

YANKEE JUSTICE: THE LIGHTER SIDE OF THE LAW

Franklin S. Billings, Jr.:

“I Was Involved in Helping Shape Our Attitude Toward Environmental Planning and the Rights of People”

The following profile of Franklin S. Billings, Jr., is the fifteenth in a series published in the *Journal* under the general title of “Yankee Justice.” The profiles are based on thirty-eight interviews of members of the bench and bar conducted by freelance writer and oral historian Virginia Downs in 1978 and 1979. The project was proposed at a meeting of an ad hoc committee of the Vermont Bench and Bar in April of 1978 to tie in with planned bicentennial celebrations of the state’s legal beginnings in 1779. It was in that year that Stephen Bradley and Noah Smith were sworn in as Vermont’s first official lawyers. The profiles include biographical material and anecdotes from the interviewees’ legal activities.

“I was born in Woodstock in the house which has always been my home. I graduated from the local elementary school and from Milton Academy in 1940. My dad was governor in 1925 and 1926, but he was not a lawyer. He had had an importing business in New York City, and then returned to Vermont and got involved in politics.

“I was educated at Harvard University, graduating with a BS degree and honors in 1943. Immediately after college, I worked in the Electronics Department of the General Electric Company in Schenectady, New York, for eight months, then joined the American Field Service and eventually the U.S. Army. I was with the Sixth Armored Division of the British Eighth Army and received the Purple Heart and British Empire Medal. My service ended in 1945 after I was wounded during the battle of Cassino in Italy. I was hospitalized for approximately five months, then returned to the United States and discharged.

“Next I spent a year at the Yale Law School, then took a year off and worked for the Vermont Marble Company. I then finished law school in another year at the University of Virginia in 1947 and



returned to Vermont. I was admitted to practice in Vermont in 1948, and the U.S. District Court, District of Vermont in 1952; U.S. Court of Appeals Second Circuit in 1952, and U. S. Supreme Court in 1955.

“I originally went to law school not only because of my academic interest, but also for the practical reason that it was a way to live in Vermont, especially in Woodstock, make a living and at the same time contribute to the local community, and eventually the state relative to how things should work and develop. I loved parliamentary law and was involved in helping shape our attitude toward environmental planning and the rights of people, especially in the criminal law area.

“I clerked in the office of Alfred Guarino and Judge Henry Black (after he resigned from the bench). In 1949 I opened my own law office in Woodstock, and in 1952 I organized the firm of Billings and Sherburne and practiced until 1966, when I went on the Superior Court bench.

“In 1951 I married Pauline R. Gillingham, whose family lived just down the street and whom I had known all my life. After college she had become an interior decorator and was working in Hanover. We had two sons and two daughters, Frank, Jireh, Elizabeth, and Ann, all of whom after college and

graduate school returned to Vermont to live.

“In politics I served as Assistant Secretary from 1949 to 1953, and Secretary, from 1957 to 1959, of the Vermont Senate. I was Executive Clerk to Governor Joseph Johnson from 1955 to 1957, and Secretary of Civil and Military Affairs from 1959 to 1960 in Governor Robert Stafford’s administration. I was a member of the Vermont House of Representatives from 1961 until 1966, during which time I was Speaker of the House from 1963 to 1966. From 1965 until 1966 I was a member of the Legislative Council and from 1967 until 1972 served on the Governor’s Commission on Crime Prevention and Control. I was a member of the Judicial Conference of the Second Circuit, the Judicial Conference of the United States, and the Windsor County and Vermont Bar Associations.

“My judicial experience includes judge of the Hartford Municipal Court from 1955 to 1963; Vermont Superior Court from 1966 to 1975; Associate Justice, 1975 to 1983, of the Vermont Supreme Court, and Chief Justice from 1983 to 1984. In 1984 I was appointed by President Ronald Reagan to a judgeship for life on the United States District Court, District of Vermont. I became Chief Judge from 1988 until 1991, and I assumed senior status in 1997, serving by assignment.

“The practice of the law between 1948 and 1979 had changed drastically in Vermont. When I passed the bar there were approximately three hundred lawyers in Vermont, all of whom knew each other. Most were small town solo practitioners, except for the cities of Burlington and Montpelier. There were far fewer specialists in the law. In 1979, there were many larger firms and three times as many lawyers. Many didn’t know each other and as a result the practice was more formal; one’s spoken word was no longer the standard. Of course, by 1979, I had been on the various courts for thirteen years, so my perspective was entirely different.”

"One time when I was presiding in the Superior Court in Rutland, we were in the divorce court and the question was of residence, and of course you had to have a year's residence. Joe O'Neill was asking the questions and he wasn't really doing very well, I didn't think, and so I asked the witness, 'Well, really, you're just temporarily out of the state at a job and you intend to return.' The witness replied, 'I hope I never come back to Vermont.' I said to Mr. O'Neill, 'What do we do now?' And he said, 'I move to withdraw the case.'

"Another time when I was Superior Judge in Windsor County Court, there was a divorce when grounds were living three years separate and apart. The lawyer asked the question, 'Now you have not lived with your husband for three years.' She answered, 'That's correct, except for the Legion Convention last year.'

"And then there was a case in the municipal Court in Woodstock when I was judge in 1955, when someone asked a witness what he did for an occupation and he said he was a sports mechanic. Well, that was too much for the court and the question was asked, 'Well, what does a sports mechanic do?' And he replied, 'I fix football games.'

"This happened while I was on vacation and happened to be sitting in the courtroom as an observer of the process. It was a criminal case in Woodstock and Raymond Trainor appeared before Judge Henry Black. Al Parker was the attorney general, and had been in Trainor's office as had Henry Black when he came in one morning, and Judge Black thought that maybe he'd had something to drink. He had that propensity. So before they started court and in open court he said, 'Mr. Trainor, you've had something to drink this morning.' And Trainor, who was about five feet five, with snow white hair, and a very dominant personality, rose in all his majesty and said, 'Your Honor, those are the first true words that have been spoken in this court today,' and he turned and walked out of the courtroom.

"Another time, when I was a part-time municipal judge, John Brockway was state's attorney and brought a complaint against a girl for obscenity and having lewd pictures. The girl pleaded nolo and I said, 'Well, Mr. Brockway, do you want to give any statement?' He started to give a statement: 'But, however,

Your Honor, I would like to present the pictures, the evidence.' And I said, 'Well, that's not necessary with the nolo plea and it doesn't seem to be contested.' But John insisted on showing me the pictures, so he came to the bench and placed in front of me three photographs with this girl stark nude except for her shoes. Whereupon, he said to me, 'Your Honor, you probably recognize your divorce client.' Whereupon, I replied, 'She has shoes on.'

"When I was working for Henry Black, we were trying the Hartland Dam Condemnation Case. Bud Whitcomb was the district attorney on the other side; it was before Judge Ernest Gibson. As oftentimes happens in federal court, they comment on the evidence, and Ray Moore from Rockingham, who was an old forester, was testifying for us about timber cruising. Judge Gibson, in summing up, said, 'Then came my old friend Ray Moore,' and, for some unknown reason, Bud Whitcomb, in the middle of the summation by Judge Gibson, rose and said, 'Your Honor, I object to the characterization of the witness Moore.' Judge Gibson was not to be outdone and he said, 'Why, Mr. Whitcomb, what's wrong with that? He is my old friend.' And the jury heard it all. And as a result Henry and I sat there with our great smiles and \$85,000 later we went home.

"There is a hearsay story that was told by one of the assistant judges while I was sitting in Grand Isle: that the jurors in town are related and half of them do not know it.

"Once young Fred Carbine of Rutland, a redhead with a very violent temperament at times, was before us in superior court and we were ruling against him. He was getting more annoyed as time went on. Finally, he kicked the chair, whereupon the court really put him down once and for all. He said, 'Mr. Carbine, we're not in Juvenile court, and we won't have any more of that.'

"Alfred Guarino when he worked for Raymond Trainor told a story about Prohibition days. You always knew where Raymond kept the bottle—right behind Volume 48 of the Vermont Reports. It was always in the same place.

"Back when I was in law school and home on vacation, Trainor was defending a manslaughter case and Al Parker was prosecuting as attorney general. The issue turned out to be a question of how far the shotgun was

from the body of the person that was shot, involving the wads from a shotgun shell. I think they were found in the wound, so therefore the muzzle couldn't have been very far from the body. Al Parker had brought up an expert from Boston to testify on ballistics. Well, Ray Trainor knew it was a local jury and he thought they had to offset the question of the ballistics expert's testimony. He saw me sitting in the court and at that point I happened to be in uniform, and I had on a few ribbons, and Raymond came over to me and said, 'I'm going to ask the court to allow you to shoot the gun and maybe we can get you to testify. They probably can't get you to be an expert, but the jury'll like it anyway.' So as a result of that I went out and took the gun and shot it and came back in and he was trying to qualify me as a witness. But in so doing, Raymond said, 'Now, you had something to do with shooting overseas?' And I said, 'Yes.' And the jury sort of leaned forward and then the whole rest of the examination concerned what one of those pretty little ribbons meant. And then, of course, they objected to my giving testimony. But, as Ray said afterwards, 'It sort of offset that city fella.'"

"One of my first divorce cases took place in Woodstock. Henry Black was the presiding superior court judge and I was trying to get into evidence that the man involved here had been guilty of adultery. Mark Drown, who was an old probation officer, was my chief witness because it had happened over in Sharon where he'd been deputy sheriff and constable for a number of years. He'd happened to walk into this room. I said, 'Mr. Drown, what did you see when you walked into the room?' And Mark replied, 'Well, it was kind of dark, but there seemed to be somebody over on the couch.' I said, 'Mark, what were they doing on the couch?' And he said, 'Well, I guess they were ... well, they were kind of embracing, I'd call it.' Whereupon that was the evidence and he was just about to step off the stand, but Judge Black stopped him, and said, 'Mr. Drown, the court has a few questions. We understand that you've been constable for thirty years over there and another twenty-five years as deputy sheriff, and the court would like to know, Mr. Drown, why do you let this sort of thing go on in the Town of

Sharon?’

“Once John Webster appeared in St. Albans when Judge Harold Sylvester was presiding. Webster was examining his witness and his witness was the person trying to get the divorce. The question came down to the location of the bedroom and the kitchen and living room. Webster asked his client, ‘Now, Mrs. So-and-so, would you describe exactly where your bedroom is in relation to the kitchen?’ And the witness replied, ‘Why, John you know perfectly well. I put you to bed there many a time.’ Needless to say, they took a recess.”

“After I was appointed to the superior court, I had a lovely call from Judge Bob Larrow congratulating me, and he said, ‘Bill, you’ve got to sit Monday. Would you like to borrow my robe?’ I replied, ‘Bob, I just need a regular robe. I don’t need a tent.’

“This is a story about Justice Percy Shangraw in the Supreme Court, when Milford Smith was also an associate justice. Shang was always a great joker and as they came off the bench one day, he sort of sidled up to Smith and said, ‘Milford, I’d kind of like to talk with you a bit.’ He said, ‘I’m kind of embarrassed, because next June fifth the people in Montgomery where I was born want to put a plaque outside of my birthplace. I’m kind of embarrassed but I just thought I’d talk with you about it. Please don’t say anything to any of the rest of the court.’ Well, of course, Smith then hurried around to all the other members of the court and said, ‘Obviously, we’ll all have to go up to Montgomery on June fifth, but we can’t say anything to Shang.’ So it went along for a couple more weeks until they had another session of the Supreme Court. As they came out this time, Shang again sidled up to Smith and he said, ‘Milford, you know I was talking to you about that plaque business. Now, not only do they want to put a plaque up, but they want somebody to say something about me. I hate to ask the Chief.’ He was Judge Holden at the time. ‘He’s busy, but I wondered if you’d mind saying something.’ Judge Smith was a great friend of Shang’s. They’d been in the Senate together, and he said he’d ‘love to, he’d be pleased to.’ And Shang said, ‘Why don’t you write something up and then we’ll see where it goes?’ And so two or three weeks later Milford went

home and he wrote up a speech about Shang, and when they got back two or three weeks later, he showed it to Shang, and said, ‘Shang, here’s what I’d like to say about you.’ Shang looked at it and right then before the whole court, he said, ‘This is a lot of hogwash.’ He tore the whole thing up and this was the first time the court knew they’d been had.

“After Judge Keyser resigned from the court, and I was appointed in his stead, the other justices thought that Shangraw always liked to come down and sit when there was a disqualification. And so Keyser and the other members of the court thought they would get back at Shang a little bit for all the jokes that he had played. And so they wrote a letter from Keyser to Chief Justice Barney, leaving a copy in Shang’s folder. Keyser said that he realized that Judge Billings was coming onto the bench and that because of his situation in the trial court, he’d be disqualified in many cases and that he wanted the court to know that he, Keyser, would like to sit when there was a disqualification, and that he would be glad to do it cheaper than Shangraw. Not only would he charge only half the per diem, but, of course, as he knew, it was a lot closer to Chelsea than it was to St. Albans. So they left the letter in Shang’s folder and as they came back after lunch, all of a sudden there was a big furor in the other room, and Shang came out to the conference room and said, ‘Ray, I want to see you,’ and motioned with his hands. And he said, ‘That was a damned cheap trick.’ It was the first time Shang knew that he had been had.

“One time Milford called up Shangraw in St. Albans and disguised his voice and said that he was a photographer and that he was trying to get the pictures of all the chief justices in the country and could he come up or could he make a date to see Chief Justice Shangraw and get his picture. And Shang said he would be honored. He’d like to do that. Milford pointed out that the photographer said there was only one hitch in the whole matter. He was trying to have everybody look alike, and so he would have to come in dinner clothes with a dinner jacket. And Shang said he could do that and so they agreed to meet at ten o’clock on a weekday morning in the Supreme Court building to get the picture taken. Well, needless to say, Shangraw came down from St. Albans in his tux and who should be there but Milford!

“Then there was a sequel to that which was almost as bad. One day, Shangraw called up Justice Keyser and says that he was a tax auditor and he wanted to audit the last year’s taxes and where could he meet Justice Keyser. Well, they agreed again to meet in the courtroom when Justice Keyser was up there and he said, ‘Well, would you bring all your records?’ And Justice Keyser obviously did, and knowing Ray, I’m sure he spent many a sleepless night going over his records, making sure they were in proper form. And again Keyser arrives in the courtroom and who is there but Shang—he was the auditor!”

“Loren Pierce was one of the old lawyers from Woodstock. I was carrying his bags one summer before I had gone to law school and was a little embarrassed when we came up to Montpelier where Loren was defending a criminal, who got convicted, unfortunately. We were up there for sentencing and just at that point, in a loud voice, Loren leans over to me and says, ‘Well, Bill, at least we won’t have to serve the sentence.’ Which was sort of embarrassing when the defendant was right there.

“Loren would tell the story that, back in the old days when they had justice courts, they had to take the railroad from Woodstock to White River Junction. And so, Loren and his vest pocket JP went to White River to hear a case. And the story goes that as they came away from the case, Loren turns to the Justice of the Peace and says, ‘Well, we beat them, didn’t we?’

“I remember one other time that I thought the witness really made a point. I was trying a contempt case in a divorce matter. We recessed over the noon hour, and when we came back I looked at the man who was involved when he resumed on the witness stand. It appeared that he might have had something to drink over the noon hour, and I was a little concerned about it. So I turned to him and I said, ‘Mr. Witness, by any chance did you have anything intoxicating over the noon recess?’ And the witness replied, ‘I certainly have, Your Honor. And if you were in the trouble I am, wouldn’t you?’ Needless to say, we continued the case until the next day.”

Virginia C. Downs is the wife of John Downs, a founder of Downs Rachlin Martin.

