advisory Committee when Title 14 A was drafted and passed in 2009, and its work on modernizing the Uniform Principal and Income Act, which was enacted in 2013.

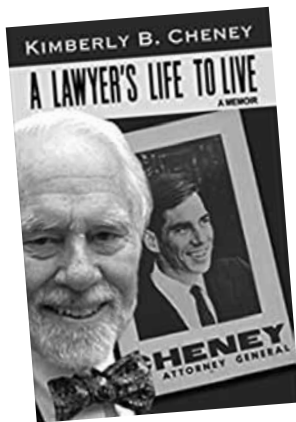
<sup>2</sup> 14 VSA Ch. 118

<sup>3</sup> 14A VSA Ch. 9

<sup>4</sup> See 14A VSA Chapter 7 (Office of Trustee) and Chapter 8 (Duties and Powers of Trustee)



## BOOK REVIEWS



### "A Lawyer's Life to Live"

by Kim Cheney

Reviewed by Geoffrey Fitzgerald, Esq.

Some memoirs present an honest account of the writer's life, foibles and all...others not so much. The "honesty" test, if I can call it that, is not simply a matter of assessing the truth of the narrative "facts" because, in most cases, the reader cannot possibly know what "facts" were omitted. The "honesty" test, therefore, becomes something akin to a gut feeling. Do you, the reader, feel like you are being told the whole story?

Kim Cheney's memoir, "A Lawyer's Life to Live," is as honest as the day is long. The book revolves around two themes every lawyer must deal with during their professional career: conflict and truth. The conflicts Cheney confronts during his life provide the momentum for the story but, in the telling, Cheney does not gloss over his missteps or

exaggerate his considerable personal and professional accomplishments. To the contrary, he tells his story in a straight-forward and compelling manner, providing the reader a window into the thoughts and motivations that drove him to do what he did over his remarkable life.

Before I go any further, I need to disclose that Kim and I are good friends. I rented space from his law firm when I opened my solo practice on February 2, 2000 and during this time we frequently sought each other's counsel regarding our pending cases. We are both passionate about the Adirondack high peaks and the game of golf, so our friendship extends beyond the realm of our shared profession. Risking criticism from those who might rightly question my objectivity, I will nonetheless wholeheartedly recommend this book.

Kim came from a place of privilege in Connecticut and he acknowledges this fact, and all the ramifications that go with it, right up front. He took full advantage of his early education at St. Paul's and Yale and, after a four-year stint in the Navy, including some rather gripping stories of his life at sea, Kim decided his path forward required him to get a law degree.

While Kim's memoir is laid out chronologically, and for the most part focuses on his professional career as a lawyer, he deftly weaves in details from his personal family life that informed his life as a lawyer. By way of example only, his mother's battle with alcoholism was pivotal in defining Kim's approach to the "war on drugs." Moreover, his painful early personal experience giving

a daughter up for adoption had a tremendous impact on his work reforming Vermont laws on the subject.

Kim enrolled in Connecticut law school in 1961. After completing his first year at the top of his class, he transferred to Yale. He graduated from Yale in 1964 and thereafter entered private practice. Cheney was involved in two conflicts of consequence in Connecticut before coming to Vermont. In one, Kim headed up a publicity campaign against a proposed taking of public park land for highway purposes. In the other, his firm brought a lawsuit it was later forced to withdraw that raised the question as to whether people of all races had a right of access to Connecticut beaches. These two experiences taught Kim several lessons, perhaps the most important being that he liked fights that had public import and consequence.

Kim was not happy in Connecticut so when he was offered a job with the Vermont Department of Education in 1967, he took it. School consolidation and funding were the prevailing issues of the time, as they are still today. Kim had a direct role in drafting legislation that was subsequently enacted reordering the duties and responsibilities of the commissioner, superintendents and school districts. He drove all over his newly adopted state with longtime Washington County Senator Bill Doyle and got to know many of the movers and shakers in the field of education during his time with the Department. But Kim was not an educator at heart and he quickly set his sights on the newly created Washington County State's attorney po-



sition.

Being a Nutmegger myself, I found Kim's run for public office, less than two years after moving to Vermont, a rather remarkable feat in and of its own right. When one does not have established friends and family connections in one's adopted home, it can be difficult to get clients, let alone votes. Undaunted by this challenge, Kim set out on this journey and got himself elected as the first full time State's Attorney for Washington County.

Kim relates many courtroom anecdotes throughout his book, but he ties them into the compelling social and political issues of the day, to wit, the "war on drugs", the "hippie/back to the land movement", Nixon and Watergate and the 1968 Democratic National Convention. In this way, Kim takes the reader back in time and artfully places his personal story in a wider historical context.

As State's Attorney, Kim dealt with a number of rather grisly murder cases. Quite frankly, having lived in Central Vermont for over 35 years, I was somewhat shocked by the violence that punctuated his years as a prosecutor. That issue aside, however, Kim takes the reader on a rather wild ride detailing his relations with police, judges, his fellow attorneys, not to mention the defendants who found themselves charged with crimes in his court, and he uses these anecdotal tales to illustrate how the concepts of honesty and truth necessarily play foundational roles in the life of every lawyer.

Kim was not a seasoned litigator when he took the position of State's Attorney and he candidly admits to some of his early mistakes. Drug offences predominated on his court docket and Kim details how he had to walk the high wire between the public's insistence on being tough on crime and his personal belief that addiction was a public health problem.

After serving two terms as State's Attorney for Washington County, Kim decided to run for Attorney General. My first question: who does that? Less than six years living in Vermont, with little or no prior associations with or connections to the state, who in their right mind would decide to run for statewide office? Of course, the time was right, given the office vacancy, but if one thing comes through clearly in this memoir, Cheney does not shy from challenge or lack in self-confidence.

As Attorney General, Kim's time in office was fraught with the deception and intrigue surrounding the Paul Lawrence saga. For those that are unfamiliar with this infamous situation, I am sure you will find the sordid details surrounding three "dirty cops" disturbing. For those who are familiar with the story, you will be amazed at the depths of the corruption that took two governors eight years to fully expose. During his time as Attorney General, Kim settled a significant case against the International Paper Company brought by the preceding Attorney General to hold the company account-

able for its role in polluting Lake Champlain. The decision was criticized by many at the time but Kim lays out the pros and cons and, in some sense, allows the reader to form their own opinion.

Kim spent a considerable amount of his time as Attorney General rewriting Vermont's criminal code which, in the parlance, was a "strike all", meaning a complete repeal and replacement of the existing laws. The new code drafted under Kim's supervision was eventually adopted by the legislature, but Kim asked that the bill be withdrawn during his tenure after an amendment reinstating capital punishment was inserted into the legislation.

In 1974, Kim lost his bid for reelection by 500 votes. Kim examines at length a number of the factors that led to his defeat at the polls, but, all reasoning aside, Kim was rocked by this setback. His personal life was in turmoil and his professional life as a politician was over. Kim needed a change and he needed time to figure out his future. So, with his family's blessing, he set out on a months long journey across Canada, down the west coast visiting brothers and back along the south where he stopped to learn more about his great grandfather on his mother's side...a rather remarkable interlude in his life and an entertaining chapter of his book.

When he got back to Vermont, Kim hung out his shingle and, for the ensuing 35 plus years, he lived the life of a private practitioner in Montpelier Vermont. Focusing on civil, criminal and family court litigation, Kim proved to be a forceful and effective advocate for his clients. Kim's life work, however, extended far beyond the actual courtroom as he was at the center of the effort to bring uniformity to child custody decisions and he worked for several years on a complete rewriting of Vermont's adoption law, both points of obvious pride and well-deserved praise.

But beyond the narrative story as to how Kim managed the major conflicts in his life, the thing that sticks out to me when reading his book is his ever-present curiosity and sense of humor. Kim dives in deep when he does not know his subject matter or he has a difficult problem to solve, but he always brings some levity to the task. At one point, Kim explains at length how he defended the right of his dog to be with him at work while he was in public office. At another, he recounts how he and Justice Skoglund tipped their hats to each other scooping dog waste on the statehouse lawn while Justice Skoglund had one of his cases under advisement. But perhaps the most telling moment of Kim's life occurred when his two ex-wives danced together at his long-lost adopted daughter's wedding. There are conflicts aplenty in "A Lawyer's Life to Live", but to the best of his considerable abilities, Kim Cheney managed them all with an open heart and a smile on his face and that fact comes shining through in this wonder-

ful memoir.

*Geoffrey Fitzgerald is an attorney practicing in Montpelier, Vermont in the fields of personal injury, contracts, real estate, family and general civil litigation. He formerly clerked for Justice Hill, was a part of several law firms practicing personal injury and premises liability defense and has been a solo practitioner for the past 21 years.*



**"The Power of Legal Project Management: A Practical Handbook"**

by Susan Raridon Lambreth &

David A. Rueff, Jr.

Reviewed by Carolyn L. Connolly, Esq.

You probably think that Project Management (PM) is a dry subject and not something you need to deal with as a lawyer. You might not understand the importance—to your bottom line—of taking the time at the outset of a new matter to plan, budget, and communicate with your client beyond the bare minimum required by the Rules of Professional Conduct. You might think that you already know what you are doing after practicing for several decades and don't need to waste time with tasks that contribute to overhead instead of billable hours. If this is you, I urge you to take the time to read—or at least skim—this handbook.

Discussion on how Legal Project Management (LPM) can be implemented by the solo practitioner, law firms, and general counsel, make this book useful to anyone practicing law in any capacity. In my opinion, it should be part of the required curriculum at every law school. Being a fairly new attorney myself, having knowledge of project management coming out of the gate would have made the transition to practice easier.

The first section of the book explains the necessity of LPM for those who might not fully understand its relevance. The second section provides an overview of the various parts of a matter with an entire chapter devoted to each: engaging clients, planning out the details of the matter, budgeting, using the budget to assist with pricing the matter, execution of the work, man-

aging communication on the matter with all stakeholders including team members, evaluating the success of the matter and how to use that information to improve future matters, and finally closing the matter. Section Three discusses ethical and business considerations of implementing LPM. Finally, Section Four discusses the considerations for organizations.

What I didn't know before reading this book and found quite fascinating was the research on personality traits of lawyers outlined in Chapter 12. It explains so much because people who choose to be lawyers are definitively not the same as people who do not choose to be lawyers. The skills and personality traits that make the average lawyer good at their job are precisely what lead to inefficiencies in matters and

cost overruns directly contributing to firm write-offs. Traits that were studied include skepticism, urgency, sociability, resilience, abstract reasoning, autonomy, and managing a team. Because lawyers tend to have a high sense of urgency, there is resistance to planning which is in direct opposition to them being willing to implement or participate in LPM. Luckily, this can be overcome by training and integration of the proper LPM tools for the chosen method.

An entire chapter is devoted to ethics (Ch. 11) and how to use LPM to keep you on track with your legal obligations to prevent issues from arising. It's a proactive approach erring on the side of creating a comprehensive communications plan, scope of work, budget, and not overstepping the bounds of what is ultimately the

client's decision when working on a matter. This chapter alone can help you do an audit of your current practices to make sure you are not putting yourself at unnecessary risk.

LPM is form and checklist driven. The handbook includes a DVD. I had to break out my eight-year-old Dell laptop with a built-in DVD-RW drive to find out what was included. There are PDFs of the Appendices and image files of the figures from each chapter. With the information in the Appendices, you can easily set up LPM forms and a system that suits your individual needs. Happy planning!

*Caryn L. Connolly, Esq. is a Legal Consultant who lives in Burlington, VT.*



## IN MEMORIAM

### Hon. George T. Costes

Hon. George T. Costes, 97, passed away March 13, 2020, at the Franklin County Rehab Center with his family at his side. He was a District Court Judge, State Senator, City Representative, City Prosecutor, Public Defender, Justice of the Peace, City Councilman and acting Mayor during Mayor Joseph Sullivan's illness. He was born on February 24, 1923, in Pittsfield, MA and graduated from Bellows Free Academy, where he enjoyed playing the violin and tennis and skiing at Jay Peak. He also graduated from Vermont College in Montpelier and Boston University School of Law. George enlisted in the U.S. Navy where he served for nearly four years and following World War II, he served 3 years in the Vermont National Guard as Command Officer of Headquarters Company, 3rd Battalion, 172nd Infantry Regiment at Enosburg Falls, 3 years with the 4638th Transportation Truck Company in Saint Albans and 3 years in the Vermont State Guard, where he served as the Staff Judge Advocate. He was Past President and a 50-year member of the St. Albans Rotary Club, and awarded the Paul Harris Fellowship. He was a 60-year member of Franklin Lodge, #4, F&AM, Mt Sinai Shrine and its Motor Corps, Green Mountain Post # 1, American Legion for 50 years and Robert E. Glidden Post # 758, Veterans of Foreign Wars. He was a member of the Greek Orthodox Church and Saint Luke's Episcopal Church and a former member of the Green Mountain Chorus and AHEPA. George also enjoyed his many big game hunting trips. Survivors include his wife, his sons and seven grandchildren.

### Hon. Peter W. Hall

Hon. Peter W. Hall a judge on the U.S. Court of Appeals for the 2nd Circuit, died on March 11, 2021 in Rutland. He was 72 years

old. Judge Hall was born in Hartford, CT on November 9, 1948 and moved to Vermont at age 11, growing up in Shaftsbury, VT. Peter considered and prided himself on being a Vermonter. His great-great grandfather, Peter Washburn, was governor of Vermont in the 1850s. Judge Hall attended the University of North Carolina Chapel Hill, where he was a Morehead scholar. He then earned a master's degree in English, also at UNC, before graduating cum laude from Cornell Law School. Judge Hall served as law clerk to Judge Albert Coffrin of the District of Vermont before becoming an Assistant U.S. Attorney. In 1986, he left government service to form Reiber, Kenlan, Schwiebert, Hall and Facey P.C. in Rutland. He served as president of the Rutland County Bar Association and the Vermont Bar Association. In 2001, he returned to public service as the U.S. Attorney for the District of Vermont. Following three successful years, he was nominated to the Court of Appeals by President George W. Bush. He became Vermont's only federal appellate Judge in July 2004. Continuing his service to his profession, Judge Hall served as a delegate of the Federal Judges Association to the International Association of Judges. As a delegate, he traveled the world, working with foreign judiciaries on matters of administration, independence, continuing education and governmental relations. He also served on the Board of Directors of the Vermont Law School and the Rutland Regional Medical Center. He was a guest lecturer at the Law School and dedicated himself to developing Vermont's next generation of lawyers. Judge Hall mentored many talented young attorneys who worked as his law clerks during his time on the bench. His former clerks now work in prominent and varied roles in private practice and public service. Peter enjoyed farm work, fishing, throwing horseshoes, gardening and annual

pig roasts. Hall was, in every respect, a good man. He was an exemplary public servant, a gentleman, a beloved family member, a kind and dear friend to many, and a quintessential Vermonter. He is survived by his beloved wife, Maria Dunton; three children; three grand-children; two step-children and two step-grandchildren.

### Karen Oelschlaeger

Karen Oelschlaeger, died on April 19, 2021, in her home in Montpelier. She was diagnosed with stomach cancer in 2018, two days before her 34th birthday. She was very clear that no one should say she "lost" any "battle" or "war" with cancer, as she was no loser. Karen died grateful for Vermont's Death with Dignity law. If any of the legislators or lobbyists who worked to pass that law are reading this obituary, she'd like to thank them from the bottom of her no longer beating heart. Karen was born in Charlotte, North Carolina on June 1, 1984. She worked at Ben & Jerry's as a teenager, leaving to pursue her passion for social justice organizing with the Fund for the Public Interest followed by Wesleyan University in Middletown, Connecticut. She later became the youngest President of the League of Women Voters of Asheville-Buncombe County. Karen obtained her Master of Social Work from UNC at Chapel Hill and moved immediately to Vermont to enroll in VLS's Accelerated J.D. program and graduated cum laude in 2016. Karen then worked as a Deputy State's Attorney in Windsor County, Vermont where she was a sex crimes prosecutor. She was passionate about juvenile justice and criminal justice reform and loved her nieces and her pets.

### J. Robert "Bob" Maguire

J. Robert "Bob" Maguire, 96, passed away on April 18, 2021. Born on July 5,

1924, and attending high school in N.J., Bob enrolled at Princeton University in 1942 but at the end of his first year, he joined the Army. He was hospitalized in Japan for more than six months with malaria until he could return home in February of 1946. He attended Cambridge University before graduating from Princeton with honors. Bob returned to Europe in October 1948, after being appointed to the Displaced Persons Commission before transferring to the ECA (the Economic Cooperation Administration) in Frankfurt, where he worked until the autumn of 1950. He then returned to the US to enroll in Yale Law School. He joined the firm of White & Case in New York City and began a successful career as a corporate attorney. In 1949, while in Paris, Bob met Pauline "Polly" Thayer, they married in 1954 and they spent the last 67 years together. In 1963 Bob, Polly and their young family chose to leave New York City and move to Shoreham. Bob led the successful effort to oppose the construction of a nuclear power-plant in East Bay. In so doing, he preserved the Mount Indepen-

dence historic site, where each summer the J. Robert Maguire lecture is presented in his honor. Bob became one of the nation's foremost historians. He was an acknowledged expert in the study and interpretation of the American Revolution. He also was considered one of the world's foremost authorities on the "Dreyfus Affair" and on the complex life of Oscar Wilde. Bob was a remarkable scholar who produced his last book on the eve of his 90<sup>th</sup> birthday. Bob is survived by his wife, their three children and grandchildren.

### Hon. Robert P. Cronin

Hon. Robert P. Cronin, 76, former Franklin County Probate Judge, passed away May 12th, 2021, at home with his loving family and friends at his side. Born in Burlington on October 22nd, 1944, Bob graduated from Richmond High School in 1962 where he played soccer, basketball and baseball. He attended the UVM where he played baseball for four more years, was a member of Kappa Sigma fraternity and received the Seman's Trophy. Bob then went onto Boston College,

where he received a law degree and then received a specialized degree in Corporate Tax law at Boston University. Bob practiced law for many years with Kissane, Yarnell and Cronin (now Kissane Associates) before being elected Franklin County Probate Judge in 1993. He served on the Franklin-Lamoille Bank Board, CVAA Board (now Age Well), was an AARP volunteer tax preparer and volunteered for many years at the St. Albans Free Library. Bob also served in the Vermont Army National Guard. He was an incredible athlete, who coached little league baseball and was assistant coach of the BFA high school girl's tennis team. In addition to his love of baseball, he played tennis, including USTA league tennis traveling all over New England to play. He also enjoyed golf and music, playing many different instruments. Bob was funny, witty, and kind with an incredible sense of fairness. Bob is survived by his wife, Ruth Cronin of St. Albans, his brothers, sister and nephews.



## CLASSIFIEDS

### HELP WANTED

#### ASSOCIATE ATTORNEY WANTED.

Hayes, Windish & Badgewick is seeking an associate attorney to join our team. Preference is given to those with 3-5 years' experience in civil litigation, but those just starting with strong work ethic and motivation will be considered too. We are a small general practice firm with an emphasis on civil litigation, insurance defense, and workers' compensation matters. We seek a candidate who is interested has high ethical standards, strong skills in research and writing, along with the patience and desire to learn the profession. Competitive pay and benefits offered. Position to remain open until filled. Please send your resume and cover letter electronically to:

Penny Webster, Office Manager  
HAYES, WINDISH & BADGEWICK  
pwebster@woodstockvtlaw.com

#### ATTORNEY – TRUSTS + ESTATES / COMMERCIAL LAW.

Paul Frank + Collins seeks a mid to senior level attorney to join the firm's Trusts and Estates team and Business team. Experience helping clients with estate planning (for both tax and non-tax planning purposes), wills, trusts, and estate and trust administration is essential. The ideal candidate will also have relevant skills and experience to assist clients with business law, including formations, business succession, financing, and multi-faceted corporate work. We have an established clientele with varying complex

needs and we seek a new team member to collaborate with our tax, corporate and estate planning lawyers.

#### ASSOCIATE ATTORNEY – INSURANCE COVERAGE & LITIGATION.

PF+C also seeks an enthusiastic entry to mid-level associate for our growing Insurance Services practice group. The work involves litigating insurance coverage and bad faith claims, defending insurers in multi-district complex litigation, and counseling insurers in various regulatory and claims handling matters. The ideal candidate has excellent academic credentials and three to four years of insurance coverage experience. Exemplary candidates without such experience will be considered. Law review and clerkship credentials are preferred, but not required.

Candidates must have strong oral advocacy and written communication skills, as well as excellent legal research, writing and analytical skills. Candidates must have a serious interest and commitment to living and working in the wonderful state of Vermont. The candidate must be admitted or eligible for admission to the Vermont Bar.

PF+C serves its clients throughout North America and the London and Bermuda insurance markets from its Burlington, Vermont office. The firm offers all the resources and opportunities of a large, international law firm while fostering a local, collegial, and collaborative work culture. We provide a competitive salary commensurate with experience, and excellent benefits in a truly sophisticated and exciting legal environment.

Applications may be submitted confidentially through: <https://www.pfclaw.com/>

[about/careers/current-openings/](#)

Or via email to:

Rebecca Guenther, PHR, SHRM-CP  
Firm Manager  
Paul Frank + Collins P.C.  
P.O. Box 1307  
Burlington, Vermont 05402-1307 USA  
[rguenther@pfclaw.com](mailto:rguenther@pfclaw.com)

### SERVICES

#### BRIEFS & MEMORANDA.

Experienced attorney writes appellate briefs, trial memoranda. Legal writing/appellate advocacy professor; author of five books. VT attorney since 1992. \$60 per hour. Brian Porto, 674-9505.

#### QDROs (QUALIFIED DOMESTIC RELATIONS ORDERS).

I prepare QDROs and other retirement pay and pension benefit domestic relations orders for federal, state, municipal, military and private retirement plans as may be required by the terms of the settlement agreement or the court's final order.

I handle all initial contacts with the plan or third party administrator and provide all necessary processing directions when the order is ready for filing.

Vermont family law attorney since 1986. Contact me for additional information and preparation rates.

Tom Peairs, 1-802-498-4751.  
[tipeairs@sover.net](mailto:tipeairs@sover.net)  
[www.vtqdro.com](http://www.vtqdro.com)



# SERVE IN THE JUDGE ADVOCATE GENERAL CORPS

VERMONT

ARMY NATIONAL GUARD ★



## WHAT IT IS

The Vermont Army National Guard provides an opportunity for attorneys to serve their state, nation, and community; to gain expertise and experience in new areas of law; to meet and network with attorneys from a variety of legal backgrounds; and to earn additional income and benefits while serving in a part-time capacity.

**Judge Advocate General (JAG) Officers** in the Vermont Army National Guard engage in a variety of legal disciplines within the military, including: administrative and civil law, contract and fiscal law, military justice, drafting of wills, power of attorneys, national security law, and general legal counseling. Officers receive specialized training in these areas of law through the Judge Advocate General's Legal Center and School in Charlottesville, Virginia.

Following training, officers will find themselves assisting soldiers and retirees, advising military commanders, and representing the Vermont Army National Guard in administrative matters. Position assignments include the Office of the State Judge Advocate at Camp Johnson in Colchester, Vermont; the 86th Infantry Brigade Combat Team (Mountain) at the Joint Readiness Center in Jericho, Vermont; and the Trial Defense Detachment based in Williston, Vermont.

## BENEFITS

- Tricare Reserve Select Health insurance
- Retirement pension

- plan at the completion of 20 creditable years
- Up to \$400,000 in life insurance
- Free Continued Learning opportunities
- Discounted shopping privileges
- Weekend drill pay and Annual Training pay
- Unlimited access to recreational facilities on military installations
- Prior Service applicants retain all prior creditable Time in Service
- Enlisted Para-legal incentives include free in-state tuition at select colleges if pursuing first Undergraduate degree and up to \$50k in Student Loan Repayment



## MINIMUM QUALIFICATIONS

- Graduate from an ABA-approved law school
- Be admitted to the bar of any state
- Meet Army height/weight standards
- Be of good moral standing and character
- Be a U.S. citizen
- Meet the prescribed medical and moral standards for appointment as a commissioned officer
- Be able to obtain a Secret security clearance
- Be 21-40 years of age: Age Waivers to enlist can be processed up to 55 years old.

FIND OUT IF YOU ARE ELIGIBLE

\* Benefits subject to change

CPT Adam Crogan  
Officer Strength Manager

✉ [adam.d.crogan.mil@mail.mil](mailto:adam.d.crogan.mil@mail.mil)

☎ 802-338-3172



# IT MEANS... KEEPING YOUR NETWORK WORKING

At TCI, our team is qualified to make the connection between you and your files. We are a dedicated Vermont IT Consulting and Support Services firm. Unlike most IT companies, TCI has a down-to-earth, cost-sensitive approach with a plan to fit your needs.

*"The great thing about TCI's is the fact we no longer have to worry about our staff taking time out of their schedules to monitor our technical systems."*

**Jason F. Ruwet**  
Esq. Partner  
Kolvoord Overton Wilson, P.C.

*"TCi is steps ahead of any other IT company we have worked with, best decision we made."*

**Lisa Maxfield**  
CFO  
Vermont Bar Association



*"The TCI team discovered a significant deficiency in our network that all the other IT firms did not."*

**William J. Blake**  
Partner  
Ellis Boxer & Blake PLLC

*"Always have great response from TCI when we need their help."*

**Jenifer Keser**  
Legal Assistant & Office Manager  
Broadfoot Attorneys at Law

**Call for a free consultation:**

**(802) 865-4409 Toll free: 888-669-9750**

**Info@TCiVT.net**

**Visit: [TCiVT.net/lawfirms](http://TCiVT.net/lawfirms)**

To download your free *"The Vermont's Law Firm Guide to IT Support Services and Fees"*



Managed IT Services



Cloud Computing



Data Backup & Recovery



Network Security



**IT  
MEANS  
TCi**



Vermont Bar Association  
PO Box 100  
Montpelier, Vermont 05601-0100

PRESORTED  
STANDARD  
U.S. POSTAGE  
PAID  
PERMIT NO. 42  
BARRE VT

**DATED MATERIAL  
PLEASE DO NOT DELAY**



Professional Fiduciaries - that's all we do!  
Employee-owned & Vermont-based



**Trust Company of Vermont**

Brattleboro • Burlington • Rutland • Manchester • St. Albans

[www.tcvermont.com](http://www.tcvermont.com)