Complex Legal Challenges require legal teamwork

Legal Complexity Requires Legal Teamwork

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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.” 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 unrelated 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 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 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? 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 reward.

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. Oydessey 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.\(^5\)

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. 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 achievable 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 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.

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Elizabeth Kruska, Esq. is current President 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.

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

4 “The Strike.” Seinfeld, Season 9, Episode 10, originally aired December 18, 1997. Also known as the Festivus episode.

5 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.

6 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.
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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 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 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 leaves behind is truly great.
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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 sour dough 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-discovering 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.
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“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.”1

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, intending 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.”2 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 wa-ter, 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 con-clusion by a process strikingly similar to that of the English Justice. This re-mar-kable coincidence, involving the origin of then new, but now well es-tablished points of law, and involving, at the same time, an inference so flat-tering to our Chief Justice, at once at-ttracted the notice of the celebrated Chancellor Kent of New York, who soon after, falling into company with several of our most noted Vermon-ters, cited this singular instance in com-pliment 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 ques-tion, would up by the voluntary trib-ute:-- …3

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 contempo-raneous record of his words.
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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.4 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 offence.”5 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 experienced 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.”6

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.”7 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.8

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.”9 The Court, in the opinion of Lord Tenterden, 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.10

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.”11 Prentiss was the first President of the Vermont Temperance Society, organized in 1828.12

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
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product of the early days of Vermont.”

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…. their 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.”

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.” 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. Burbree (1892). 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.”

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.” 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 dissentient. In one other case Prentiss is listed as dissenting, but the opinion is not included in the report.

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.

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 such misapprehension should have existed.” For this Prentiss was accused of “double dealing, and of a deliberate plan of gaining confidence by false pretences.”

After 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 mainy and noble virtues of the people.”

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.” 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,
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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 disorder, as sanguinary, as terrible, as any which marked the ferocious and bloody annals of revolutionary France.24

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.”25

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 remaining, and that in truth little or nothing.”26

...[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.27

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.”28 Calhoun, Webster, Clay—these were Prentiss’s peers. Calhoun once described him as the “best lawyer in the Senate.”29

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.”30

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 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.”31

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.”32

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.”33 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.34

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.35

“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.”36 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.37 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.38 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.39 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.40

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
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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.”

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.

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.”

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.

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 deposits; 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.

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. 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.”

His decision in Martin v. Hunter’s Lessee (1816) established the authority of federal courts over state courts when federal constitutional issues were construed by the states. In Prigg v. Commonwealth of Pennsylvania (1842), Story upheld the fugitive slave law.

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.” In Story’s Commentaries on Equity Jurisdiction (1833), 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 dillgence, and brilliant talents.”

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 great [sic] man, I am satisfied he is not humble in his acquirements.”

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 immovable foundations.”

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.”

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.”

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 immediate 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 Elizabeth town 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.”

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.

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 coating license.”

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.”

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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 brown, and said, "The opinions of the learned Chancellor are always enti-
titled to the highest consideration."

Nice Words

You’re the top. You’re the Colosseum. You’re the greatest. Pile up the compliments, the plaques, awards, diplomas, li-
censes, 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, cele-
brates its heroes as a way of justifying its integrity. Kent thought Prentiss the “finest jurist in New England.” We use the com-
ment 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 be-
comes 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 per-
formed 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 com-
petence. They are Super Lawyers or the “Best Lawyer of 2020” or a “Lawyer of Dis-
tinction.” These present proof by plaque that your lawyer is one of the finest. Rep-
utations 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 & Rich-
ardson and is a regular contributor to the Vermont Bar Journal. A collection of his col-
umns 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 Judi-

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The VBA team has been working for several months with IntellLinx, 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 3rd with your new login from IntellLinx at your currently registered email address with a temporary password. Please use this to log into your account on IntellLinx 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, 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 IntellLinx AMS on May 3 with your UserID and temporary password. Please look for an email from 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 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!
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.

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.

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1 Reformatted from article, “5 Happiness Hacks that Take 5 Minutes Or Less, by Cathe- rine Pearson (5/12/21), https://www.huffpost.com/entry/happiness-hacks-five-minutes-or-less_L_609bf35f4b0997247e3f9f

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BE WELL

If you have 5 minutes, you can activate your own internal happiness!1

by Samara D. Anderson, Esq.
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 Vasilion, 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.

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"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 Der poel-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 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 stuff!” 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
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 Brandi.

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 complicated 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. 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. 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 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.” Today there are approximately 300 programs across the country offering post-secondary education in prisons. 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.” 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 between 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.

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

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.

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. We have another 4.5 million people on probation or parole. 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. In Russia, there are 386 people in prison per 100,000 population. Today’s imprisonment rate in the United States is nearly seven times what it was in 1972.

Vermont’s average daily sentenced population is about two thirds of what it was ten years ago. As of March 19, 2021 Vermont’s sentenced population was 1,239. 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. Despite almost a one third decrease in the key incarceration rate, the 2021 budget is $167 million, a 22% increase over 2010. The annual average daily 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. 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. Though bleak, Vermont’s recidivism rates are somewhat better than much of the rest of the country. According to a study of 30 state correcc-
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. 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. Between 1980 and 2011 California spent 13 percent less on its college and university system, but spent 436 percent more on its corrections system. 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 percent 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. Our public tuition charged to in state students is the highest in the country, and twice the national average. 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. However 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. 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. Among white male high school dropouts 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. Of course, poverty always plays a role. Incarcerated people have a median annual income that is 41 percent less than non-incarcerated people of similar ages. In Vermont 75 percent of those that are incarcerated read at below the 9th grade level. On the other hand, according to the U.S. Census, 93 percent of Vermonters have at least a high school degree. 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. 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. 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 percent reduction in recidivism rates, one dollar invested in prison education programs saves between four and five dollars in three-year reincarceration costs.

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 earlier. Two-thirds of these children’s parents were incarcerated for non-violent offenses. 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.

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.”

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 unfa-
tering 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 treat-
ment of crime and criminals mark and mea-
sure the stored up strength of a nation and are the sign and proof of the living virtue
in it.40

There is an irrefutable cost benefit analy-
sis favoring our financial investment in ex-
panded 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 crimi-
nal 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 supple-
mented by the FAFSA Simplification Act (Free Application for Federal Student Aid).
FAFSA is “sentence-blind”—meaning all incarcerated people, regardless of sen-
tence length or conviction, can qualify—
and includes people with certain drug-re-
lated convictions who could not previous-
ly apply for Pell Grants. It covers people in jails, prisons, and juvenile and civil commit-
ment 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.41

Undoubtedly there will be various enti-
ties seeking to profit from this opportuni-
ty, and it will be incumbent upon Depart-
ments of Correction to ensure the quality of programs being offered. The Prison Uni-
versity Project and the Alliance for Higher Education in Prison among others have de-
volved a template to help guide Depart-
ments of Corrections and educational insti-
tutions in assuring high levels of quality in the programs that are being used.42 Like-
wise, 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.43

The time and opportunity to provide ex-
panded post-secondary education in Ver-
mont 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 Cor-
rrections 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.44 Sec-
ond, it can access funds through the Work-
force Innovation and Opportunity Act to support post-secondary programs in Pris-
on.45 The Department of Corrections bud-
gets $3,503,773 to pay 35 teachers. Sala-
aries 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.46 Nonetheless, the Department’s 2021 budget request speaks only to secondary education allo-
cating only $103,949 to supplies, equip-
ment, space, IT and operating expenses.47

The Future of College Behind Bars in Vermont

While DOC and CCV are “actively and
collaboratively planning to expand the ac-
tess 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 pro-
gram, 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 pro-
grams through CCV, a Department of Cor-
rrections officials stated: “…until we com-
plete implementation of the wireless ac-
cess network, it is difficult to identify what else would really enhance the access or ad-
dress 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 meaning-
ful State-wide program. She points to the
Women’s Re-entry Center in Maine where
women take classes online from the Univer-
sity 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 edu-
cation is one of the main roads to a mean-
ful 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
don’t not 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 pro-
tection, 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.

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College Behind Bars

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.

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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 work 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 to 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 Bassingthwaite, 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 security awareness training for the legal community.*
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 Vermont (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 Association in drafting Vermont’s new trust code as well as provisions of the Uniform Principal and Income Act and the ability to convert trusts to “unitrusts.”

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 Executive 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. 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 estate 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 0.40%, 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.

1 Christopher Chapman, CTFA, 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.
2 14 VSA Ch. 118
3 14A VSA Ch. 9
4 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 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 defendant who found themselves charged with crimes in his court, and he uses these anecdotals 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 accountable 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 his 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 wonderful 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.


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-

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Honor. Peter W. Hall

Hon. Peter W. Hall, 72, passed away on March 11, 2021, in Rutland. 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.

IN MEMORIAM

Hon. George T. Costes

Hon. George T. Costes, 97, passed away on 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.

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, 1925, in Arlington, Vermont, the son of John and Marion Maguire, he was educated in local schools and Vermont Law School. After graduating, Bob entered private practice with his brother, Robert Maguire, in Montpelier and served as a City Councilor and Alderman. Bob returned to private practice after his brother’s death in 1975, forming Maguire and Carney PC with his son, Michael, which was acquired by Facey PC in 1991. In 1999, Bob formed Reiber, Kenlan, Schwiebert, Hall and Maguire PC. After the death of his son, the practice became Reiber, Schwiebert, Maguire PC. In 2001, Bob stepped down from his practice and continued to serve on the Board of Directors of the Rutland County Bar Association and the Vermont Bar Association. Bob, his wife, Susan, and their step-daughter, Karen, reside in Montpelier and enjoy gardening, bird watching, and socializing with family and friends. He is survived by his step-daughter, Karen, her husband, Robert Pickin, and their daughter, Emily Victoria Pickin, and step-grandchildren; two step-children and two step-grandchildren.
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 Independence 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 90th 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,

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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 66th Infantry Brigade Combat Team (Mountain) at the Joint Readiness Center in Jericho, Vermont; and the Trial Defense Detachment based in Williston, Vermont.

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