



THE VERMONT BAR JOURNAL

233

Spring 2023, Volume 49, No. 1

Civility and Professionalism
Survey Results Inside



Complex Legal Challenges require legal teamwork

Legal Complexity Requires Legal Teamwork

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PRESIDENT'S COLUMN

Civility and Professionalism: Your Responses

On January 29, 2023, the Vermont Bar Association launched a survey on civility and professionalism.¹

We received an overwhelming response: **699** of you answered.² The survey was sent to Vermont lawyers, state and federal judges, court staff, paralegals, and other participants in our legal system. In this President's Column, I provide a summary of your answers, together with additional thoughts and observations shared at our CLE at the VBA's March 31 Mid-Year Meeting in Manchester.³

As an initial matter, I want to thank you for taking the time to respond to our survey. Many of you provided detailed (and exceedingly candid) comments,⁴ and we truly appreciate it. As you know, we conducted the survey because of a concern that there has been a decline in civility and professionalism among lawyers in Vermont. Your responses – and the sheer volume of your responses – suggest that the concern is not ill-founded. Indeed, we seem to have touched a nerve.

1. Are most lawyers civil and professional?

The good news is that **92.69%** of you answered that most lawyers you engage with are "civil/professional" or "very civil/professional."⁵ As one of you reported: *The attorneys in my county are always gracious, appreciative, personable and sometimes feel like family!* When asked how you would compare lawyers' civility and professionalism nowadays with when you first began practicing, **12.55%** of you said that things have gotten better, and **58.30%** said things are the same.⁶

Notably, however, **29.15%** of you said that things are worse. Further, **61.22%** of you reported experiencing or witnessing uncivil or unprofessional behavior from a lawyer in the last six months.

2. What are the most reported examples of recent bad behavior?

For those of you who experienced or witnessed uncivil or unprofessional behavior in the last six months, we probed further. We offered 12 examples of potential uncivil/unprofessional behaviors for you to report, plus the option to select "other."

Here is what we learned:

- The most reported example of bad behavior is a "sarcastic or condescending attitude," at **59.05%**. You described: *condescending references about op-*

posing counsel in briefs, as well as condescending remarks about being a 'green' attorney. This issue was especially noted by court staff, who reported that attorneys are sometimes *verbally abusive to court clerks*. As one of you put it: *I am very disheartened at the incredibly disrespectful communication that court staff are subjected to these days from some attorneys. Being rude, condescending, and insulting does nothing to enhance the work that we all need to do together.* The point is well taken. Rude and condescending behavior is unacceptable, and employing it, particularly in interactions with court staff, surely does not help you advance your client's cause. Bad behavior is a bad strategy.

- The next most-reported bad behavior is "inflammatory writing in correspondence, emails, briefs or motions," at **54.96%**. At our CLE, Judge Teachout offered examples of writing that struck her as unnecessarily inflammatory and, in the end, "not effective at all." These include describing the opposition's argument as "preposterous" or "absurd" or "outlandish" or "beyond Kafkaesque," as well as referring to an opponent's statement of fact as "false" rather than as "incorrect."⁷ Some might consider these to be potentially close calls.⁸ But Mike Kennedy noted that being aware of the court's (or a particular judge's) perception of the effectiveness of such language may well be required by our duty of competence under Rule 1.1 of the Vermont Rules of Professional Conduct.⁹ In other words, as Mike always says, "be careful out there."
- The third most-reported example was "misrepresenting or stretching the facts," at **49.57%**. You complained of *hyperbolic or meritless motions loosely grounded in fact*, and there were a number of complaints about attorneys *lying to the court*. Of course, this violates the Rules.¹⁰

Interestingly, despite being offered 12 choices (which seemed like a large enough number of options at the time), **24.14%** of you checked the "other" box and wrote in your own examples. The most frequent was the failure to return calls or emails or otherwise engage with counsel: *failing to return calls or emails; not responding to*



Andrew Manitsky, Esq.

emails or phone calls; no response with no explanation; stonewalling; refusing to engage with me; ignoring repeated communications; and inexcusable delays in responding to correspondence. Also noted were concerns related to behavior during discovery, with respondents complaining about *gamesmanship with discovery and attempts to avoid discovery obligations*. As one of you reported: *Unnecessary disputes over discovery are a major problem. I think they have gotten much more frequent during the many years I have practiced.*

Perhaps most disturbingly, **14.44%** of you reported "sexist comments." The majority of incivility I have encountered stems from sexism, observed one of you. Another said: *I've been called a bitch and told that I am 'overly aggressive' and that I need to 'calm down.'* And another complained about *older male attorneys making thinly veiled references to male judges that suggest they are both part of the same old boys' club...when opposing counsel is a younger female attorney*. This is clearly a significant issue that requires further attention. Among other things, it represents a violation of Rule 8.4(g).¹¹

Finally, many of you observed that the problem is *thankfully limited to a few bad actors*. Said another: *It seems to be always the same attorneys, and that is just how they do business.* Out-of-state attorneys were singled out as a problem. So were a few practice areas: *It is the absolute worst among the family bar.* At the same time,



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some practice areas seemed less vulnerable to bad behavior: *Most attorneys in my practice area (real estate and transactional law) are kind and collaborative.*

3. What are the consequences of incivility and unprofessionalism?

The overwhelming majority of you agreed¹² that incivility and unprofessionalism have severely negative consequences.

Specifically, incivility and unprofessionalism:

- lead to an increase in litigation/transaction costs (**88.20%**)
- tend to prolong discovery and/or negotiations (**89.61%**)
- make the practice of law (or working in the legal arena) less satisfying (**89.95%**)
- harm the public's/client's confidence in the justice system (**91.28%**)
- make it more difficult for matters to reach resolution (**94.53%**)

In my last column, I explained how studies across the country have shown that being civil and professional will make you both a more effective lawyer, and a happier lawyer. The VBA study confirms it once again.

4. Why do we engage in bad behavior?

In your responses, you offered some ideas as to why we engage in bad behavior.

One common theme is that *incivility mostly stems from stress*. And it was noted that the *isolation of COVID made this much worse*. Others observed that stress is a problem beyond incivility: *Lawyers being overworked or stressed leads to poor decisions, poor quality of life, and loss of good professionals from the practice*. Attorney wellness is a major focus of VBA and is a requirement under the Rules, so each of us has a responsibility to address it.¹³

Another common answer relates to clients' demands: *Clients appropriately demand that their lawyer represent them as zealously as possible, and appropriately so. Of late, some newer lawyers see this as uncivil or unprofessional when it is precisely the opposite*. Now, the foregoing comment raises a number of issues. Without question, we must serve our clients competently.¹⁴ Even so, the requirement of "zealous advocacy," as such, no longer appears in the Rules (although its remnants remain in the comments)¹⁵, and there are, of course, a multitude of restrictions as to what we may do in the service of our clients.¹⁶

The comment also highlights the confounding issue of perception in this area. What looks like incivility or unprofessionalism to one lawyer may appear to be dutiful, diligent representation to another.¹⁷ And then there is the further problem (noted by some of you) of using allegations of

incivility or unprofessionalism as a weapon in the service of clients, when those allegations are questionable at best, or spurious at worst.¹⁸

5. How can we improve?

We asked you what actions, programs, or initiatives might improve civility and professionalism. We received more than 300 responses. Here are some takeaways.

First, a significant number of you reported that you would like judges to be more active in curbing bad behavior, saying: *judges need to take a hard line; judges should not ignore uncivil behavior; judges should not be shy about utilizing Rule 11 sua sponte; the court needs to take an active role in policing attorneys who misbehave; incivility could be swiftly & effectively rebuked by judges; most judges just 'let it go' in dealing with motions for sanctions; no trial judge enforces discipline in the proceedings; would like to see judges gently reprimand lawyers who use inflammatory language; greater use of court sanctions; and perhaps some hand slapping by the judge*.¹⁹ When judges have acted, it has been appreciated: *As a young attorney, I interrupted opposing counsel and the presiding judge kindly but forcefully explained that interrupting was not tolerated because respect for the court and counsel was important. I never forgot that lesson*.

Second, there was a big push for more social interaction and mixers. You asked for monthly local lunches for the county bar lawyers, and other events like the VBA Mid-Year and VBA Annual Meetings. You explained: *I think it is harder to be uncivil face to face, and that social gatherings help people to get to know each other and have better relations*. And as one of you put it: *In my experience, the only thing that improves civility between lawyers is when they have personal relationships with each other outside of the courtroom*.

Third, you asked for more CLE seminars on civility and professionalism. There was a split, however, on whether the CLE should be required (comments suggesting required CLE; mandatory CLE course on civility; mandatory ethical and professionalism training at least once a year for all practicing attorneys and their staff), or merely offered (comments stating we certainly don't need more CLE requirements, that much is certain; anything but a civility/professionalism program requirement for CLE).

Fourth, there are some of you who believe that this is mostly a non-issue. We are, after all, lawyers. As one of you put it: *Lawyering is by nature adversarial. If you don't like it, then you should get out*. Others had a slightly different, though related, take on the subject: *everyone relax*.

Finally, a significant number of you expressed appreciation that we conducted

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the survey and that we are focusing on this issue. You suggested that continued attention on civility and professionalism will help. Rest assured, we will continue our efforts. We will offer more CLEs, including another two-hour CLE on the topic (with ethics credit!) at the VBA's Annual Meeting in Burlington. And at that meeting, I will be presenting a President's Award for Civility and Professionalism (and I ask you to submit candidates for consideration). We are looking to acknowledge lawyers who have demonstrated the kind of civility and professionalism that not only is expected of us, but that exceeds those expectations. I have asked the County Bar Presidents to nominate candidates, and I have also asked them to consider giving their own awards for civility and professionalism. It is one thing for us to call out bad behavior. But we must also recognize and reward good behavior when we see it.

* * *

A few final comments. You should know that the judiciary is paying very close attention to the concerns revealed by our survey. Mike Kennedy continues to publish and speak on the topic, with a greater sense of urgency than ever; Mike and I will be speaking on the issue at the annual PRB meeting in June. And judges (like Judge Helen Toor) are scheduling benchbars on the issue. We must continue to have thoughtful and candid conversations on civility and professionalism.

I am asking future VBA Presidents to conduct the same civility and professionalism survey at regular intervals in the years to come. I noted at the outset that **92.69%** of you said that most lawyers you engage with are "civil/professional" or "very civil/professional." That's a great number. But I think we can get it to **100%**. We ought to be in a place where everyone can agree that at least "most lawyers" are civil and professional. As one of you observed: *I still believe that lawyers remain among the most honest, ethical and trustworthy professionals.*

We at VBA are committed to elevating the practice of law in Vermont. We are committed to helping you, and to helping you better serve your clients. As always, please be in touch with your thoughts and suggestions.²⁰

¹ The survey was based, in significant part, on the 2021 and 2014 surveys conducted by the Illinois Supreme Court Commission on Professionalism (the 2021 results of which are referenced herein as the "Illinois Survey"). We acknowledge with gratitude the generous assistance of Mark C. Palmer, Esq., Chief Counsel for that Commission.

² With 2,996 surveys emailed and a response rate of 699 (or 23.33%), our margin of error is, conserva-

tively, +/- 3.2%. Survey results follow this column.

³ At the Mid-Year, Judge Mary Miles Teachout, Bar Counsel Mike Kennedy, and I presented a CLE seminar entitled: "Civility & Professionalism: Three Perspectives," looking at the issue from the point of view of a judge, bar/disciplinary counsel, and a practitioner. Thank you to the attendees for their active participation. The CLE was recorded and is available for viewing (and for CLE credit) on the VBA website.

⁴ Quoted comments are provided in *italics*.

⁵ This is even higher than the Illinois Survey (at **88.7%**).

⁶ Only **2.87%** of you described lawyers as "uncivil/unprofessional" or "very uncivil/unprofessional," which is the same as the Illinois Survey (at **2.9%**).

⁷ Two comments here. First, a few attendees admitted to using such language with some regularity. Second, Judge Teachout admitted that she is perhaps on the far (conservative) end of the spectrum in her perception of such language.

⁸ It seems to me that close calls are as important to discuss as egregious cases. In fact, a few of you suggested that egregious examples of bad behavior aren't all that helpful: *Stop doing presentations/programs that highlight the MOST egregious examples and start talking about the more subtle ones. By focusing on the most egregious, it is easy for people to say they would NEVER behave that way and not see themselves as needing to make a change.*

⁹ The Vermont Rules of Professional Conduct are referred to herein as the "Rules."

¹⁰ See Rule 3.3(a) (Candor Toward the Tribunal) ("A lawyer shall not knowingly make a false statement of fact or law to a tribunal").

¹¹ "It is professional misconduct for a lawyer to engage in conduct related to the practice of law that the lawyer knows or reasonably should know is harassment or discrimination on the basis of race, color, sex..."

¹² These results are for "strongly agree" and "somewhat agree" combined. Notably, in each instance, "strongly agree" received approximately three times the votes of "somewhat agree."

¹³ See, e.g., www.vtbar.org/attorney-well-being/ ("Attorney well-being is a critical component of our duty to represent our clients with competence") (listing resources suggested by the Vermont Commission on the Well-Being of the Legal Profession); Rule 1.1, comment [9] ("Maintaining the mental, emotional, and physical well-being necessary for the representation of a client is an important aspect of maintaining competence to practice law").

¹⁴ See, e.g., Rule 1.1 ("A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.").

¹⁵ See, e.g., Rule Preamble ([9], referencing "the lawyer's obligation zealously to protect and pursue a client's interest, within the bounds of the law, while maintaining a professional, courteous and civil attitude toward all persons involved in the legal system" (underscore added).

¹⁶ See, e.g., Rule 3.6 (prohibiting trial publicity likely to materially prejudice an administrative proceeding); Rule 4.1 (requiring truthfulness); Rule 8.4(c) (prohibiting dishonesty and deceit); and Rule 8.4(d) (prohibiting conduct prejudicial to the administration of justice).

¹⁷ In fact, there is some divergence of views on "newer/younger" versus "experienced/older" attorneys vis-à-vis civility, with each group being criticized. One comment captured them both, however: *The worst offenders are older attorneys or inexperienced attorneys.*

¹⁸ See, e.g., *Doe v. Exxon Mobil Corp.*, Case No. 1:01-cv-1357-RCL (D.C. Cir., May 12, 2021) (hold-

ing that counsel should not have “impugn[ed] another attorney’s character without reviewing the entire record” and ultimately imposing sanctions of approximately \$300,000 against accusing counsel).

¹⁹ Discovery disputes, again, were highlighted.

You said that judges should be *more receptive to resolving discovery disputes in a way that goes beyond viewing them as just both sides bickering. I believe that many lawyers are reluctant to bring discovery disputes to the judge based on the perception (right or wrong) that judges don’t*

like to be ‘bothered’ by such squabbles.

²⁰ Special thanks to Lisa M. Maxfield, VBA’s Associate Executive Director, for her invaluable assistance.



VBA Survey on Civility and Professionalism (2023)

Q1 Most lawyers I engage with are:

Answered: 697 Skipped: 2

ANSWER CHOICES	RESPONSES	
Very Civil/Professional	35.44%	247
Civil/Professional	57.25%	399
Neutral/No Opinion	6.31%	44
Uncivil/Unprofessional	2.44%	17
Very Uncivil/Unprofessional	0.43%	3
Total Respondents: 697		

Q2 How would you compare lawyers’ civility and professionalism nowadays with when you first began practicing law (or working in the legal arena)?

Answered: 693 Skipped: 6

ANSWER CHOICES	RESPONSES	
Better	12.55%	87
The same	58.30%	404
Worse	29.15%	202
Total Respondents: 693		

Q3 Have you experienced or witnessed uncivil or unprofessional behavior from a lawyer in the last six months?

Answered: 691 Skipped: 8

ANSWER CHOICES

RESPONSES

Yes

61.22%

423

No

39.51%

273

Total Respondents: 691

Q4 If Yes, please select all that apply

Answered: 464 Skipped: 235

ANSWER CHOICES

RESPONSES

Indiscriminate use of motions

23.92%

111

Playing hardball (such as not agreeing to reasonable requests for extensions)

31.47%

146

Inflammatory writing in correspondence/emails, briefs, or motions

54.96%

255

Misrepresenting or stretching the facts

49.57%

230

Misrepresenting the law or making baseless legal arguments

34.48%

160

Negotiating in bad faith

20.91%

97

Inappropriate interruptions of others (e.g., clients, colleagues, counsel, judges, witnesses)

31.25%

145

Sarcastic or condescending comments or attitude

59.05%

274

Swearing, verbal abuse, or belittling language

18.97%

88

Inappropriate comments about a lawyer's age or experience

12.72%

59

Racially or culturally insensitive comments

4.74%

22

Sexist comments

14.44%

67

Other (please specify)

24.14%

112

Total Respondents: 464

**Q5 Please indicate how much you agree or disagree that
incivility/unprofessional behavior:Harms the public's/client's confidence in
the justice system**

Answered: 688 Skipped: 11

ANSWER CHOICES	RESPONSES	
Strongly agree	65.99%	454
Somewhat agree	25.29%	174
Neutral/no opinion	6.25%	43
Somewhat disagree	2.47%	17
Strongly disagree	0.58%	4
Total Respondents: 688		

**Q6 Please indicate how much you agree or disagree that
incivility/unprofessional behavior:Tends to prolong discovery and/or
negotiations**

Answered: 693 Skipped: 6

ANSWER CHOICES	RESPONSES	
Strongly agree	64.79%	449
Somewhat agree	24.82%	172
Neutral/no opinion	9.24%	64
Somewhat disagree	0.87%	6
Strongly disagree	0.58%	4
Total Respondents: 693		

Q7 Please indicate how much you agree or disagree that incivility/unprofessional behavior: Leads to an increase in litigation/transaction costs

Answered: 695 Skipped: 4

ANSWER CHOICES	RESPONSES	
Strongly agree	63.31%	440
Somewhat agree	24.89%	173
Neutral/no opinion	10.65%	74
Somewhat disagree	0.86%	6
Strongly disagree	0.43%	3
Total Respondents: 695		

Q8 Please indicate how much you agree or disagree that incivility/unprofessional behavior: Makes it more difficult for matters to reach resolution

Answered: 695 Skipped: 4

ANSWER CHOICES	RESPONSES	
Strongly agree	71.51%	497
Somewhat agree	23.02%	160
Neutral/no opinion	4.46%	31
Somewhat disagree	0.72%	5
Strongly disagree	0.43%	3
Total Respondents: 695		

Q9 Please indicate how much you agree or disagree that incivility/unprofessional behavior: Makes the practice of law (or working in the legal arena) less satisfying

Answered: 697 Skipped: 2

ANSWER CHOICES	RESPONSES	
Strongly Agree	72.02%	502
Somewhat Agree	17.93%	125
Neutral/no opinion	8.03%	56
Somewhat disagree	0.72%	5
Strongly disagree	1.29%	9
Total Respondents: 697		

Q10 In what county do you primarily practice?

Answered: 647 Skipped: 52

ANSWER CHOICES	RESPONSES	
Addison	3.25%	21
Bennington	6.03%	39
Caledonia	3.25%	21
Chittenden	34.62%	224
Essex	0.31%	2
Franklin/Grand Isle	4.33%	28
Lamoille	3.09%	20
Orange	0.93%	6
Orleans	2.32%	15
Rutland	8.66%	56
Washington	20.87%	135
Windham	3.86%	25
Windsor	8.50%	55
TOTAL		647

Q11 Years of experience in the legal profession:

Answered: 694 Skipped: 5

ANSWER CHOICES	RESPONSES	
0-4	9.80%	68
5-9	11.82%	82
10-14	11.53%	80
15-19	11.38%	79
20-24	11.10%	77
25-29	9.37%	65
30-34	10.95%	76
35-39	7.93%	55
40-44	8.36%	58
45+	8.21%	57
Total Respondents: 694		

Q12 Check the one that best describes your practice setting:

Answered: 694 Skipped: 5

ANSWER CHOICES	RESPONSES	
Law Firm	52.88%	367
Corporation	2.74%	19
Government	15.71%	109
Judiciary	17.44%	121
Academic	0.43%	3
Military	0.00%	0
Legal Aid or Non-Profit	4.47%	31
Not Currently Practicing	3.75%	26
Other (please specify)	4.61%	32
Total Respondents: 694		

Q13 Which best describes your title/position:

Answered: 687 Skipped: 12

ANSWER CHOICES	RESPONSES	
Associate	10.48%	72
Partner	36.97%	254
Prosecutor	4.51%	31
Public Defender	1.16%	8
Staff Attorney	9.17%	63
In-House Counsel	4.80%	33
Paralegal	1.02%	7
Judge	3.20%	22
Judicial Clerk	6.11%	42
Court Staff	7.57%	52
Other (please specify)	17.32%	119
Total Respondents: 687		

To see the survey data in a different format and in color, see the Survey Monkey website at:
<https://tinyurl.com/5fx3k5cv>

PURSUIITS OF HAPPINESS

Charity Clark — Vermont Attorney General, Vermont Adventurer

KSV: Hi Charity! First, congratulations on your history-making election as Vermont's Attorney General. First woman ever elected to that post. What's the thumbnail version of how it's going so far?

CC: I am very pleased with how things are going! We have an excellent, experienced leadership team in place. Most of our legislative priorities are making progress at the State House. I am proud of the Office's work serving our client agencies, providing leadership on policy issues that impact Vermonters, and prosecuting important cases, both criminally and civilly.

KSV: Is there anything that has surprised you about the response you've had since you won the election?

CC: I did not appreciate the extent of the impact my campaign, victory, and inauguration would have on women professionals, especially attorneys. Multiple women have either become choked up speaking to me or expressed excitement or relief that "it's about time." And a surprising many more have commented on the symbolic white pantsuit I wore on Inauguration Day.

KSV: As you know, for this feature, we interview legal professionals who have interests and passions outside of the law which help keep them balanced. You and I have worked in the same places a couple of times over the years, and I know that you have lots of outside interests. I've been especially impressed by your outdoorswoman credentials, you're a keen hiker, aren't you?

CC: Yes, I love to hike and backcountry and cross-country ski.

KSV: I want to hear all about that and about your path to the AG's office, but let's start at the beginning if you don't mind. Can you tell us a little about your background? Where did you grow up?

CC: I lived in Ludlow until I was 7, but I consider Manchester to be my hometown. My family owned and operated Clark's Market, a grocery store in Londonderry, Vermont, and I spent a lot of time at the store as well.

KSV: Those origins played a significant part in your decision to run for Attorney General, didn't they? Can you elaborate on that?

CC: Growing up in small towns where ev-



Charity, aged 6 or 7, hiking at Little Rock Pond.



Moosalamoo



Long Trail terminus, at the Canadian border

everyone has to pitch in made a big impression on me. But especially working at the store -- which looked like a giant chalet in a ski town -- opened my eyes to all kinds of people. I referenced this in my campaign stump speech. All kinds of people make up a community, but the people struggling -- whether from poverty, infirmity, lack of childcare, addiction, or loneliness -- really stuck with me. And also the hard work it takes to work at a grocery store and to run a small business.

KSV: What career did you imagine for yourself back at Burr and Burton?

CC: Journalism. I double majored in college, in English and Political Science, so even through college journalism was a probable career for myself.

KSV: When and why did you decide on law?

CC: Working in the Governor's Office as a policy analyst gave me the perfect viewpoint of the benefits of a law degree. I knew that it would let me make a living by doing things I love like reading, learning, and serving the community. I also could see first-hand what a positive impact people, especially some of the women I looked up to, had with a law degree.

KSV: Where did you go to law school?

CC: Boston College Law School

KSV: I think I recall hearing you once say something about how those Jesuits were influential on your thinking about community service. Do I have that right?

CC: I was glad to attend a law school that trained me with those values, and I think my legal education has served me well, but particularly in public service. I also made lifelong friendships with smart people who care about the world.

KSV: Can you walk us through your legal career prior to becoming AG?

CC: I started my career as a litigator at Downs Rachlin Martin. After about 3 years, I moved to New York City and worked at Orrick for nearly 6 years. When I was pregnant with my daughter, I quit my job and moved back to Vermont. Seven months pregnant, I drove home to Vermont for good in a snowstorm with two suitcases and, of course, my skis.

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Skiing at Bromley in middle school



Backcountry skiing at Bolton

KSV: So from Vermont to New York City and back again. What brought you home?

CC: Vermont always called me home and I couldn't fight it anymore. Plus, I wanted to raise my daughter here. She is an 11th generation Vermonter, after all!

KSV: Let's talk about your hiking and skiing. Have you always done it?

CC: Yes, my family hiked and skied regularly when I was little. In my youngest years, we skied at Okemo a couple of times a week, so I have been ripping down the mountain since before I could even really read. By the time I got to UVM, I shifted to mostly cross-country skiing. In recent years, I have really gotten into backcountry skiing as the ideal sport, because it combines all of my favorite winter sports into one! As to hiking, I started hiking more in high school when my dad decided to finish the Long Trail. When I was in college, my nickname was "Night Hiker," because I was so busy that sometimes I wouldn't get to the mountain until dark.

KSV: Tell me about some of your favorite hikes.

CC: Kim, I don't know where to begin! It is cliché, but I am a sucker for Camel's Hump and Mount Mansfield, because they are challenging and, oh, the views. Mount Pisgah is an absolute world class hike. The trails on Mount Equinox behind Burr and Burton are beloved to me, but maybe that's mostly sentimental? My favorite underrated hikes are Laraway Mountain and Mount Elmore. I also feel connected to Little Rock Pond, a beautiful place and the first hike I ever did on the Long Trail when I was a little girl.

KSV: I know you've got a crew of hiking buddies. Can you tell me about them?

CC: One of my college roommates and best friends, Liz, is ever game and unflappable. My dad is also one of my best hiking buddies. My friend Jessie is from the Pacific Northwest and we are always comparing trail notes on hikes or skis. I also have some childhood friends I hike and ski with and I like to hike with the Green Mountain Club. One of the cool things about the Long Trail is the incredible sense of community on the trail. So, sometimes, you don't have a hiking buddy, but you meet one along the way.

KSV: How often do you manage to get out for a hike?

CC: I get out for a hike or ski a couple of times a week. I am lucky to live in the same town as several hikes and the Cato Mountain Center, so I can pop over after or before work for a hike or ski, depending on the season. This winter, I have started skinning up Bolton before work once a week and it has been amazingly uplifting and energizing. Just the perfect way to start the day! We have a joke in the Attorney General's Office that if you take a couple of hours of vacation time for skiing on a powder day, you claim to have a "double eye" problem that kept you from work -- except it's the two "i's" in "skiing" that's the problem. I guess that's a Vermont lawyer joke.

KSV: What's been the most challenging one to date?

CC: I was backpacking on the Long Trail with plans to spend the night at Jay Camp. It was very hot, and all the streams were dry. Eventually, very thirsty, I kept reassuring myself that there was a spring at Jay Camp, and I spent my time fantasizing

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ing about the perfect drink (fizzy lemonade with mint? Fizzy limeade with sliced mango? Etc.) When I finally arrived at Jay Camp the spring was dry. Thankfully, I found day hikers who drove me to Montgomery Center where I purchased a liter of water and a half gallon of cold lemonade. In the parking lot, I guzzled both. A man next door approached and offered his Wi-Fi and a burger. Then, I bumped into hikers I had met on the trail who drove me to their bed and breakfast and dropped me at Jay Peak the next day. Anyway, the hike up Jay to the Canadian border? That was the hardest hike, because I was so dehydrated from the day before.

KSV: Have you set yourself any particular hiking challenges?

CC: I finally finished the Long Trail in 2021 and I am currently making my way through the NEK 20, which is a challenge to hike all of the major peaks in the NEK. Sixteen down, 4 to go! I would also love to finish the Catamount Trail (on skis) someday.

KSV: Being a lawyer is a hard job. Being the AG is a particularly hard job. I'm guessing that getting outdoors and going up mountains must be really helpful to you in many ways. Can you tell me a little about the rewards you reap from it?

CC: There's this Wendell Berry poem



Camel's Hump

called "The Peace of Wild Things" that expresses just exactly how I feel in the woods. Google it! When I am outside hiking or skiing, I feel happy, peaceful, and energized. I recently read an article about Flaco, the owl that escaped the Central Park Zoo and was allowed to be free. The article said that in spite of his lifetime of captivity, Flaco somehow "remained wild inside." Especially after my years in New York City, I related to that so much, the idea that when you get into the woods you remember you are still wild inside. I should add that hiking or ski-



Monroe Skyline

ing are also great ways to catch up with a friend.

KSV: That's great. While we're on the subject of outside interests, do you want to say anything else about other things you do that are particularly meaningful to you? Any shout outs to family and friends are welcome.

CC: Spending time with my daughter brings me a ton of joy. Honestly, nothing can compare with being her mother.

I also volunteer with the Junior League of Champlain Valley, especially at their Diaper Bank in South Burlington, which I helped start in 2018 when I was President of the League. There are zero government subsidies for diapers, and this 100% volunteer organization manages to distribute 120,000 diapers statewide every month.

KSV: I know you're just getting started in your job as AG, but do you have a plan at this point to run again for the job?

CC: I love the Attorney General's Office. You can do so much good as Attorney General, and it is a great feeling to know that every day my work is helping Vermonters and Vermont, making it a better place. The employees are smart, hard-working, and committed to serving the State. I love having the State as a client, too. Vermont is the only state in the country with a two-year election cycle for attorney general, and my current plan is to run for Attorney General again next year.

KSV: Well, best of luck to you and thanks for sharing your pursuits of happiness with the VBA.

CC: Thank you for featuring the ways that lawyers find balance!

Do you want to nominate yourself or a fellow VBA member to be interviewed for Pursuits of Happiness? Email info@vtbar.org.



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WHAT'S NEW

Vermont Law and Graduate School Teams up with VBA to Help Small Businesses

How do small businesses in Vermont access legal services? What prevents them from doing so? And, do they understand when the challenge they face is a legal issue? These are the questions that the Vermont Law and Graduate School Entrepreneurial Legal Lab (VLSell), in partnership with the Vermont Small Business Development Center (VtSBDC) and the Vermont Bar Association (VBA), seeks to answer.

VLSell launched in 2018 under the leadership of Jeannette Eicks and Trey Martin. At the time, its focus was on educating small businesses about the law and providing subsidized legal services via students working in a field placement under a mentoring attorney's supervision. Soon thereafter, the program established its primary partnership with the VtSBDC, an SBA-funded organization offering business advice to small-scale entrepreneurs. Through the pandemic, VLSell and VtSBDC educated dozens of small business owners and

helped them find the legal services they needed.

In late-2021, VLSell became the "legal services spoke" of the SBA-funded Community Navigator Pilot Program (CNPP)—a two-year program aimed at supporting economic recovery after the pandemic through a combination of service providers and small business advocacy organizations. The CNPP has allowed us to work with the VBA to offer an additional service to qualifying businesses—a paid referral, for 5-10 hours of low bono transactional services (\$75/hour) with a member of the Bar. Qualifying businesses include BIPOC-, LGBTQ-, women-, and veteran-owned businesses, businesses owned by socioeconomically disadvantaged and disabled individuals, and rural businesses.

Through the CNPP, nearly 70 entrepreneurs have received expert legal education. They've formed relationships with an attorney who can help them with their le-

gal needs, and to whom they can return in the future when they need help. Due to the program's success, we've secured additional funding geared toward helping these small businesses start up and grow, fostering the economic engine of Vermont. And, our funding will allow us to continue the low-bono referral service through the VBA that has helped make the program a success.

So, what is the answer to the questions we set out to address? As you might expect, it depends. Through a CNPP survey, we found two barriers for minority-owned small businesses trying to access legal services. First, the law is unknown and scary, and they don't know whether their issue is legal or when to hire an attorney. Second, small business owners find legal services inaccessible because they are too expensive and too unfriendly to cash-strapped startups. VLSell aims to continue to provide education, and equitable access to legal ser-

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vices, to address these needs.

If you're interested in joining the panel of attorneys willing to take referrals from our small business clients, some of whom might bring future business and loyalty to your practice, please reach out to Mary Ashcroft at mashcroft@vtbar.org to inquire.

Nicole Killoran directs the Entrepreneurial Legal Lab at Vermont Law and Graduate School, and also works with students in the JD Externship Program. She lives in Randolph with her family and dog, and is just happy it's Spring.



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WHAT'S NEW

The 2023 Mid-Year Meeting - Manchester and Beyond



The VBA held its in-person Mid-Year Meeting at the Equinox Resort and Spa in Manchester Center on March 31 and followed up with a slate of webinars the following week. Attendance figures for the Manchester meeting made it clear that people are ready to get out and meet again! Last year's Mid-Year Meeting was held in downtown Burlington, and it drew what was then a post-pandemic record crowd for a VBA event: 132 attendees. Given Manchester Center's less-than-central location, we estimated that we might have 125 people. Instead, we had 228 registrants and, with the judges, Professional Responsibility Board, staff, and sponsors, 258 people were in attendance! This did cause a bit of crowding and congestion, but the goodwill was palpable, and the mood was excellent.

Breakfast with our sponsors (13 altogether) kicked off the day (eggs, bacon, the whole thing) followed by the first CLEs of the day on managing trauma in the workplace and the future of non-competition agreements in Vermont. Those were followed by a break to get some of that breakfast and talk to our sponsors. The morning finished up with CLEs on modes of mediation and open meetings and public records

laws. Then it was time for lunch and the VBA business meeting.

Board of Managers President Andrew Manitsky presided over the meeting which began with a recorded video message to the VBA from ABA president Deborah Enix-Ross. Andrew then moved on to the main business of the meeting, which included a vote on whether to change to the VBA Constitution to include the VBA Mission Statement: "The mission of the Vermont Bar Association is to promote the highest standards of skill, ethics and professionalism within an inclusive legal profession; foster understanding and respect for the rule of law; support equal access to a fair and effective system of law; and provide valuable resources to its members." This passed without debate.

It was then time for the pro bono award. Andrew presented this year's award to Attorney Sarah Star, who is the head of the VBA's juvenile law section. Her outstanding work is described in this issue of the VBJ – keep reading.

Elections on the uncontested slate of candidates for the VBA Board followed and these were also handled with alacrity and without debate. They are: President-

Elect – Josh Diamond; Treasurer – Matthew Valerio; Secretary – Edward J. Tyler. Three At-Large members were also elected: Jessica Bullock, Richard Cassidy, and Jordana Levine.

Bonnie Badgewick, a Board Member of the Vermont Bar Foundation, then gave an update on the VBF's Access to Justice Campaign and encouraged attendees to "see Jose." That is, Bar Foundation Executive Director Jose Herrera, who was on hand to give the VBF report and to promote the VBF online auction that is underway this spring. (Find an update on the auction in this issue). Elizabeth Kruska, a past president of the VBA and our delegate to the ABA, gave her report on the ABA meeting, which included a contentious and as yet undecided question about the future of the LSAT in law school admissions.

After lunch, the crowd moved back to the classrooms to hear the Hon. Helen Toor give tips from the bench on civil practice. Then, to wrap up the day, there was a standing-room-only ethics CLE led by Andrew Manitsky, the Hon. Mary Miles Teachout (Ret.), and bar counsel Mike Kennedy.

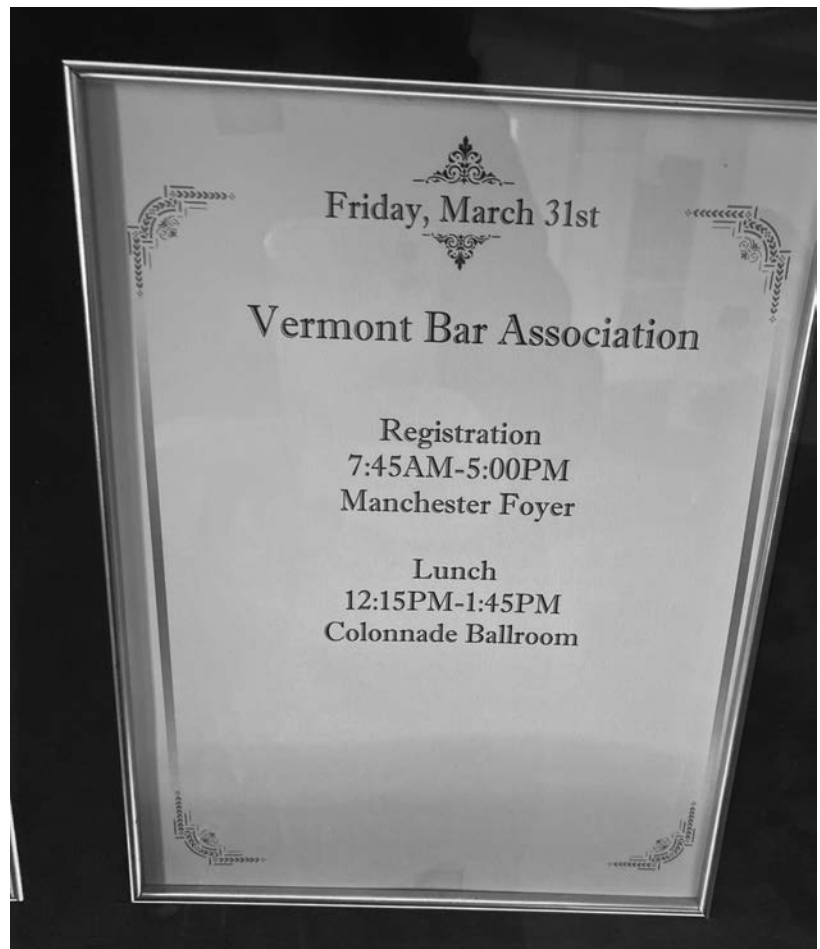
The trio led a lively discussion of the re-

sults of the civility survey that the VBA conducted this winter. Improving civility is one of Andrew's goals for his presidential year and it was clear that his interest is widely shared. The topic has got the attention of the judiciary and it will be taken up again at the annual meeting, Sept. 29 in Burlington.

The Women's Division and the Young Lawyer's Division also had their meetings in Manchester. The WD elected Alison Stone - Chair; Breanna Weaver - Vice Chair; Caryn Connolly - Treasurer; Rizlaine "Riz" Sabiani - Secretary, and Erin Gallivan - Delegate to the VBA Board. The YLD elected Pam Eaton Chair; Justin Brown is Chair-Elect, Ryan Long is treasurer and Kevin Lumpkin is Past Chair.

Rain and snow had begun to fall as the Manchester meeting wrapped up, which reminded some of us why remote meetings still have their charms. As noted, webinars continued online the entire following week. There were 11 classes offered over the following five weekdays with 12.5 total CLE hours on offer. With 698 Zoom logins the Mid-Year meeting webinars also proved very popular.

Thanks to all our presenters and to all who attended. We will see you for the annual meeting on Sept. 29 at the Hilton Burlington Lake Champlain!



BE WELL

Resiliency in the Ruts — Treating Mental Health with Motocross



There's a lot that goes into negotiating a turn in motocross. It's important to apply pressure to your brakes as you approach the corner, then let off as you enter the "rut." While in the rut, maintain your speed, lean into the corner and keep your head up, with your eyes looking towards the end of the rut.

This knowledge, as well as my growing passion for motocross, has provided key lessons in helping me navigate some ruts in my personal life and professional career as an attorney. Let me explain...

In May of 2020 I was living in Italy and was at the end of a five-year litigation assignment where I'd worked as a prosecutor and victims' counsel for the U.S. Air Force. I lived with my wife and three young children in the town of Sacile, which is about an hour from Venice. By this point in my career, I was already emotionally exhausted, having spent the entirety of my time in the Air Force reviewing and litigating sex crimes; specifically, crimes against children, sex assault, and rape cases. I'd represented countless clients, both service members and foreign nationals, who were entangled in the legal process after undergoing the trauma associated with being the victim of a crime.

Issues in my personal life compounded my exhaustion. Aside from the challenges of COVID, during which Italy suffered significant losses, we were awaiting biopsy results from a lump discovered in my wife's breast. The news we received was devastating—my 35-year-old wife had grade 3, aggressive, breast cancer. Our life was turned upside down.



Hebert family having fun.

I was extremely fortunate that the Air Force was able to find me a position in San Antonio, Texas, so that my wife could be near her family during treatment, but my new assignment further depleted my emotional tank. I'd been reassigned to Disability Counsel where I fought for military healthcare and retirement benefits for discharged service members.

My second week on the job, I was assigned my first client, a 39-year-old diagnosed with Stage IV terminal cancer. I'll

never forget the feeling of loss and hopelessness when I got off the phone with that client. I had tears streaming down my face and I knew that any added benefit I could provide wouldn't solve his actual problem — the cancer. Since then, I have represented numerous cancer clients as they fight for treatment, benefits, and dependent entitlements. As lawyers, we are told to "care" for our clients but don't care "too much" because it could lead to compassion fatigue. No one teaches you how to manage

emotional boundaries when you're dealing with victims of sex crimes and clients with cancer.

None of this is to say that military disability law wasn't extremely rewarding. But I was still reeling from the stress of my prior litigation position where I experienced things that I couldn't unsee or unhear. My nerves were on edge, I wasn't sleeping, and I was becoming further withdrawn socially. I was buckling under the effects of vicarious trauma and burnout, my stress further compounded by having to watch my wife undergo a double mastectomy and chemotherapy.

I had been trained to help people solve their problems - but who was going to help me solve mine?

Before my wife started her first treatment, she told me to focus on the kids and occupy their time with fun activities. She didn't want them to worry about what Mom was going through. This made my priority clear. If the kids were happy, then Mom could focus. But being raised on the back roads of New Hampshire, I didn't really know what to do with my kids in a large, congested city. Then a memory sparked an idea. I remembered how much I had loved it when my dad would take me to ride my



Honda CR80R dirt bike around the Rochester fairgrounds. I thought dirt bikes might be the ideal diversion for my sons. A few weeks later, my oldest son and I were picking up three brand-new dirt bikes.

The first few times we went to the motocross track, my boys were uneasy. They were afraid to fall. They didn't know how to start, stop, or how to handle the bike. To

make things worse, I had difficulty teaching them since I hadn't ridden a dirt bike in 25-years. This forced me to ride and learn with them every chance I got, doing my best to lead by example. We trained, practiced, and measured our progress with every lap. Hours of training turned into blisters that lasted for weeks. We even traveled to train with experts like Kyle Swanson, A.J. Catanzaro, and Austin Forkner.

When we were riding and racing our dirt bikes, we were focused on staying upright, there was no space for anything else in our minds. They didn't lay awake at night with anxiety. Instead sleep came quickly and easily for them - for me, as well. We made new friends and learned new skills, changing tires, oil, and clutches. It was a boyhood dream playing out in a world of worry, fear, anxiety, and pain.

Whether it's an unwanted outcome in litigation, unchecked boundaries, or indirect exposure to a traumatic event through a first-hand account or narrative of that event, legal practitioners are exposed to high amounts of secondary trauma. Riding a dirt bike didn't solve my problems. But it did provide me with an outlet to focus on outside of the daily grind, a concept that can be applied to other legal practitioners:

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1. Find something you enjoy doing and be passionate about it
2. Bring your family and friends into the activity
3. Dedicate time to practicing it every week
4. Fill your empty space with it (Don't allow your mind to concentrate on the trauma)

We all recognize that you can't pour from an empty glass. The same principle applies to us. We can't show our clients empathy when we're emotionally depleted.

As legal practitioners in a demanding and results-driven career field, we need to come to terms with the fact that our due diligence and best efforts are enough. The services we provide to our clients are criti-

cal to their well-being, but we also need to prioritize managing our own well-being.

Motocross with my boys has provided a necessary emotional break over the past three years and has replenished my reserves when times were tough, equipping me to support my family and my clients. Thankfully, things have become more manageable recently. My wife is now in remission, although we still have our occasional scares. I've also found my stride with clients, even though my caseload hasn't decreased. I know things won't always be easy – that's just the nature of life. But I'm now in a better position to emotionally manage the hard parts – the ruts.

While the struggles of our profession may never end, prioritizing and enforcing your commitment to personal health, men-

tal well-being, and relationships should be a necessary part of the process.

If you have concerns about seeking mental health assistance, due to Professional Responsibility or bar licensing, reach out to your state bar and educate yourself on the boundaries of seeking professional help. The Vermont Bar Association, like most state bar associations, has a Lawyer Assistance Program to provide guidance for practitioners struggling with vicarious trauma, compassion fatigue, and burnout. (Vermont LAP: 1-800-355-4352 or www.lapvt.org).

Remember, in life, there will be ruts but keep your head up and look through to the end of the rut. Try not to fall, but if you do, don't allow yourself stay down.

[Disclosure: The views expressed in this article are solely those of the author and do not reflect the official policy or position of the Judge Advocate General's Corps, the Department of the Air Force, the Department of Defense, or the United States Government.]

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Save the date for the VBA Annual Meeting

We will be at the Burlington Hilton Lake Champlain on **Friday, Sept. 29**. We will have a full day, including several CLEs on AI, as well as ethics and many other subjects. Watch your email and the VBA website for details but **mark your calendar today**.

Vermont Lawyers Assistance Program

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

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"Choosing Vermont," Incubator Lawyer Edition

For the past year, we've been featuring Vermont lawyer origin stories in this space. We've asked colleagues to tell us why they came to Vermont to work, or why, if native, they have chosen to stay. In the last issue, we changed things up a little and asked students at Vermont Law and Graduate School (VLGS) to tell us why they decided to come to Vermont for their legal education. For this issue, we're back to the attorneys, but we're focusing on a special group: current participants in Vermont's "New Lawyer Incubator Project."

The New Lawyer Incubator Project is a workforce development partnership between the Vermont Bar Association and Vermont Law and Graduate School aimed at supporting newly admitted and new-to-Vermont solo practitioners. Created in 2014, the project has graduated 16 lawyers and has assisted several others. Nearly all remain in active practice in Vermont and serve clients statewide. Their practice areas include business, family, real estate, public benefits, civil, estate planning, and general practice law.

Lawyers join the Incubator project for 18 months, using the time to set up their solo law practice, build a client base, work on business and marketing plans, try different areas of practice, gain experience, and become integral members of their communities. Benefits of the program include individual and group mentoring and support to meet first-year licensing requirements, a reimbursement stipend of up to \$2,000 to pay for law office start-up costs, weekly "rounds" with peers and VLGS and VBA staff, a free membership in the VBA, with free admission to VBA's CLE programs and Lawyer Referral Service, and a free VLGS course to audit. Incubatees also get guest lectures on law practice management, ethics and trust accounting, tech needs, substantive law topics and, importantly, they get client referrals and experience through and experience building through our low bono programs.

If you're interested in joining the next class of Incubatees (that would be class number 10), see the announcement in this issue for instructions on how to apply, or contact the VBA's Legal Access Coordinator, Mary Ashcroft, Esq: mashcroft@vtbar.org. (You'll meet her below if you haven't already).

If you're interested in sharing your own Vermont origin story for a future issue of the Vermont Bar Journal, send me an email: kvelk@vtbar.org.

Now, please meet some of our current Incubator Project attorneys.



Brian Bailey

Who are you and where do you work?

I am Brian Bailey, a patent attorney with 15 years of experience in "BigLaw," primarily Faegre Drinker Biddle & Reath and its predecessors. I recently launched a solo practice here in Berlin, Vermont focused on patents, intellectual property, and general business and community support. I have been helped in that transition by the solo practice incubator of the Vermont Bar Association and Vermont Law and Graduate School. The incubator has been indispensable in helping with everything from logistics to making connections with clients and other members of the bar.

If you're from away, what brought you to Vermont?

I'm originally from Chicago, born and raised in the city-proper and a couple of its near-north suburbs. I escaped the big city after high school and lived in Northern Arizona, rural Illinois, Western Michigan, and Northeast Indiana for about 25 years prior to moving to Vermont. My Dad grew up in Essex as a 12th-generation New Englander before meeting my Mom in Chicago. He often reminisced about his glorious free-range childhood in 1950s Vermont. In this way, Vermont became a mythical character during my childhood years. In the mid-90s, my Dad, my brother, and I rode our motorcycles from Chicago to a family reunion on Mount Desert Island in Maine. Passing

through Vermont on our way, we stopped to climb Mt. Mansfield. I remember the awesome strenuousness of that climb, and my Dad rhapsodizing about the purity of the water flowing trailside. My brother moved to Vermont not long afterward, and after a couple of decades thinking about it, I finally made my way here in 2021, now with a partner and two young boys in tow.

Why have you remained in Vermont?

It's only been two years so far, but I've never looked back. A short list of Vermont's qualities that will keep me here includes: cultural and practical support for ethical, sustainable producers of food for humans; a well-functioning political system at the state, and especially local, levels; and an abundance of nature coupled with an apparent willingness on the part of Vermonters to protect it for future generations.

Vermont is also a manifestly wonderful place to raise my children. My Dad, ever the Vermonter away from home, said of the move: "What a great gift you're giving to your boys." And so it has been.

How, in your opinion or experience, is law practice in Vermont different from other places?

The bar in Vermont seems even more tight-knit and collegial than other states I've practiced, even though those other states were not lacking in collegiality!

What are your three favorite places (mountains, lakes, restaurants, whatever) in Vermont and why are they your favorites?

1. Irish Hill, my neighborhood hiking & biking spot. I'm so grateful to be able to explore such a large, beautiful, and rugged area even when I have just an hour or two to spare. 2. Bolton Valley, where gravity works better than a brand-new engine but still costs less. 3. My brother's house in Plainfield, the magnet that finally attracted us to Vermont and continues to be a stable source of joy.

When you travel in the Rest of America ("ROA") what makes you wish you were back here?

Roadside billboards! I never appreciated how distracting billboards are until I started living without them.

What's the number one bit of advice you would give to an attorney thinking of coming to work in Vermont?

Accept that these days, you don't get to choose your house; your house chooses you. Get as close to your goals as you can and call it good.

Other comments?

I knew I loved Vermont years before I arrived. It wasn't until we got here that I realized how welcoming Vermonters could be. A big thank you to all the friends, neighbors and total strangers that have made my family and me feel like we've found home.



Mary Ashcroft

Who are you and where do you work?

I'm Mary Ashcroft and I work for the Vermont Bar Association where, among other things, I coordinate the New Lawyer Incubator Project. I've also been a solo practitioner in the Rutland area since 1987. And a select board member, a legislator, a zoning administrator, a health officer, a JP, a school and scout volunteer and a church moderator and choir member. I'm supposed to be retired...

For natives, why did you decide to stay in Vermont or to return?

I was born and raised in Bellows Falls, a paper mill and railroad town during my youth. My family was blue collar—Dad was a truck driver, a railroad worker and general handyman, and Mom a homemaker raising us five kids. Both Mom and Dad read—a lot—and were very involved in our community. My grandparents on both sides came as immigrants from England, Ireland, and Quebec, so while I can claim to be a "native," I'm not Abenaki and I'm only a third generation Vermonter. I knew I wanted to return to Vermont to practice law, but I had to attend law school elsewhere as the nascent Vermont Law School was not yet accredited. It also didn't have a night division. To be able to afford tuition, I worked as a secretary during the day and attended evening classes at Catholic University Law School in DC for 4 years.

I knew I was coming back to Vermont to practice law. I wanted to serve Vermonters

like my family—decent, hard-working and making do without much money. And I was bitten by the bug of politics and wanted to run for office back home.

I've stayed in Vermont now for close to 70 years because it's home. I've been able to make a living, raise a family and contribute to my community as my parents and grandparents had done.

How, in your opinion or experience, is law practice in Vermont different from other places?

I have not practiced law in other states, although I enjoy talking with lawyers and judges who have. I like to think that the Vermont bar is friendlier and more collegial than elsewhere. But because we are small, we also know each other too well with all of our bumbles and imperfections. Sometimes that gets in the way of objectively serving our clients.

What are your three favorite places (mountains, lakes, restaurants, whatever) in Vermont and why are they your favorites?

My three favorite places are my late husband's family farm on Creek Road in Rutland Town which provides me with daily challenges; an old grist mill museum in Bellows Falls which my family helped preserve; and Mt. Independence in Orwell. The last site is where I go to recharge and reflect after setbacks in my life—my troubles are dwarfed by the incredible hardships faced by those stoic early Vermonters. I'll add a fourth: the State House in Montpelier where I served my town as lawmaker, met my husband, served my state as legislative liaison for Governor Kunin, and where the VBA brings lawyers together for a Pro Bono Conference every other year.

When you travel in the Rest of America ("ROA") what makes you wish you were back here?

When I travel in the rest of America, I remind myself that every place I visit is special and beautiful to the people who live there. While I love coming back to Vermont—I remember lowering the window in a homebound bus to savor clean mountain air after a stint in the city—I treasure memories of other places—my first glimpse of the Mississippi River, walking the ruins at Chaco Canyon in New Mexico, eating at Mi Tierras restaurant in Old Town San Antonio.

What's the number one bit of advice you would give to an attorney thinking of coming to work in Vermont?

My advice to a lawyer considering a move to Vermont: Come! Your legal skills are needed and will be valued, you can make a decent living, and you will find a sense of community. But you must work at

it. Be prepared to put in long hours, put up with quirky and stubborn clients, and endure (without rolling your eyes) friendly advice from everyone who has lived here longer than you. Avoid taking boundary line dispute cases. And volunteer—at your kids' schools, in your faith community, in local government, in the courts. You will be asked constantly, and you should say yes often. That's how you become a Vermonter.



Kelly Flynn

Who are you and where do you work?

My name is Kelly Flynn, I live in Addison County and have a solo firm practicing a variety of areas including social security disability benefits, family, employment, and small business law.

If you're from away, what brought you to Vermont?

In 2009, I moved to Vermont from New York City, to join my (now) husband already residing up here. I was motivated by the idea of living in a small rural state and am not surprised that I continue to love living here.

Why have you remained in Vermont?

I remain in Vermont because my family has established roots in our professional, school, civic and social lives. I see the impact of our day-to-day actions in our community, which hold us accountable to be good citizens and neighbors. I have found an always present spirit of collaboration, sense of belonging and welcoming in Vermont; which continues if we all actively perpetuate it.

How, in your opinion or experience, is law practice in Vermont different from other places?

Prior to living in Vermont and for my first ten years in Vermont I worked in corporate

law. While I am unable to provide a comparison of law practice in and out of Vermont, my experience of practicing law within Vermont has been in a very supportive and collegial bar. My encounters with the court, attorneys, and other legally related organizations have been courteous and professional.

What are your three favorite places (mountains, lakes, restaurants, whatever) in Vermont and why are they your favorites?

While it is hard to choose only three favorite places, on reflection I would include the 'Trail Around Middlebury' (TAM) hiking trail which is an approximate 17-mile loop trail around Middlebury and the surrounding area, Haymaker Bun Company bakery and the Addison County Field Days each year.

When you travel in the Rest of America ("ROA") what makes you wish you were back here?

When I travel to the ROA, I always miss the space Vermont offers. Space in open land, little traffic, and beautiful views.

What's the number one bit of advice you would give to an attorney thinking of coming to work in Vermont?

Vermont is a place where an individual attorney can make a visible impact on the community through solo practice or within a firm. There is a lot of opportunity to create your own path and other attorneys are a call away to provide advice or direct you to appropriate resources. Don't be afraid to dive in, ask questions and be respectful as you will be regarded with equal respect.

Kristin Saroyan

Who are you and where do you work?

Kristin Saroyan. I recently started a solo practice, Marigold Law PLLC, to provide legal services to artists and people in creative fields. I help clients with intellectual property issues, business formation and estate planning. The Incubator group run by the Vermont Bar Association and Vermont Law School has been an enormous help and resource as I have built my solo practice. Everyone in the group is kind, knowledgeable, and patient with even the most basic questions.

If you're from away, what brought you to Vermont?

I moved with my family from Morningside Heights in Manhattan to Vermont in 2013. My husband and I were seeking greener pastures and relief from New York's oppressive kindergarten application process. When we visited Norwich for the first time, kids were ice skating outdoors on the town



green and the elementary school guidance counselor warmly invited us for an impromptu school tour. There was an extraordinary student art installation in the school entryway. We were hooked.

For non-natives – why have you remained in Vermont?

My family and I fell in love with the seasons. Fall colors, maple sugaring, ski season, the short but gorgeous summers, and even mud season, because that's when baseball starts. We enjoy the local arts scene in White River Junction and beyond, and the beautiful scenery wherever we go. Even after ten years in Vermont, we still appreciate the near complete lack of traffic.

What are your three favorite places (mountains, lakes, restaurants, whatever) in Vermont and why are they your favorites?

The baseball field at Huntley Meadow in Norwich because it is a beautiful place to meet friends and watch hours and hours of Cal Ripken baseball. Centennial Field in Burlington because that is where the Lake Monsters play ball. Maxfield Sports Complex in Hartland because it hosts the annual Cal Ripken tournaments and the Upper Valley Nighthawks. Forgive me, it's baseball season.

When you travel in the Rest of America ("ROA") what makes you wish you were back here?

I always miss the friendly people. Vermont is one big small town. I can go anywhere in Vermont and count on seeing someone I know, even if I am hours from home. My family and I recently visited Philadelphia and attended a Phillies game. When it became clear the Phillies were likely going to lose, fans started hurling leftover

food and beer cans around the stadium and yelling rude comments at the players. My sons were impressed by the giant food fight and the colorful language. I was relieved we made it safely back home to Vermont without getting beamed by a hot dog.

What's the number one bit of advice you would give to an attorney thinking of coming to work in Vermont?

Always treat people you meet as if you already know each other. Because even if you don't yet, you will soon.



Erik Ramakrishnan

Who are you and where do you work?

I work for myself in Alburgh. I've lived here since August 2022, and operate out of my home under the name the Law Office of Erik Ramakrishnan. Most of my work is California-based freelance work. Prior to moving here, I practiced in California for over a decade, mostly in the areas of municipal law and land use. In recent years, my practice has focused on new laws that limit local control over housing development to address the housing affordability crisis.

I have taken on some Vermont-based work since arriving and would like to take on more, including freelance work. Ultimately it would be great to be the town attorney of a couple small towns.

If you're from away, what brought you to Vermont?

I was born and raised near Detroit and moved out to California when I was 23, where I lived for the next couple decades. In 2013, my brother moved from Michigan to Vermont for work, and five years later my parents followed. My husband Sreejith is a permanent-remote employee, and during the pandemic I realized that I can live and work anywhere I want in the world, too. So, we decided to follow the rest of my family out here, and we landed in Alburgh to be as close as possible to Montreal.

For non-natives – why have you remained in Vermont?

I only just got here, so ask me again in a few years.

How, in your opinion or experience, is law practice in Vermont different from other places?

I moved here from Silicon Valley where things change for the sake of change, and here things often stay the same for the sake of tradition. So that's different. Generally, my impression is also that the legal system is less complex and formal here. I also have the impression that doctrines of judicial deference to agency decisions are not as developed here as in California, and frankly my mind was blown the first time I heard that review of local agency administrative actions is typically in the form of a trial de novo here rather than "on the record" (as Vermonters call it) by writ of mandate.

What are your three favorite places (mountains, lakes, restaurants, whatever) in Vermont and why are they your favorites?

A couple times before winter set in at the end of last year, I biked down from Alburgh to Burlington to visit my parents, and I absolutely loved being on the Colchester Causeway, so that's one. Vermont also has one of the prettiest state capitals (and capitols) in the country, so that's two. And for three, I'll add that anyone visiting or passing through Alburgh should check out the Vermont Bakehouse.

When you travel in the Rest of America ("ROA") what makes you wish you were back here?

Unless New York counts, I haven't really been back to the ROA since moving here late last year.

What's the number one bit of advice you would give to an attorney thinking of coming to work in Vermont?

I'm glad that I can work remotely for attorneys and clients back in California because I have found breaking into the legal market here a little challenging in my area of law.



STARTING YOUR OWN LAW PRACTICE?

APPLY TO JOIN THE VBA/VLS SOLO LAWYER INCUBATOR PROJECT

The Vermont Bar Association and Vermont Law School are accepting applications from new and new-to-Vermont lawyers who want to start their own solo law practices. We will select 2-4 candidates to work with for 18 months as they hone their legal and business skills. The incoming group will overlap for 6 months with our present class of incubator attorneys.

Incubator Attorney Benefits:

- Individual and group mentoring and support to meet first year requirements.
- Reimbursement stipend of \$2,000 to pay for law office start-up costs.
- Weekly "rounds" with your peers and VLS and VBA staff.
- Free membership in the VBA, free admission to VBA's CLE programs and Lawyer Referral Service, free VLS course to audit.
- Guest lectures on law practice management, ethics and trust accounting, tech needs, substantive law topics and much more.
- Client referrals and experience building through our low bono programs.
- Links to attorneys and mentors for advice and future practice opportunities.

Incubator Lawyer Commitments:

- Establish a solo Vermont law practice and become active in your community.
- Set business goals and self-monitor progress toward a self-sustaining law practice.
- Get professional liability insurance, office hardware/software, become licensed in Vermont.
- Take pro bono and low bono cases to comply with VRPC 6.1.
- Not actively seek other legal employment while in the Project.

To Apply:

- Send a letter of interest and resume to:
Mary Ashcroft, Esq.: mashcroft@vtbar.org
Professor Nicole Killoran: NAKilloran@vermontlaw.edu

The application period is now open and will close applications when we have chosen 2-4 Incubator Lawyers to begin in late spring of 2023.

Mediating Disputes - the Understanding Model: A Takeaway from a Week at the Harvard Program on Negotiation

One significant shortcoming of litigation is that the people with most at stake, the parties, often play the most limited roles. They are often left uninformed of the nature of and rationale for the process. The truth can be subverted as a strategy to persuade and coerce a result. Parties may feel alienated by, and disempowered in, the process. While a decision may be final, the underlying conflict can get worse with both financial and emotional costs to the parties.

Over the past several decades, litigants have increasingly turned to mediation to resolve disputes. Mediation holds out hope of keeping costs from spiraling out of control. However, the most common form of mediation, where parties caucus with the mediator separately and the mediator engages in a form of shuttle diplomacy, can leave understanding of the dispute and control over its solution in the hands of the mediator, instead of the parties. Although usually cheaper and faster than litigation, there remains an element of persuasion, and even the potential for coercion. The mediator is the only person who holds all the information, including the parties' secrets. In our urgency to limit our discomfort with tension and emotions that accompany conflict, we lose the benefits of digging deeper into the conflict.

There is another option. In November 2022, we attended a five-day mediation training at the Harvard Law School Program on Negotiation. The instructors, Dana Curtis, Robert Mnookin, and Gary Friedman, teach a model of mediation they refer to as the "Understanding Model." We

became convinced over the course of this training, with some limited but significant exceptions, that the Understanding Model of mediation is a more effective means of resolving conflict than the standard caucus model. Even more, the deeper understanding of the parties' own, and each other's perspectives, priorities, and concerns enables them to harness the creative power of conflict to shape mutually rewarding solutions that leave all parties better able to preserve their personal, business, and economic interests.

How It Works

Staying in the same room

Unlike the caucus model, the parties and mediator stay together for the duration of the mediation and work through the conflict together. Although a party and her lawyer may meet separately to discuss their own strategy and evaluate their options, the mediator does not participate in this meeting. This idea can be anathema to some lawyers. It is scary and uncomfortable to face tension in the room directly. After hearing an overview of the model, many of our classmates, mostly lawyers, early in the training thought, "it seems like a great idea, but it would never work for MY clients because..." By the end of the training, however, most were able to see its potential for everything from primarily distributive insurance claims to highly emotional and even generational conflict in family and estates litigation.

It does require, however, that lawyers and their clients be willing to commit to being open and vulnerable even when there is tension in the room.

The Parties (not the Mediator) are Responsible for the Information and the Solution

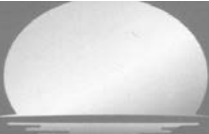
Caucusing empowers the mediators (and maybe the lawyers) over the parties. Without caucusing, the mediator must facilitate discussion and the flow of information rather than being the conduit for it.

When the parties themselves hold the information and are responsible for how it is transmitted, there is more possibility for creativity. The parties' work together moves the conflict away from a zero-sum outcome toward novel win-win solutions generated by the parties that might never arise in caucus.

With caucus the mediator controls the flow of information. Each party meets with the mediator and reveals what information they decide can be shared, while still preserving their bargaining position or their future litigation strategy should mediation fail. As the mediator is the only one with all the information, the mediator is often in the best position to craft the solution.

Nearly every lawyer has likely experienced the mediator who tries to convince each party that the party should settle on a compromise. Some lawyers even rely on a mediator to "talk sense" into their client to encourage settlement. The parties must trust that the mediator knows best because the mediator is the only one who knows the whole truth. The result is, in essence, a non-binding arbitration. Similarly, many of us have heard, and espoused, the belief that a good mediation result is one in which both parties are equally unhappy.

This mediator/advisor role is comfortable for many lawyer-mediators, and clients. We may not trust our clients to be able to solve their own problems. Or we may believe that their conflicts need to be filtered through the professionals. We believe lawyers and mediators are better at seeing the "right" answer than the participants to the conflict. Also, clients, unfamiliar with the process may want to place this trust in the attorney and the mediator.



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VBA Directory

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

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



inPERSON

VBA Conferences

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



onLINE

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In the Understanding Model, the parties may have secrets and bargaining positions, but the mediator will not. The parties control the flow of information — when, what, and how they wish to disclose, if they do, or how, to the other party. As trust builds in the process and in the other parties, information can flow more freely. The mediator works to make sure this flow can happen by actively listening, asking questions to draw out essential information and feelings, helping parties reframe their positions in terms of underlying interests and values, and encouraging safe and expansive discussion of options.

The Process in the Understanding Model

Contracting

In the first part of the Understanding Model, known as “contracting,” the mediator explains, and the parties negotiate, the process; ensuring there is agreement to meet, to follow the ground rules, and to go through the entire process together. The parties are invited to briefly explain what has brought them to the table. They are introduced to the style of active listening employed by the mediator. Then they must commit to the respective roles and responsibilities of the parties and the media-

tor and decide whether this model of mediation and this mediator is right for them.

Defining the Problem

Once the parties understand and agree to the process, each party tells their story of the conflict. The mediator works to ensure they can tell as much of their story as the party wants and to ensure each person feels heard and fully understood. The mediator summarizes or paraphrases what has been said and tries to identify salient feelings. The mediator asks the party to confirm that the mediator’s understanding is accurate and complete. If something was missed, the mediator encourages the party to explain further until satisfied that the mediator, at least, fully understands their perspective. This reflection is a process referred to as “looping.” If there is tension that arises during this process, the group stays together through it, rather than breaking up and going into separate rooms. The mediator’s presence and demeanor provide a safe context for the parties to blow off steam without intervening to stop the discussion.

Identifying the Legal Context

Once each person and lawyer has finished explaining what happened, from their own perspective, the mediator turns to analyzing the legal risks and opportunities. As Bob Mnookin put it, “we mediate in the shadow of the law.” If there are lawyers involved, they may have a good grasp of the legal landscape. But lawyers, in their roles as advocates, also have biases in favor of their own client. In the presence of the parties, the mediator will engage the lawyers in identifying the potential strengths and weaknesses of their case. The mediator highlights overlapping and divergent views of the law. If the parties are unrepresented, the mediator can research the issues and provide the legal framework without giving advice. Alternatively, the parties may engage a third-party legal expert to provide a summary of the relevant law.

The reality testing in this stage can be particularly difficult for lawyers. Each party becomes aware that the bargaining power may not be equal under the law or in their bargaining position. This can be difficult for advocates to admit while still in the “shadow of litigation.” However, each party benefits from realistically addressing the challenges to their case. This can help them assess the alternatives to negotiating a settlement and allows them to realistically weigh all options. The cognitive biases held by each party and attorney are challenged, but not by somebody convincing them of their weaknesses in a separate room. Rather they consider these relative weaknesses and strengths together through open discussion of the relevant law and facts.

Identifying Underlying Interests

Next, the mediator turns to exploring the interests underlying the stated positions, to understand what really matters to the parties. Often this may be the first time that the parties have really heard what the other side wants.

Interests are different from positions. Positions are what the parties say they want. In a divorce, a spouse may ask \$5,000 a month in spousal support. That is a position. Interests are the “why” behind the position. The spouse may be concerned about being able to afford an apartment, or he may want acknowledgement of his role in the marriage, or respect, or even revenge for treatment by the other spouse. There may be many interests behind each position. Through open-ended questioning, the mediator can bring out these interests and put them up on a whiteboard or chart where the parties can see and refer to them during the next phase.

The parties now start looking at their dispute through a wider lens. They can turn from binary — you’re wrong and I am right — thinking to, “so that’s what you care about.” The hard and fast positions — yes or no, can give way to what is truly important. The parties may begin to see all that they can potentially gain or lose from their relationship with one another.

Generating and Exploring Options

Once the participants and mediator have identified all the relevant interests, they turn to brainstorming options. Each uses the lists of interests to suggest possible options on the board. The mediator may also suggest options to encourage courage and creativity among the parties.

There is no evaluation and no attribution at this point. Options are not analyzed, assessed, or judged as they are proposed. No note is made of who presented the option. The mediator may encourage parties to suggest outlandish and seemingly unrealistic options, even options that may not be in the parties’ perceived best interests. These are not considered “offers” and there is no commitment made in this phase. The more options, the better. The more creative, the better. Once the brainstorming is complete, many new paths for negotiation may have been revealed. The effort is aimed at opening possibilities that had never occurred to the parties or the mediator prior to going into the exercise.

Only after possible options are exhausted do the parties start evaluating them. Parties can rank the different options based on their interests, the law, and their alternatives to a negotiated resolution. One method is for each party to rate each option as, (a) worth discussing, (b) not sure or, (c) not interested in any further discussion. Once each list is done, the mediator can see if

there is agreement on options worth considering, rejecting, and those requiring further discussion.

Using the options list each party can put together potential settlement packages. If the parties are already talking, they can keep discussing possible outcomes, or it can be more formal in which each party presents packages of one or more possible resolutions to the mediator. The mediator can determine where there is common ground and which issues require further exploration.

Challenges

The mediator guides the process and elicits information from the parties at each stage without imposing her own views. The mediator is required to be fully mentally present throughout, using active listening, demonstrating understanding, and showing empathy. Reframing statements in a way that identifies feelings and summarizes the salient points requires focus. Similarly, deciphering interests from stated positions takes skill and practice. This model shifts the responsibility of the mediator to the front end of the process and away from the decision-making and solution creation. The parties remain entirely responsible for crafting and deciding on the final resolution.

The mediator's responsibility is to first help them reach the point of understanding where they are capable of such a feat.

The challenge of the Understanding Model is also its strength. The model is unique in providing a forum for parties to lean into the conflict and work through it. In this way, unlike litigation, arbitration, or even caucus-style mediation, it provides a forum for parties to understand their own conflict, understand the other party's perspective, and have the experience of being heard and understood (often for the first time in the dispute). It provides the tools and a process for parties to restore their relationships. Most importantly, the parties truly own the solution and gain a framework for resolving future conflict.

To reap these benefits, as lawyers, as parties, and as mediators, we must open ourselves up to being vulnerable and uncomfortable. We must engage with intense emotions that we are accustomed to suppressing and ignoring by keeping parties separate or silent as their lawyers translate their feelings into law and legal jargon.

Conclusion

A diverse group of men and women, strangers to one another at the outset, participated in our training. This included

lawyers in various stages of their careers, union leaders, judges, business leaders, mediators, a real estate broker, a school principal, a therapist, and an international negotiator. We came from all over the U.S. and Canada, from Brazil, the Netherlands, Belgium, Germany, Ireland, Hungary, and Sweden. It was lovely and inspiring to experience how quickly this group of strangers felt connected and willing to be vulnerable. Everyone was engaged, interested and interesting. Perhaps it's because the folks who attended were all committed to trying to transform conflict through understanding. But we believe the course and the model of mediation had a lot to do with it. Even if only in role play, the Understanding Model promotes empathy and building relationships. We feel it brings out the best in us and in our clients.

The Understanding Model has the potential to lead to better outcomes, more creative resolutions, and settlements that can restore or strengthen personal and business relationships. It offers greater potential for more equitable, more mutually beneficial, and longer-lasting resolutions than would arise from traditional models of mediation.

Fritz Langrock is an experienced trial lawyer and less experienced mediator at Langrock Sperry & Wool in their Middlebury office. He is an active member in the American Bar Association where he is Treasurer-Elect and will serve a three-year term as Treasurer beginning in August of 2023. Fritz lives in North Ferrisburgh with his wife Adela. Fritz still plays hockey.

Caroline Price is a staff lawyer with Legal Aid Ontario (Canada), practicing criminal and family law. Caroline previously worked in private criminal defense firms in Toronto and Vancouver, and spent a year developing a youth civil rights program at a public defender office in New York City. She received her J.D. from the University of Victoria, British Columbia and a B.A. (Hons.) from the University of Toronto, with a specialist degree in Peace and Conflict Studies and a minor in psychology. Ms Price is the mother of two young boys and currently resides in the District of Muskoka in Ontario, Canada.



The VBA flourishes with member participation!



Do you have a question about your practice area, or advice to share? Get involved in a VBA section and join in the relevant VBA Connect forum. See the VBA website for more information. <https://www.vtbar.org/>

There are lots of other ways to get involved. Have a look at the website for information about serving on the Board of Managers, with the Bar Foundation, or in a section. <https://www.vtbar.org/opportunities-to-service/>

Do you have an idea for a CLE that you would like to see or to present? Reach out to Director of Education and Communication Kim Velk at kvelk@vtbar.org. Kim also wants to hear your ideas for *Bar Journal* stories, book reviews, "Pursuits of Happiness" nominees.

Pro Bono Award Winner Sarah Star — Defending Children and Families and the Constitution

Attorney Sarah Star is a solo practitioner in Middlebury, a graduate of the University of Chicago and of Northeastern School of Law. She was admitted to practice before the Vermont Bar in 2006. She is this year's winner of the VBA's Pro Bono Service Award.

When Sarah Star graduated from the University of Chicago in 2002, she earned an unusual degree for a future lawyer—a BA, with honors, in comparative literature—Latin, Greek, and Russian.

How did she get from comparative literature to the law? “I’m married to a classicist, and we had a desire not to become a two-academic household, so one of us had to find something else to do,” she said with a chuckle. In 2005, Sarah’s spouse was hired at Middlebury College, so the couple relocated to Vermont and Sarah started thinking about a career outside the ivied walls.

She enrolled in Northeastern Law School in Boston. It was not an easy first year. “I really felt lost,” she remembers. Then she signed up to intern with the federal public defenders’ office in Philadelphia, working on habeas corpus petitions and appeals. Something clicked for her. “I felt like I was using the close reading skills from my undergraduate work and my new law school skills to help people.” She liked the work: visiting inmates, framing arguments for the appellate cases, diving deep into case histories. She also interned for William Sessions in the Federal District Court in Vermont, and with Judge Richard Klein in the Superior Court of Pennsylvania before graduating from Northeastern in 2006. She was admitted to the Vermont Bar that same year.

After a single year with a Middlebury attorney, she opened her own law office. Her practice has evolved as criminal, family, and juvenile law, with a strong civil rights advocacy that underpins her work.

“I believe practitioners should think about family law in terms of constitutional law and individual rights and liberties. That drives a lot of what I do. I raise constitutional issues in CHINS cases, in family court cases. We’re not there to be therapists—our clients have social workers for that—we are there for due process.”

It was her work in Addison Family Division from 2020 through 2022 which



prompted Judge Thomas Carlson to nominate Sarah for the VBA’s Pro Bono Service Award. The judge wrote “she accepted at least three major and extended pro bono appointments on behalf of children in very difficult family cases.”

The judge noted that in each case Attorney Star:

[C]onnected with the youth, investigated the situation together with a GAL, and then advocated helpfully in multiple hearings. The court and the families involved were very, very fortunate to have someone so dedicated to child welfare, knowledgeable of the systems and resources involved, and a strong advocate while sensitive to the winds and emotions of family disputes.

The judge concluded: “The court staff knew they could call her and that she would likely be able and willing to help. She made a huge difference.”

Star was surprised and pleased to win the Pro Bono Award. “I’m very grateful to Judge Carlson for the nomination,” she



said. "Sometimes when you are there for due process and raising issues, that can be seen as slowing things down. It's good to be recognized as not being a nuisance."

Attorney Star serves as case load relief counsel for the appellate division of the Vermont Defender General and in that role handles a few dozen Vermont Supreme Court appeals each year. She takes on most of the termination of parental rights cases, reading all the transcripts from CHINS proceedings from start to finish, then she reviews the case file, court and attorney files, using her close reading skills to identify issues and raise them on behalf of the appellant. In these cases, Star sees the end of the road in family relationships. "So much has happened and gone wrong for these families."

Star is the chair of the Juvenile Law Section for the VBA, using this opportunity to present CLE programs to fellow practitioners. She is a frequently-tapped resource for the juvenile bar. "I love fielding questions from juvenile practitioners, talking things through, especially for newer attorneys." With her bird's eye knowledge of juvenile proceedings gleaned from her appellate work, she helps practitioners in trial court avoid bad things from happening to families.

In her family court work, Star prefers to represent children in contested matters

between their parents. "It's hard to have a skill set and the ability to help and not use it in some way." She added, "a practitioner might be sick of divorces but can do pro bono work and really make a difference."

Star credits the Vermont Supreme Court in its recent ruling in *Vance v. Locke*, 2022 VT 23, 279 A.3d 689 (2022) for outlining the role of the attorney for children. It's a template she follows. At the beginning of a case, to avoid more conflict, she contacts the attorneys for the parents to discuss the scope of her representation. Attorney Star acknowledges her compelling interest in children's rights. "I am always thinking about what my clients' rights are, what interests of theirs are at stake, and

what competing interests there may be." Star affirms that the parents, until they are proven unfit, are presumed to be making decisions in their children's best interest. She often hears disturbing allegations, but tries to understand the family and respect the bonds within it. Hers is a carefully crafted role: "You don't want to act like you are saving the child from the parents—that's never going to be productive."

Understanding the juvenile system, how DCF works, and what services are available to families, Star draws the line between counselor and advocate. "I feel strongly that while lawyers can slip into in the role of social worker, the best service they can provide their clients is to protect constitu-

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The Vermont Bar Association is looking for additional panel members to serve on our Lawyer Referral Service. We field over 40 calls a day and the service has generated more than 3 million dollars in revenue the past three years to our panel members. There is significant need for more panel members in rural areas.

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tional rights." Star asserts: "clients are better able to access services when they feel that their rights are being protected by their attorney."

The protection of constitutional rights is an overarching theme of her legal practice. "Family practitioners need to keep constitutional issues in mind, those basic human rights which are important and fundamental, especially the rights of children."

In 2010, Star won the Vermont ACLU's David Curtis Civil Liberties Award for her work in a civil union dissolution case which challenged the validity of Vermont's civil union statute. In other significant cases, Star successfully challenged a DCF determination to prematurely withdraw services from a family, overturned a CHINS finding based on juvenile mental health challenges, and reversed a termination of parental rights decision when there was no finding at trial of parental unfitness. Her earlier work with death row inmates taught her

not to shy away from tough cases. "If you have an ability to help someone in a very difficult situation, it's hard to walk away from that responsibility."

Attorney Star's pro bono work extends to other organizations, too. As an advocate with the Gay and Lesbian Advocates and Defenders (GLAD), she was trial and appellate counsel in the de facto parentage case *Sinnott v. Peck*, 2017 VT 115, 180 A.3d 560 (2017) which was decided during the time the Legislature was pondering changes to Vermont's parentage laws.

Pregnancy Justice, a national advocacy project representing pregnant women, including those at risk of having their newborn children taken from them, has also benefitted from Star's legal expertise. She started her work when the opioid epidemic was coming to Vermont, representing mothers to challenge DCF's assertion that those using drugs were unfit parents. She also co-counsels with the Southern Poverty

Law Center in federal civil litigation.

Locally, Star served as president of the Addison County Bar Association for seven years, during which time she undertook a task nearly as challenging as some of her cases—she organized a photo shoot for the Addison County Bar composite group photo. "After that, I knew it was time to turn the job over to someone else," she laughed.

Attorney Sarah Star encourages Vermont lawyers to do pro bono work—and she stands ready to advise and guide. "I'd take on challenging cases and then reach out for help," she said, naming attorney Anna Saxman and the GLAD and Pregnancy Justice organizations as particularly supportive.

"If it is important to you, you should do it," Star concludes.

Mary Ashcroft, Esq., is the Legal Access Coordinator at the VBA.



CROSSWORD PUZZLE

by Kevin Lumpkin, Esq.

Kevin is a litigation partner at Sheehy Furlong & Behm in Burlington, and in his spare time he enjoys puzzles and trivia of all kinds, especially crossword puzzles.

Note: For those readers who regularly solve the New York Times crossword, this puzzle is about a Wednesday-level difficulty. Many thanks to Matt Greer, Esq. for test-solving this puzzle.

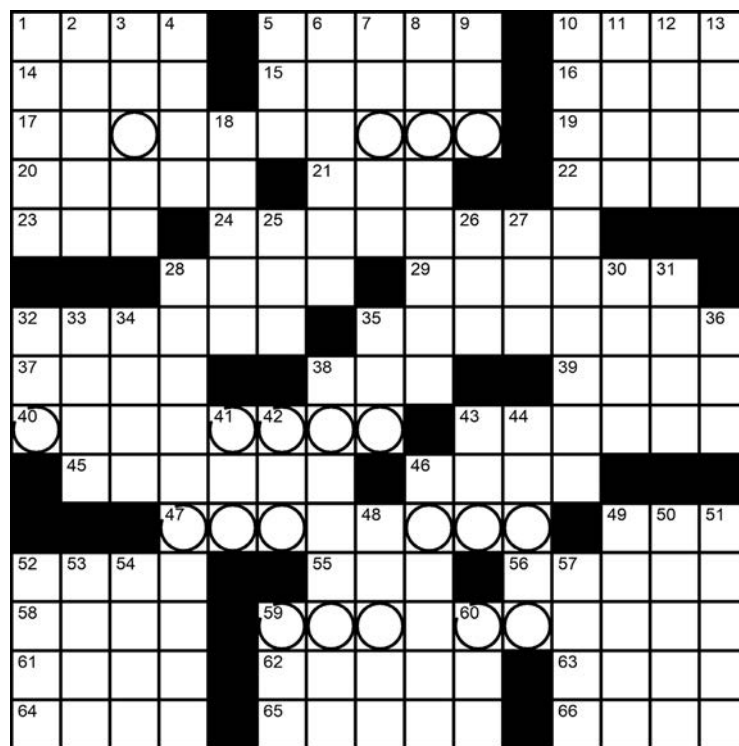
See page 45 for the Winter Journal's Crossword Solution.

Across

1. Auctioneer's shout
5. Rx order
10. Scrabble piece
14. Zone
15. Joel and Ethan, for two
16. It can be bright or bad
17. Wide acceptance*
19. Not Chandler, Joey, Monica, Rachel, or Phoebe
20. March composer
21. Bygone space station
22. Otherwise
23. Nile snake
24. With 35-A, component of Vermont's unified judiciary or this puzzle's theme
28. Toy on a string
29. Penny pinchers, maybe
32. Fairy lookalike
35. See 24-A
37. ___ Bator
38. Power couple?
39. Eye affliction
40. Fictional anchor Ron*
43. Except if
45. Israeli intelligence group
46. Something hit a lot by Caitlin Clark and Steph Curry
47. Crowning achievement*
49. Anatomical pouch
52. Launcher of 21-A

Down

55. Carrier to Oslo
56. Disney title character or NYC neighborhood
58. NYC neighborhood or London neighborhood
59. Informal gathering of musicians*
61. Taylor Swift's ___ tour
62. Suisse peaks
63. Sad
64. Balint and others, for short
65. Up Up Down Down Left Right Left Right B A ___
66. Theater backdrops
1. Chips go-with
2. Favorite cookies of cruciverbalists
3. Advantage
4. Oral argument spot, maybe
5. Poli ___
6. Red, for short
7. Target again
8. Facing ruin, say
9. "Gangnam Style" musician
10. How an obsessive might pursue a goal
11. Word with American and Pop
12. Minus
13. Facility
18. Unspoken, like a conspiratorial agreement
25. GPS suggestion



26. ___ system (device that gives 25-As.)
27. Popular video container extension
28. Popular London travel hub and tourist destination
30. Confirmation, e.g.
31. Some beans
32. Hero
33. Choice
34. Uncommon: Sp.
35. 24-hour cycle
36. Duck Hunt console (abbr.)
38. Flavors, say
41. Team for Carly Lloyd and Megan Rapinoe
42. Go out for a bit?

43. Coffee container
44. More than wants
46. Salad preparer, in a way
48. Home to the only N.F.L. team to win a Super Bowl in its own stadium
49. "Say cheese!"
50. Concerning
51. Ben and Jerry's freebies on April 3rd
52. Operator
53. Achy
54. Former House Speaker Smith
57. PC storage devices
59. Austrian affirmatives
60. Winter hrs. in Montpelier

Vermont Bar Association

PROCRASTINATORS' MONTH BINGO

JUNE

1st Prep for the Month YOU GOT THIS!	20th Brown Bag Law Study: Family Law	7th Impact of Generative AI on the Legal Industry	8th 6 Easements & a License*	2nd TGIF!
9th LGBTQ+ Parentage Issues & Rights*	29th Count Your CLE Blessings People!	14th Advanced Issues in Private Sale Transactions	19th Juneteenth Federal Holiday	21st RELD episode #6 Digital Closings & Recording*
16th Property Tax for the Non-specialist*	15th Environmental Law Update*	6th FREE Mindful Moments for Wellness	14th Private Co. Investment Transactions	22nd The Bad Lawyers of Hollywood (ethics)
9th Family Law Year in Review*	23rd TGIF!	14th RELD episode#5 Powers of Attorney*	28th RELAX!	27th Mindful Moments for Wellness
5th Monday Funday!	26th Deep Dive into New VT Trial Court Decisions Database on Fastcase*	13th UPOAA* TBD	14th Issuance of Equity as Employment Compensation	30th Your Done! You Made It! Congratulations!

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and we have got them!**

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VBA website and register today.**

Thank You for Your Support with the Vermont Bar Foundation's First Annual Online Auction

The Vermont Bar Foundation and Revenue Enhancement & Promotions Committee would like to thank all our generous donors and especially the members of the Vermont Bar who donated and participated in the First Annual Online Auction which occurred on April 8th-April 21st.

At the time I am writing this article, we are hoping to have raised \$30,000.00 to assist in bringing legal services to Vermonters without access to justice. Members of the VBF have been campaigning diligently throughout Vermont. Perhaps you have seen an email or two from us lately? A big thank you to the County Bar Presidents for sharing our links to this exciting event! We would also like to recognize VBA President Andrew Manitsky for sharing the stage at the VBA Mid-Year Meeting in Manchester, Vermont to promote the Auction. It was certainly a lively crowd at lunch!

As you know, our many grant recipients rely in part on funding from the VBF to keep their programs viable. In the past, much of the VBF source funding has come from the interest on members IOLTA accounts, but in recognition of the need for greater resources for legal support in the Vermont Community, the VBF is reaching out with innovative ways to increase funding for the good work our grant recipients do. As always, we thank you for your support and look forward to a busy and successful new year!

Please join us in thanking the following donors for their support:

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LOW BONO OPPORTUNITIES:

Get Money and Experience while Helping Others

Small Business Legal Assistance Project

This VBA/Vermont Law and Graduate School partnership links low bono attorneys with small business owners who need advice and legal services related to their businesses. With an SBA grant, we pay you \$75/hour for 5-10 hours of legal work on issues such as entity formation, IP, contracts, commercial leases and contracts, taxation, and regulatory compliance.

Victims of Crime Act Project

The VBA has a federal VOCA grant to pay you \$75/hour for up to 10 hours assisting clients in legal matters relating to their victimization. Cases include custody and divorce, partition actions, assisting with evictions, collections defense, estate planning, no stalking orders and much more.

County Low Bono Projects

The Vermont Bar Foundation funds the VBA's county low bono projects. You can receive \$75 an hour for 3-6 hours helping low-income clients in landlord/tenant, foreclosure, collections defense, child support contempt defense, post adoption contact agreements and adult involuntary guardianship cases. Training programs for free CLE credits are available through the VBA.

*Contact Mary Ashcroft (mashcroft@vtar.org)
for more information and to get signed up!*

How to Secure Your Smartphone

Smartphones can be a significant cybersecurity risk, in part because many owners take a lackadaisical view when it comes to properly securing them and attackers know it. Couple this with the reality that smartphones are network connected devices that store all kinds of data, to include passwords, personal and financial information, location data, documents, photos, and client confidences and the reason smartphones are such an attractive target becomes self-evident. Now, add into the mix that there is no work from home or personally owned device exception to the rules of professional conduct and your obligations as a lawyer become clear. Every smartphone anyone is using for firm business must be properly secured. There can be no exceptions.

What type of threats do we need to be concerned about?

The following are the most common concerns:

Phishing attacks that use social engineering tactics in order to trick someone into doing something that enables a successful attack - The attack vectors vary. It could be anything from placing a malicious link in an email or text message, leaving a concerning voicemail, sending numerous multifactor authentication (MFA) prompts at 1 in the morning hoping the target will eventually accept one, and the list goes on. Should someone click on the malicious link, return the wrong call, or approve that annoying MFA request, it's game over. Making matters worse, the victim will often not even be aware that their actions enabled a successful hack.

The downloading of a malicious app - Malicious apps may be available for free or for a price and can even be hidden inside well-known useful free apps. Malicious apps typically exploit software vulnerabilities on the smartphone that can allow a hacker to access device data.

Connection threats - A smartphone's ability to connect to a network via GPS, Bluetooth, Wi-Fi, or cell service can be exploited by hackers in multiple ways. A few examples include users being tricked into logging into fake sites, unwittingly connecting to rogue networks or access points, or unintentionally allowing access to their geolocation data.

Device theft - Smartphones are small, easy to steal devices that contain a treasure trove of valuable information.

What steps should we be taking to address the problem?

While there are additional things that can be done, such as regular user training on how to spot a phishing, smishing, or vishing attack, if your firm is able to accomplish all of the following, you're going to be off to a great start.

Secure all smartphones - Set pins and passwords and make them as strong as possible. For device passwords, this means all passwords should be comprised of a combination of numbers and letters that is at least 8 to 10 characters in length. The longer the better, and the use of a unique passphrase is fine. Avoid using facial recognition or fingerprint scanning as biometric based security is less secure. **Enable the auto lock feature** and set it to lock if the phone is idle for no more than 5 minutes. A setting of 1 minute would be even better. Also **enable the find my phone feature**. This feature will help you locate a lost or stolen phone and will also help you remotely delete your phone's data should that ever prove necessary. **Enable an auto factory reset** after 10 to 15 incorrect attempts to unlock the phone. This will delete most data, to include downloaded apps should someone try to gain access to a phone's data. And finally, **make sure that the encryption function is turned on** as one additional step to protect the data stored on each device. Note that on some smartphones data encryption is built in.

Keep all phone operating systems and apps up to date - Enable auto update and accept those updates whenever they are made available. Users may need to manually check for app updates, which should be done at least monthly.

Install a robust security app on all smartphones - Examples include Bitdefender, Norton, Trend Micro, and VIPRE. Avoid using free versions of security apps as free versions will not provide the same level of protection. If the security app comes with a VPN, turn that on. If it doesn't, then also install a VPN app on all phones. While any data stored on a smartphone is encrypted if encryption is enabled, data traveling to or from a smartphone isn't. The use of a VPN addresses that concern. Here

again, avoid the use of free VPNs if you want to have your data stream be as secure as possible. Examples of trusted VPN providers include CyberGhost, NordVPN and ProtonVPN.

Disable Wi-Fi auto connect and Bluetooth auto pairing. In addition, it's a good idea to turn off Wi-Fi and Bluetooth when they are not in use. In short, you don't want to leave potential entry points open and unmonitored.

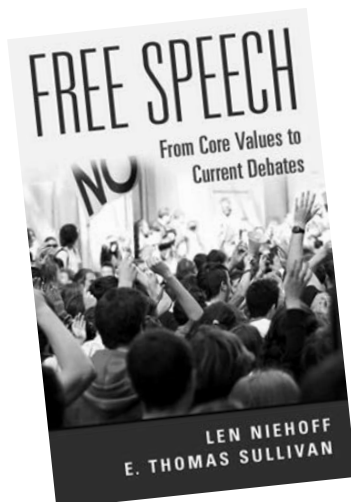
Institute a firmwide policy that prohibits the downloading of any apps from untrusted sources. Stick to using apps available from your devices' official app store, for example the Google Play Store and the Apple App Store. Many apps from untrusted sources contain malware that can steal data and install viruses just for starters. In addition, train users to be cautious about accepting all requested app permissions. Permission should only be granted to phone features that the app needs to function properly. For example, why would a flashlight app need access to a phone's camera, location data, and the contact list? Don't grant these kinds of permissions to any app that doesn't need them.

Finally, **never donate, recycle, resell, or otherwise replace a smartphone without erasing all the data, signing out of and then deleting all downloaded apps, and resetting the phone to factory defaults.** Letting go of a smartphone without properly deleting all data is just asking for trouble.

Since 1998, Mark Bassingthwaighte, Esq. has been a Risk Manager with ALPS, the nation's largest direct writer of professional liability insurance for lawyers. In his tenure with the company, Mr. Bassingthwaighte has conducted over 1200 law firm risk management assessment visits, presented numerous continuing legal education seminars throughout the United States, and written extensively on risk management, ethics, and technology. Mr. Bassingthwaighte is a member of the State Bar of Montana as well as the American Bar Association where he currently sits on the ABA Center for Professional Responsibility's Conference Planning Committee. He received his J.D. from Drake University Law School.



BOOK REVIEW



Free Speech: From Core Values to Current Debates, by Len Neihoff and E. Thomas Sullivan
Cambridge University Press, April 2022
Reviewed by Peter F. Langrock, Esq.

E. Thomas Sullivan, former dean of both University of Minnesota Law School and the University of Arizona law school and former President of the University of Vermont, has combined with Len Neihoff of the University of Michigan law school to write *Free Speech*, a very readable book.

At this time in our country with the growth of social media, increasing calls for censorship, and the decreasing ability of the public to separate fact from fiction, protection of the First Amendment, and the common law protection of non-government speech, is critical.

This book concerns itself with both the history of free speech from its constitutional and common law beginning to the current challenges perpetuated by the information revolution.

The authors deal with analysis of the First Amendment, which prohibits the government from prohibiting most forms of speech, to the great body of law dealing where speech is protected by the courts outside of government action. They refer to the second category appropriately as "Everyday First Amendment."

The book speaks to both protection from government interference and protection afforded by the common law in the private arena at a very understandable level using the history and background of cases that developed both areas of the law.

This book does not read simply like a scholarly treatise which, of course, it is, but like an historical novel underlying the importance of free speech in a democratic republic.

The book is broken into four parts. The first part is Core Values, followed by History, Basic Principles, and Current Controversaries.

Part II, History, deals with background free speech prior to 1919 and from 1919 to 1963 and then from 1964 to the present. This gives an historical perspective that is not widely known.

The last part deals with Current Controversaries, such as hate speech, speech in public schools, campaign finance regulation, academic freedom, and speech on the internet. It is thought provoking in this arena and does not pretend to give simple answers.

For all lawyers who deal with First Amendment law, as well as common law protection of free speech this is a valuable read. The First Amendment is not just the exclusive province of First Amendment lawyers and those dealing with defamation in the private sector. Free speech is a part of the very heritage of the profession, and this book is a marvelous way of analyzing the importance of it – both to lawyers and society as a whole.

The reading of this book will not only make the reader a better lawyer but also a better citizen.

Peter F. Langrock, Esq., is the founding partner of Langrock Sperry & Wool, LLP and has been litigating in Vermont State Courts and the Federal Courts since his admission to the bar in 1960.

Correction. In the winter 2023 issue of the *Vermont Bar Journal*, Peter F. Langrock Esq. reviewed, *Renegade for Justice* by Stephen Saltonstall. The byline on the review incorrectly cited Gary Shattuck, Esq. We regret the error.

Want to review a book for the *Vermont Bar Journal*? You can review your own book or one that you think would be of interest in VBJ readers. We look especially for reviews of new titles, or new editions of old titles, that have some connection to Vermont. (A Vermont-based reviewer counts!) Interested? Send inquiries to info@vtbar.org.

Here's the Winter Journal's Crossword Solution!



IN MEMORIAM

Mary Hall

Mary (Conroy) Hall passed away at her home in Fairfax, Vt., due to complications from leiomyosarcoma on November 14, 2022.

Mary was born on July 8, 1961, in Brattleboro, Vt. Her younger years were spent in various Vermont towns until she moved to Engelwood, N.J., in 1970. After graduating from high school, Mary completed her undergraduate degree in economics from Rutgers University. She followed this with a graduate degree in international affairs from Columbia University.

After a brief career in banking and non-profit organizations in New York City, Mary moved to Austin, Texas, in 1990. She would go on to earn an MBA and JD from the University of Texas at Austin. Mary was admitted to the bar in Texas and Vermont. While in Austin, Mary focused her law practice on family law.

Mary moved back to Vermont with her husband, Steve, in 2017.

Mary had a wide variety of jobs over the years, but nothing was more important to her than her daughter, Emily. Mary's graduate work at Columbia took her to Europe, Asia and Africa. Through her extensive travels abroad with Emily, Mary instilled in her a love for culture and languages. They also shared a love for thrift stores and the New York Times crossword.

In addition to Emily, Mary is survived by her husband, Steve; mother, Joy, and father, James; sisters Jennifer, Paula, Katy and Victoria; stepchildren Melissa and Carrie; and Carrie's son, Caleb.

J. Eric Anderson

Eric Anderson, beloved husband, father, brother, grandfather, and friend passed away due to complications from Parkinson's disease at the age of 84 on January 2, 2023. Born on March 25th 1938, and raised in Glen Ridge New Jersey by Robert and Elizabeth Anderson, Eric was a popular child and an exceptional student who went on to attend Dartmouth College, where he rowed crew and forged lifelong friendships with many of his classmates. While at Dartmouth Eric joined the ROTC, and upon his graduation in 1960 he served in the U.S. Marines, stationed in Okinawa Japan, San Diego Recruit Depot, and in the Marine reserves from 1963-1966. He later served the Vermont Air National Guard as Judge Advocate from 1981-1998, retiring as Colonel. After graduating from UC Hastings Law

School in 1966, Eric moved to Brattleboro and began his nearly 50-year career as a lawyer, occasionally accepting firewood or maple syrup as payment for his services. He loved the outdoors, running, hiking, biking, skiing, birdwatching, gardening, watching the Sox, singing with the River Singers, being a member of the Bellows Falls Rotary Club, serving on the board of directors for Parks Place and Compass School, the Development Review Board of Westminster, and spending time with his wife, who was at his side when he passed. Eric is survived by his sister Adrienne Anderson Fly, his children Molly and Rob Anderson, his grandchildren Charlie and Ally Anderson, and the love of his life, his wife Beth James.

John Bergeron

Born 1947, Burlington, Vermont. Died January 29, 2023, Shelburne, Vermont

As he was embraced by his family, the well-known twinkle in John "Jack" Bergeron's eye went dim and his mighty heart stopped beating on January 29th, 2023 in Shelburne, VT. His work here is done and now he can rest. Jack is entrusting those who loved him to carry on in his stead with the same enthusiasm for life that he exhibited over his 75 years.

Jack was many things to many people – Husband, Dad, Boppa, Brother, Friend, Attorney, and so many more – but if there is one thread tying these things together, it is this: Jack gave his best, and then some, in everything he did. If a certain task required five of something, Jack would deliver ten for good measure. Every time. This was the Jack Bergeron way.

Born to Ben and Pauline Bergeron in Burlington in 1947, Jack began his life roaming the neighborhood looking for swing sets to jump from, cliffs to climb up, and water to swim in. During these early years, Jack sought to find the threshold of physical impossibility – how high, how far, how long could one go – breaking many bones and causing his mother much distress in the process.

Naturally (and thankfully), Jack channeled his energy into athletics at Rice High School and St. Michael's College. Jack was never the biggest guy on the team, but his determination was unmatched. On the cross-country course, the soccer field, and the ski hill, Jack left his competitors wondering how they got beat by such a scrawny looking kid.

As college came to a close in 1970, Jack added academics to the list of things he could succeed at if he worked hard enough,

and off he went to Washington DC for law school at Catholic University. But, not before he met Cathy, in 1969, in the trunk of a car, on a blind date, when mutual friends snuck them into a drive-in movie. Neither of them were typically rule breakers, but this auspicious beginning of a life long relationship just goes to show that some rules are made to be broken.

Jack returned to Burlington as a married man and prosecutor working in the Chittenden County State's Attorney's Office. After 3 years of trial experience, and with his usual quiet confidence, Jack decided to open a private practice. He hung his own shingle and, as Jack tended to do, he built something from nothing, knowing that if he worked hard enough, he'd succeed. At first, his only clients were family and friends to whom he never wanted to send a bill (not ideal with a young family in the making!). But, in time, Jack became known as a skilled litigator, and the paying clients came knocking. Jack went on to co-found Bergeron Paradis & Fitzpatrick in 1989, where he spent the rest of his career, and where his law partners became life-long friends. Jack loved his work. The adversarial nature of litigation tapped into Jack's natural competitiveness, providing a landscape where hard work equaled good results. However, it was the people – the attorneys he worked with and against, his staff, and his clients – who made his career so meaningful for him.

Jack avoided the limelight, and might even be described as a quiet guy in a crowd, but look a little closer and you'll see that he easily made friends everywhere he went, sometimes in the most unexpected places. There were no prerequisites to gaining Jack's friendship; he would see the good in anyone and draw it out of them, often through the act of lending a hand: Jack always had a hand to lend. Over his lifetime, Jack amassed an impressive array of friends from many walks of life. A special thanks to those who stood strong with Jack near the end (there were many of you), and especially to PM, Spencer, Bob and Jon, the most loyal of friends.

We still don't know how, but Jack found time for so many activities outside of his devotion to his family, friends and work. He had a creative side that he explored through self-taught skills: stained-glass creations, handmade furniture (many will recall his legendary Adirondack chairs and the giant table on the porch at his camp); hand-carved duck decoys; fly tying; and bee-keeping, to name just a few. And, Jack was always physically active. He ran marathons, hiked and skied throughout Europe and

North America, often ran up Camel's Hump before work on a summer morning, and, his most enduring passion, rode his bike many thousands of miles over decades of time. Jack was the kind of guy where "century rides" (100 miles) became not enough, and so he doubled those and completed 200 mile rides, for no reason other than it was a challenge and sounded like fun. Much of Jack's riding was done in the early morning hours with an awesome group of biking buddies, and at other times with Cathy on the back of a tandem bike. In everything he did, Jack was always good-natured, kind and generous. He contributed freely to worthy causes, and enjoyed serving his alma mater, St. Michael's College for nine years on the Board of Trustees. Additionally, Jack served on the Advisory Board of St. Anne's Shrine for several years.

Jack was the quintessential family man, and a hero to his three children, Jenny, Adam and Aaron. He was Superman in their eyes, capable of doing just about anything, and there was nothing he wouldn't do for them. As was his nature, Jack led by example, showing his children with a soft touch and steady hand how to be a good person and live a full life. Jack's passing leaves a big hole in his kids' hearts, but he equipped them well and they're going to take his reins from here and do their best to live a life like his.

Jack and his wife Cathy were a great team. Known to so many as simply "Jack and Cathy", their relationship was built on mutual trust, shared adventures, and unwavering support for one another as they navigated life's highs and lows. These two knew how to set goals and then achieve them: building their camp on the shore of Lake Champlain where they spent summers entertaining friends and boating with the kids; arranging a home exchange and living in France for part of a summer as a family; completing the Tour de Mont Blanc by trekking through France, Switzerland and Italy; multi-day hiking trips throughout Europe and in many National Parks out West; touring throughout Southeast Asia; finishing the Long Trail together; cultivating so many shared friendships with others (many who joined in the aforementioned trips); and, perhaps their most singular shared focus, supporting and encouraging their children to explore the world, find interesting work, and lead good lives. In their later years, they evolved into Boppa & Mimi, hosting their three grandkids every summer at the camp, taking them on trips, and playing lots and lots of games. Jack slept in the camp bunkhouse with the grandkids when they were younger, often telling somewhat traumatizing bedtime stories.

Jack was diagnosed with Parkinson's Disease in 2016 and, in true Jack fashion, he met the disease head on and accepted

Save the Date

July 28, 2023

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Vermont Law & Graduate School
8:30 am to 4:30 pm



Details Coming Soon!

what was to come, showing so much courage and grace. He never once – not ever – complained about his diagnosis. In fact, he still maintained that he was “lucky in life” – a theme song that seemed to play in Jack’s mind throughout his lifetime. He lived his last years the only way he knew how: Still biking and skiing when he should have been walking; then, still walking when he should have been sitting. He fought hard till the end. His family is ever grateful for the kind and compassionate care provided to Jack by the staff at Wake Robin, the Bayada Hospice team, and Dr. Gene Moore.

Those who loved Jack may feel that his life was cut short, but remember: Doing things the Jack Bergeron way meant that he packed in 150 years of life into his 75 years on this earth. In life, illness, and even death, Jack did a good job. He will always be remembered as being a good man. Rest in peace dear Jack. You are loved by so many.

Jack is survived by his beloved wife Cathy; children Jennifer (Brad) Carlson, Adam (Angie) Bergeron, and Aaron Bergeron; grandkids Taylor, Kate and Grady; siblings Paul, Jane and Jay (Joanne), and countless friends and extended family members.

Robert Ulrich

Bob Ulbrich passed away peacefully on February 23, 2023, at the Jack Byrnes Palliative Care and Hospice Care Center. He was 93 years old and was born in Rahway, New Jersey to Adolph and Mabel (Miller) Ulbrich on November 29, 1929.

He attended schools in New Jersey and graduated from Rutgers University receiving his Bachelor’s Degree and then Law Degree in 1954. He moved to Vermont in 1955 and passed the Vermont Bar in 1956. He clerked for Hugh Henry in Chester, opened his own office in January 1957 and purchased the building from Mr. Henry converting it into offices and naming it the Henry Office Building in honor of Mr. Henry. He practiced there until closing his law firm on December 31, 2018. He was also legal counsel for the SBA for two years.

When living in Windham he was Town Moderator, was on the school board, and was Justice of the Peace. After moving to Chester, he served as Town Moderator, Recreation Director and was on the Board of Chester Academy Trustees for 35 years. His practice in early years was mainly in real estate and corporations. He incorporated The Vermont Country Store for the Orton family and served on their Board for some 30 years. He also incorporated Magic Mountain, Timber Ridge and Tater Hill Country Club. His clients included Pearl Buck in her many real estate ventures and he set up the John Butler Scholarship Fund

for Green Mountain students. His dedication to his clients went above and beyond expectations.

Bob was an avid tennis player and organized and ran many Chester tennis tournaments. He continued to play tennis into his nineties and especially enjoyed his group at West River and Mayotte Arena, with whom he also played a skilled game of ping pong in the winter months. Needless to say, he was very competitive. Bob enjoyed skiing, particularly the “apres ski”, golf and travelling. He was a big band fan and had his own band, the Bobby Williams Band, and played at many venues in New Jersey. He was a wonderful father, grandfather and husband and an inspiration and mentor to his family and friends.

He is survived by his wife of 45 years, Diane, his children Robert Ulbrich Jr, Karen Goldstein, Susan Doolittle and Sherri Lloyd. He is also survived by his grandchildren, Geoffrey Doolittle, Stephanie Doolittle, Kate Avery, Tim Kirsch, Justin Ulbrich, Tristan Ulbrich and Ryan McSally, and four great grandchildren. He was predeceased by his parents, his brother Fred, his sister, Doris and one grandchild Kristin.

Martin Nitka

Martin Nitka died peacefully on Thursday, March 30, 2023, while hospitalized in New Hampshire. He retained his sense of humor until his death, entertaining his family and endearing himself to hospital staff. The cause of death was respiratory failure and Covid-19.

Martin Nitka was born on August 7, 1942, in Dessau, Germany to Heinz and Gisela (Heuse) Nitka. He was the youngest of three children. Martin’s travels began at an early age. At the end of World War II, when Martin was three years old, the family fled Dessau, which became the Eastern Zone of Germany, controlled by Russia. It was Heinz’s work as a physicist that prompted the family to flee, to avoid Heinz being involuntarily sent to work in Russia.

After fleeing the Eastern Zone, the family resided in Berlin while awaiting an opportunity to work and live in England. In 1948, the family arrived in Manchester, England, where Martin attended The Manchester Grammar School. He learned to speak English quickly, wanting to eliminate his German accent. When Martin was 12, he emigrated to the United States with his family, settling in Binghamton, New York, where he attended school and worked hard to drop his then British accent. As a teenager he became the Broome County Chess Champion and had an opportunity to play a tournament match against Bobby Fischer, his contemporary. Fischer won. Martin became a US citizen at the age of 18, hav-

ing previously held British and German citizenships. He had great respect for the US Constitution.

Martin graduated from Hamilton College, Clinton, New York in 1964. During his college years, after working a summer in California, he purchased a Model A Ford and drove it cross country with Dan Lamont, his college roommate. They met many mechanics along the way. He also studied at the University of Heidelberg, from which many members of his family had graduated. Martin went on to attend Albany Law School of Union University, Albany, NY obtaining his law degree in 1967, and passing the New York State Bar the same year. One of Martin’s first jobs as a lawyer in New York State was drafting legislation for the New York State Assembly. It was during his time in Albany that he met Alice Waterson. Alice and Martin married while working as “ski bums” at Mount Snow in Dover, Vermont in March 1968, and decided they wanted to make Vermont their permanent home. They moved to Ludlow the following year, where Martin began work as a lawyer for attorney Wally Schinowski. Following Schinowski’s death, Martin worked as a sole practitioner, establishing his practice at 92 Main Street. In 1988 Martin and Frederick Glover established a partnership for the practice of law in Ludlow, known as Nitka and Glover. Martin retired from the practice of law in 2014.

Martin was an active participant in Ludlow civic life. He served as town attorney, member of the Ludlow Select Board and Cemetery Commissioner among other positions. He was elected as town meeting moderator for many years, where his sharp wit could cut the tension in a debate. He was a member of the Vermont Bar Association, Rotary International, and was honored as a Paul Harris Fellow through Rotary in 2000. He served on many boards, Coolidge’s Plymouth Cheese Factory, Fletcher Farm, and Friends of Ludlow Auditorium (FOLA). He was also a past president of Okemo Mountain Ski Area.

Martin had many diverse interests. He enjoyed fly fishing in Vermont and New York trout streams, bird hunting with his dog, hiking the Long Trail and other trails in the Green and White Mountains. He enjoyed downhill skiing in his younger days, and cross-country skiing in the National Forest as he got older. He competed in the Stowe Derby in 2008 on an old pair of three-pin skis. He said he came in last in his age group. He loved The New York Times crossword puzzles, chess, and anything to do with numbers. He could keep track of everyone’s score in a golf foursome and remember all the shots. He listened to public radio since its inception, watched Bloomberg News, and loved to cook and eat salt and salty foods. He looked forward

to planting his garden each Spring and was never happy with the results. He was an avid golfer and longtime member of Okeemo Valley/Fox Run Golf Course, where he also worked on the "Mow and Go Crew", walking behind a lawnmower for miles in the early morning. Some of his favorite pastimes were critiquing his wife's politics, and "contributing to his carbon footprint" by going for car rides around Vermont.

Martin is survived by his wife Alice Nitka of Ludlow, his daughters Abigail Nitka (Ulgur Aydin) of Brooklyn, NY and Molly Nitka (Keith Lazarczyk) of Rutland, Vermont, a sister Inge Judge of Durham, New Hampshire, and two grandsons Berk Aydin and Sam Lazarczyk. He is also survived by many first cousins, in Europe and Argentina, where Martin's maternal grandmother was born. He was predeceased by his sister Gisele Atwater, and niece Brigitte Judge.

John B. Webber

John Barclay Webber, 89, of Rutland, passed away on April 19, 2023. He was born in Rutland, Vermont April 4, 1934, the son of Christopher and Esther (Ladue) Webber, Sr. John married his wife of 35 years Kathleen (Kurdeka) Webber in 1966. John attended The Millbrook School, Middlebury College and Boston University Law School. He was admitted into practice in Vermont in 1964, before the U.S. District Court of Vermont in 1966, and the U.S. Court of Appeals for the Second Circuit in 1968. His practice was primarily trial preparation and trials on the defense side. He practiced law with Webber & Costello, later with Webber, Reis, Holler & Urso, and lastly with Webber, Chapman & Kupferer. He was a fifth generation Vermont lawyer. John was active in Vermont Bar activities and was past president of the following: the Rutland County Bar, the Vermont Bar Association, and the New England Bar Association. He was also president of the Northern New England Defense Counsel Association, as well as the Sterry Waterman Inn of Court. He was also Chair of the Vermont Judicial Nominating Committee. He was a member of the International

Defense Counsel Association, the Defense Research Institute, and the Federation of Defense and Corporate Counsel. Additionally, he was a member of the Association of Professional Responsibility Lawyers, the College of Master Advocates and Barristers, and the National Arbitration Forum. John founded the Vermont Lawyer's Assistance Committee in 1986 and was the director for many years. He received the Vermont Bar Association Distinguished Service Award in 1995, as well as the Professionalism Award in 2009. He was also the recipient of the annual American Inns of Court Foundation Professionalism Award in 2006 for the United States Court of Appeals for the Second Circuit which was presented to him by the Chief Judge of the Second Circuit in a ceremony at the Federal Court of Appeals in New York City. From 2002 to 2012 John was a public member of the Vermont Medical Practice Board, which he enjoyed immensely. He was also a Trustee of the General Breed Fund, and past president and then treasurer of the Evergreen Cemetery Association. John was a member of the Rutland Country Club, and had a long history of sailing and skiing, especially at Mad River Glen. He was an avid sports fan and loved watching his favorite teams the Bruins and Red Sox. John was a voracious reader and had an insatiable appetite for politics. John is survived by his daughter, Meghan Webber Rice, her husband Andrew; their three children Cooper, Jackie, and Allison; his sister Mary Munroe; and brother, Christopher Webber, Jr. He was predeceased by his wife Kathleen in 2002.

Marianne Lipscombe Marshall

Marianne Lipscombe Marshall died on April 4, 2023. She was born on June 27, 1950, in Seattle, Wash., to Jack Wilfred Lipscombe and Betty Jo Howard Lipscombe. Marianne grew up in the oil fields of southern New Mexico and west Texas and graduated from Big Spring High School. Marianne earned a double major in philosophy and sociology from Newcomb College at Tulane University in New Orleans and a JD

from St. Mary's University Law School in San Antonio, where she met her husband and the love of her life, Steven D. Marshall, son of Dr. Carlton and Cynthia Marshall.

Marianne served as Caldwell County Attorney in Texas; Deputy State's Attorney for Franklin County, Vt., and as a partner in Marshall and Marshall Legal Services in Swanton, Vt. She was honored for being one of the first 100 women admitted to practice law in the state of Vermont.

In addition to her husband, Marianne is survived by her children, Cynthia (Craig) Wilems of Seabrook, Texas; George (L. Gayle) Marshall of Corinth, Texas; Mary (Samuel) Carleton of Winooski, Vt.; and Kathryn (Ryan) Baxter of Lunenburg, Vt.; her grandchildren Anabella, Grace and Emmaline Wilems, Nolan, Alaina and Susanna Marshall, Adele and Louise Carleton, and Hawkeye Baxter. She is also survived by her brother, John Howard Lipscombe (Jan), retired Texas County Court at Law Judge of Austin, Texas; sister Dr. Elizabeth Lipscombe Ritchie, pediatric surgeon, of Boerne, Texas; and several nieces and nephews. She was predeceased by her parents and brother William C. Lipscombe, U.S. Coast Guard retiree, who suffered from untreated PTSD after serving on the front lines in the war on drugs in South America and the Mediterranean.

Marianne was active in the community and for many years served on the Franklin County United Way and the Rock Point School Boards. She was a fifth- and sixth-grade volunteer staff and was active in the Swanton School parent volunteers and the Holy Trinity Episcopal Sunday School. She also served as past president of the Franklin County Bar Association, as the Swanton Town Justice of the Peace and was a Vermont Community College philosophy teacher (Introduction and Social and Political Ethics).

In more recent years, Marianne enjoyed painting with watercolors and showing her work at the Artist in Residence Gallery in St. Albans. Belief: if it's about God, it's about love; share God's light. Her kids say, "Mama was always finding ways to bring people together to share joy, love and build community."



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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 86th 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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