

# YANKEE JUSTICE: THE LIGHTER SIDE OF VERMONT LAW

## John G. Kissane: His Uncle's Lifestyle Lured Him to the Law

The following profile of John G. Kissane is the twenty-ninth in a series published in the *Journal* under the general title of "Yankee Justice." The profiles are based on interviews of the members of the bench and bar conducted by free-lance writer and oral historian Virginia Downs in 1978 and 1979. The project was proposed at a meeting of the Vermont Bench and Bar in April of 1978 to tie in with planned bi-centennial 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 Malone, New York, a community the same general size and description as St. Albans, Vermont, where I presently live. I went to school in the public schools in Malone and I guess perhaps because I was a football player, I wound up going to Norwich University and playing football over there. Following Norwich, I went to Boston University and studied law because I had never actually wanted to be anything but a lawyer. I was indeed fortunate that I had made up my mind at a very young age, probably because I had an uncle who was a lawyer and he took two months off every summer to enjoy the Adirondack Mountains and I thought, 'If that's what lawyers want to do, that's what I want to be.' In any event, I went to B.U. and after graduating in 1939, I decided I wanted to live in a community similar to the one I came from, but felt that I would prefer to do it on my own rather than start a practice in the town where my father was a doctor. With the rest of my family there, I probably could have gotten started faster but that didn't quite appeal to me, so I came to St. Albans and have been completely happy that I did select this community.

"I came immediately to St. Albans after graduation with my old friend Leo Wilson, who was then president of the Northern Baseball League. He asked me



to come over and he took me around to meet some of the older lawyers on the first day of July with Horace Powers, who was general counsel of the Central Vermont Railway. Horace was, at that time, also on the Board of Bar Examiners and he was insistent that I start on the first day of July and not any later because the six-month period for clerkship started then. If I didn't start on the first it would be another whole year before I could take the bar exam.

"I worked with Horace in his office until I was invited by William R. MacFeeters to come into his office. So before I finished my clerkship with Horace I went up to MacFeeters' office, which was a general practice and much more to my liking than to just be involved with railroad law and the limitations placed on the practice in being in that type of office. I went to work with Mr. MacFeeters, took the bar exam, and had just started a rather fine practice when World War II came along. At that time I had been elected state's attorney. I resigned that position, went into the Navy and stayed there until October of 1945. When I came back to St. Albans, I had no office because Mr. MacFeeters had not stayed with the practice of the law. It meant

that I had to start all over again and I started alone. Starting a law practice is quite an experience when you have no money, no office, nothing except my wife and a couple of children. I had to move three or four different times to different locations because it was almost impossible to find suitable office space in St. Albans at that time.

"From then on I became interested in politics, primarily, I guess, because of my close friendship with Ernest Gibson. I went to work with him on his campaign for governor and took care of Franklin County and Northern Vermont in this area. Following that, I continued my practice where my bread and butter came from, but I went on the Water Conservation Board as its first chairman, stayed there for two or three years, and resigned. I pretty well got out of politics, though I did run for state's attorney again when I got home because I needed the \$2500 salary. I kept that for one year, and then didn't run again, and never did run for political office following that. My only other stint with any kind of politics was when I was appointed collector of customs by President Eisenhower. That was a political appointment that lasted only until President Eisenhower left office.

"I was able at that time to continue to practice law, even though I was collector of customs, but it meant long nights practicing law rather than in the daytime. From there on I've had the usual small-town practice and have enjoyed it tremendously. I started with one other lawyer as a partner, and we now have five partners and a young man who has just passed the bar exam who is working in the office. The type of practice, of course, has to be general but I have been able to specialize with more people in the office. Practically all my work now is estate work, corporate work, and quite a lot of work with banks. I stay away from, as much as I can, divorces and real estate work. It's most difficult to have a happy client in a divorce case."

\*\*\*\*\*

"At one point in my practice, ladies became jurors. Up until that time the jurors had been selected from the towns and the county, generally speaking, by the sheriff who would go through the formalities of selecting jurors but on the day of the trial, generally speaking, only a small percentage of the people who had been selected showed up, so the sheriff would go out on the street and pick up six or eight more people, bring them in and they would sit as part of the jury panel.

"In the first case that I ever tried as a prosecutor, and I can't remember whether I was city grand juror or state's attorney at the time, but the case involved a man who was arrested for being drunk on the public streets of St. Albans. He was apparently and obviously, from all the testimony, very drunk. He had been in the old St. Albans House, where there was a counter that was used by the bus company for selling tickets and for taking packages from the buses and holding for people to call for. This man, the defendant, who was then called a respondent, had been in the bus office and at that time a package that had come on the bus disappeared. So the police were called and they had as a prime suspect the man who had become terribly inebriated. So they picked him up and asked him if he had taken a package out of the bus station. He said yes, he had. They asked him what he did with it and he said he threw it in a car that was parked beside the road. They asked him where and he didn't know. He obviously was simply talking and not giving them any information, so they took him to jail and turned him over to Jimmy Finn, who was a sheriff for many, many years in this county. Jimmy locked him up for intoxication. He was so drunk that the other inmates took him in the shower room and put him under the shower to try to cool him off and quiet him down because he was creating such a disturbance. Well, he went to an attorney and in those days the fine was \$5 or five days in jail for public intoxication, but his lawyer decided that he ought to have a trial.

"So we got prepared for the trial and I had as witnesses the sheriff, the police department, the people who saw him in the bus station—we had about ten or twelve witnesses simply to prove that this man was really loaded. We even had some of the jailbirds that had put him under the shower and everybody testified that he was stinking drunk. We expected that the case would take about

five minutes for the jury to decide, but for some reason the jury took the case and after many hours, Judge Warner called the jurors back into the courtroom and asked if there was any possibility of an agreement and they said, no, there'd be not a possibility, so the judge declared a mistrial. We then inquired as to the reason for the mistrial because it was obviously a miscarriage of justice if there ever was one, and we found that as soon as the jurors went into the jury room they took a ballot and it was eleven to one for conviction and that each time the ballot had stayed at eleven to one. I should tell you there were eleven men and one woman, and this was the first woman that I had ever had on a jury. The one woman happened to be the mother of a very good friend of mine and I had been entertained in her home and she in my home. I knew her very well; I knew her to be strict, a fine juror. She lived in a home in St. Albans that has recently been sold but it is a historical site, one of the historical buildings of St. Albans, and was a gorgeous place at that time. But across the street from this home was the Elks Club and my lady juror, my friend, told the rest of the panel that until the city police arrested everybody who came out of the Elks Club inebriated, she would never convict anyone of inebriation and, therefore, would not convict this man. This was my introduction to women on the jury.

"I had a second experience, not too long after that. I was no longer a prosecuting officer. I was defending. A man drove his car up Fairfield Street in winter time and he had the misfortune of having a sideswipe accident with a car going in the opposite direction. The misfortune was that the car going in the opposite direction was a state police major. The police immediately turned around because my client failed to stop. He followed my client and stopped him. He found that in his opinion my client had been drinking too much to be driving. He was arrested, put in jail and later he was tried.

"During the selection of the jury I was advised by my client that one of the jurors had been very friendly to the defendant and he felt that he would like to have that lady on the jury. So I raised no objection to her and the prosecuting officer raised no objection to her sitting on the jury. To say the least, it was a rather slim case to try. But we let the state have the opportunity of proving their case, and I would say that the case lasted maybe a couple of hours and then

went to the jury. The jury again in this case couldn't agree. That was fine by me because I thought if we got a hung jury that's about all that we could expect. I had been told by my client that he felt very strongly that he would never be convicted so long as this lady was on the jury. That was what I was thinking all the time that the jury was taking so long. I said that this lovely lady was holding out for my client. The judge, finally, about six o'clock, called the jury and asked if there was a chance of reaching an agreement if they went back into the jury room. They said no, they had tried desperately to resolve their differences, but that the case was being held up because one person and only one person wanted to vote for conviction and eleven to vote acquittal. But they didn't name any names, of course. So the judge declared a mistrial and I walked out of the courtroom and started out of the building when this lady juror that had been sitting on the case asked me if I would give her a ride home. That lady juror happened to be Jewish and I didn't realize it at the time but that Jewish holiday started at six o'clock that evening. The lady was very anxious to get off the street before the holiday started. I gave her a ride and when she was in the car she said, 'I would like to have you tell your client that I voted for conviction, and I was the only one that voted for conviction and I would have stayed there for days waiting for them to change their minds, and except for the Jewish holiday I would still be there. But because I had to get off the street by six o'clock, that is why I had to change my vote. It was not a hung jury, it was an acquittal.' She finally changed her vote to go along with the majority. That was my second interesting experience with a female on the jury.

"So I began to wonder. Generally speaking, women make exceptionally fine jurors. I enjoy trying cases with women on the jury. I think they have better insights in many cases than men. They seem to give it more thought than men."

\*\*\*\*\*

"I lived on a street in Malone, a street corner, and it was not uncommon at all to be awakened in the middle of the night hearing shots. I don't suppose they were shooting at the cars, but they were attempting to stop cars that were carrying booze on the way to New York City, because that was the direct route from Canada down through Malone. I

was present during the Dutch Schultz trial in Malone because that was tried before Judge Bryant while I was in school there. They were trying to get Schultz because he was a known gangster, but they were simply charging him with income tax evasion. I do remember so well that Dutch practically owned Malone. He was in every bar and bought drinks for everybody and took care of poor people over there. I can remember that was the first time I had ever heard of a judge chastising a jury for the verdict, but Judge Bryant really laid them out in lavender. It was written up in all the national magazines, including *Time*, quoting what he said to them about the miscarriage of justice. He [Schultz] was acquitted. It was a big thing in that small town—bigger than the county fair.”

\*\*\*\*\*

“When I started practicing, there were never downstairs offices. Offices were always on the second floor. People felt that they wanted a second floor office because then the general public wouldn’t know that an individual was going to consult a lawyer. I used to go back to work after my supper and work until ten or eleven night after night. But I don’t see lights on in many law offices after supper now.”

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



*Last issue’s Yankee Justice article on Ralph Foote did not include a photograph of Mr. Foote. We remedy that with this photo.*