

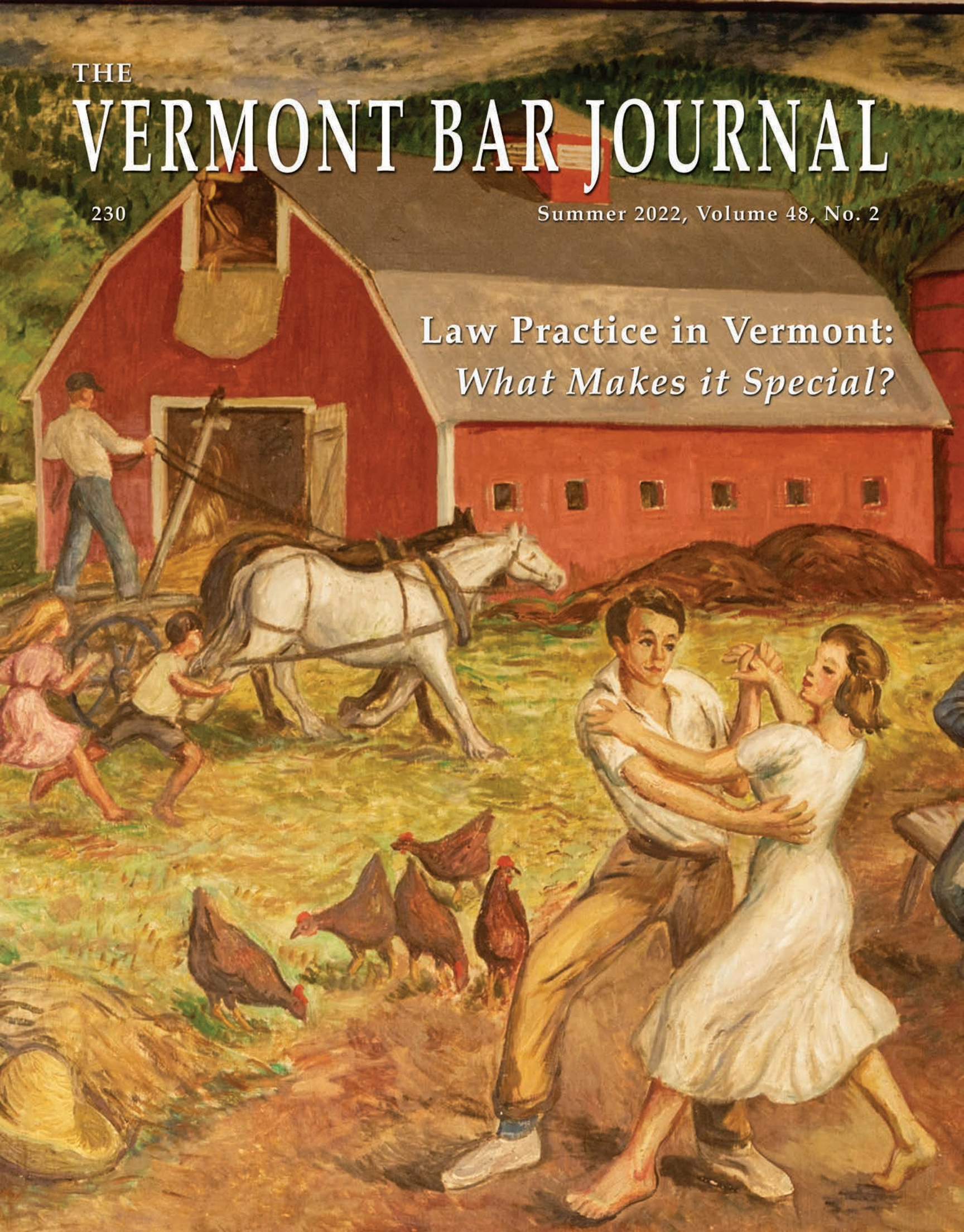
THE

VERMONT BAR JOURNAL

230

Summer 2022, Volume 48, No. 2

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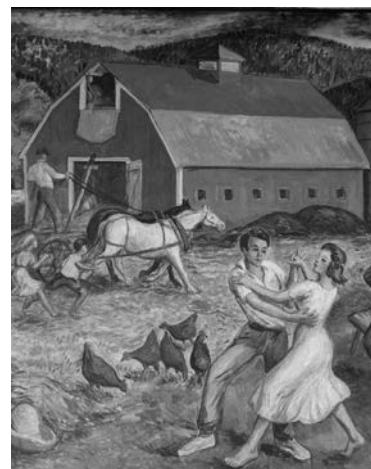
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Detail from the mural, "Haying"
c. 1939 by Philip Von Saltz.
The mural is located in Federal
Building, St. Albans, Vermont.
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Try out the
Crossword Puzzle
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on page 30!

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Fax: 802-223-1573
E-Mail: kvelk@vtbar.org
On the Web: www.vtbar.org

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PRESIDENT'S COLUMN

Practice Differently, Live Better?

I was enthusiastic to have the opportunity to listen to Meghan Hottman speak at a recent conference. She is a successful lawyer and entrepreneur, and an accomplished competitive cyclist. Meghan's is the self-titled "Cyclist Lawyer," representing injured cyclists and educating law enforcement and others about the risks and rights of cyclists under the law. But the intriguing aspect of her talk wasn't about cycling, it was about lifestyle and balance.

Meghan explained her evolution as a cyclist and the challenges she faced balancing that evolution with law school and a career. She was able to achieve reasonable balance it seems by having courage enough to pursue her passion while also embarking on her career in the law. Her resistance to being funneled into a work-centric existence and making time for what gave her joy and her life meaning brought her success in both endeavors.

After a decade of hard work and success, Meghan began to wonder whether the accumulated trappings of success were indeed, success. She wondered whether there wasn't more to success than clothes, cars, etc. Then came COVID, and Meghan

realized that the "old" way wasn't necessarily the only way of practicing law.

Liberated from live courtroom appearances and wasteful travel time, she embraced technology to make remote practice possible and successful. Meghan heard through friends that someone had a conversion van for sale. She dismissed it initially, but later bought the van, installed solar panels to fuel her coffee maker and laptop, and went on the road. She visited National Parks and landmarks, she "appeared" in court, took remote depositions and she realized she wasn't being marginalized or shunned (her word) by colleagues and others.

An earlier conference speaker had reminded us that a recent study had confirmed the results of ABA/Betty Ford study of "at risk" behavior of lawyers. In contrast, Meghan's story illustrates that we aren't destined to a life of risky behavior provided we have the courage to pursue those things that balance our lives.

Meghan had the courage to try another way. She dared to practice differently, and she benefited from it. Conversion vans aren't for everyone. But I think we all



Bob Fletcher, Esq.

should have the courage to practice differently, and tolerance for those who do. Stay well and do better.



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PURSUIITS OF HAPPINESS

Ira Morris, Esq. - Violinist, Teacher

KSV: Hi Ira! As you know, for this feature. we interview people with interests and passions outside of the practice of law which have helped keep them balanced. You had a long career in the law, some of which we shared as colleagues in the AG's office. A few years ago, however, you went inactive in law and went into music full time. Let's start with what you are doing these days. What's your answer now when people ask what you do for work?

IM: I'm teaching private students, and coaching chamber music ensembles - I also do some performing, particularly as a long-time member of the Springfield, MA Symphony Orchestra, and also as a regularly hired player to assist the Dartmouth College Symphony.

KSV: OK. Can you tell us a little about your origins? Where did you grow up?

IM: I grew up in Bennington, VT - at the time the Bennington College music faculty lived in the community, and so there were good instructors available locally.

KSV: Were you musical as a kid?

IM: I studied violin from the time I was eight years old until I graduated from high school. I played locally in the community orchestra there, the Sage City Symphony. I would have like to have played much more chamber music as a kid, but the key to that is having someone to organize it. I tried this a little on my own, but it was hard to get everyone to show up, we didn't have a coach etc., so this was an unmet need for me in those years.

KSV: When and how did you first get interested in music?

IM: My older sisters were both playing - one went on to be a professional cellist - and there was music in the house from the time I was old enough to notice, as my Mom was a big classical music lover. My sisters were always playing recordings of new things - and there is no question that, it being the late 60's-early 70's, I was exposed to all sorts of different and at times strange things.

KSV: Do you have your own musical family? Tell me all about them...

IM: Yes, my wife, Pam Reit, is a trained professional violinist and an award-winning Suzuki Instructor and founder of Vermont Suzuki Violins, Inc., a non-profit that runs group classes and chamber music groups. My oldest daughter retains an interest in musical theater, but it remains to be seen how much of it she'll get to do. My youngest daughter is an accomplished cellist who just finished her first year at Oberlin College, in the conservatory division.

KSV: That's great. Do you ever play or perform together?

IM: Yes - but mostly for weddings and the like - we don't make a point of performing concert music together. The rehearsing takes too much time.

KSV: What kinds of things have you done together?

IM: In addition to playing for various engagements we will have an occasional chamber music session in our home together, sometimes just the three of us, but usually with an additional guest that allows us to play string quartets.

KSV: You've been a music teacher for a long time, and you also taught me a lot about the law when we worked together in the AG's office doing mental health cases. I would say you have a strong teaching vibe. How did you get into teaching?

IM: My first official "teaching" thing was as a ski instructor - and going through the certification process with that, initially as a college student and later as a young adult, really taught me about how people learn, along with providing a basic understanding of physical movement and how movements are integrated, their cause and effect etc. As a violin teacher, a huge component of playing is physical movement. The ears are big part too, but issues about balance and coordination play enormous roles, bigger than most people think.

Any teaching I did as an attorney was because I'd been working in a fairly narrow area of the law for a long period of time. The accumulation of information could be shared then, but it wasn't like that was ever a point of doing it. One thing I can say is as someone who taught more generally, you could develop a discerning eye for other people you might get to work with who could effectively move you from the familiar to the unfam-



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miliar, and which ones couldn't. I was lucky in the late-going to work with one attorney like that, I learned an enormous amount from him, and admired his gift this way.

KSV: Is teaching another vocation for you, along with the music?

IM: There isn't a distinction - everything is learning - a fair amount of what I think I know is self-taught, but I have been able to validate a large amount of that from other sources (colleagues, master classes, available video), but in other cases I had to throw it out because I couldn't validate it that way; I'm much more likely to think of myself as a goof than a visionary.

KSV: What about it attracts and holds you?

IM: Maybe I should start with a story about my initial experiences with chamber music as a kid. At the start of 7th grade, four of us were put together to play a Mozart quartet. It begins on this radiant F Major chord, and we got lucky and played that it perfectly in tune. I had this experience of my sound disappearing into the group's center in this perfect unity of sound, and it was like a sustained flash of light that obscured everything in the room. We fell apart soon after, but in that small moment of perfect execution I felt transformed. Years later I understood this as hearing the voice of God in that moment, and as I am not at all a religious or spiritual person, that was the power of that experience.

So, in the coaching of chamber music, that's an easy answer - I'm providing a service that I so badly wanted as a kid, so every moment I provide that, I feel has a great value, maybe one whose value isn't understood until you've gone without it. It's not just the music or the playing there, it's the collegiality and working together to achieve a goal. I'm not looking for anybody to get a spiritual value from the sound like I did, but if they do then we have something to talk about. I'm lucky to now have a group that is similar to one I had when I started up with it; they are friends first and players second, and they adore each other and maybe because of this

they are ever so happy to be together in a group, and they work together as a team so well. Their parents are also very committed to them being together, so it's a situation where you feel like the people you are working with love what you do for them and are maybe getting lifetime memories out of it.

Private teaching is different - you feel like you might imagine a psychologist/therapist does at times, since the kids have so much on their plate, and it is hard to make the instrument and its study fit in their lives - it's hard to play the violin or viola, and it requires their time and patience. Increasingly, this challenge is what is interesting or gratifying about it - making it work for them - and this is quite different from the teaching I did 20 years ago when they had less pressure, more time, and the focus could be more on excellence... I mean it still is, but there is a whole lot of junk that gets in the way of that now.

KSV: When you were making career choices in school, was it a contest between law and music? What were you planning for yourself back then?

IM: Long story - too long for here. Summarizing: my brother-in-law is a quite well-known teacher and musician in New York City. He says there are two kinds of musicians: the ones who can stay away, and the ones who can't. He says the most miserable people are the ones who are in it but could stay away - the ones who can't stay away? They don't - at least eventually. In my case, there were times where I had to stay away but also didn't want in, other times where I didn't have to stay away and didn't want in, other times where I wanted to be in and so I got in as much as was reasonable in the circumstances. That's the basic paradigm I've worked from. I think he would say I'm one who couldn't stay away, and I think time has proved that out, but it's not exactly a smooth progression, or a one-size-fits-all answer there.

So, more specifically, at the time I graduated high school in 1981, and for a decade plus afterwards, staying away was easy - there was no contest at all. I met my wife,

who is a full-time musician/player, and gradually got sucked back into it. I'd put the blame for it on her, but I was ripe for the taking. I don't know quite where I'd be without her, in this way, and in many other ways too.

KSV: What year did you start working as an attorney?

IM: 1988.

KSV: Can you outline your legal career? Where have you worked?

IM: Initially in a large firm in Portland, Maine - which was not for me. I went from there soon after to being a judicial law clerk for the New Hampshire Superior Court. I had a brief stint in a small Burlington firm, but I had an application into the AG's Office for a position with DMH at the time - they knew that, and that I was likely to take that job if it was offered. Eventually they made an offer for me to stay, but after my New Hampshire clerkship there was no question for me that my place was in government if I could find a home there, so when I got the assistant AG job I took it. Then I stayed in a position whose duties/practice areas changed over time, but stayed more similar than different, for the next 27 years.

KSV: Was music running a parallel the whole time?

IM: No - that started up when I met my wife in 1992 (though I'd known her from an earlier time) and didn't really reach a truly parallel course until the late '90s. After that, there were varying degrees of each. As a matter of employment, the law always came first - it paid the mortgage. I always told my students that if I was summoned to go somewhere or do something in connection with my work with the State, even if I was in the middle of something with them, I would need to go do that and would have to work it out with them later.

KSV: I remember my first-year property law teacher telling the class that musicians were good at property law - something to do with following chains of title. What do you think about that? Did your music mind influence the way you practiced law?

IM: No - my legal training, and particularly the question that goes "if this statement is true, what else would be true?" was a profound influence on the teaching.

KSV: So you're teaching and you're performing - what's your performance schedule at the moment?

IM: As minimal as I can make it while still feeling like I do it.

Some people love to perform as a means of self-expression and a desire to give of themselves to an audience - an example? Michael Jackson - and though I was told this was what I should aim for, it never resonated

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with me. What's important to me is the people who wrote the music, and in classical music you are given the task of conveying the thoughts of people who have way more genius than you do. It's daunting, but it is the foundation of what it is, and I feel like I'm teaching people to respect these historic (or contemporary) geniuses, to love what they do for us, and how they have given us the chance to have even a micro role in participating in their efforts. I'd rather just play it than perform it, which is a legitimate way to participate in the art form too, but rehearsal/performance cycles give you a chance to play the music at a really high level, so that's another attraction for me. But I'm not an artist who cares deeply about my audience and their relationship to me - I care much more about the person who wrote the music I'm playing.

When I talk about the importance of "still feeling like you do it" what I should stress is that if you are teaching you need to have a lived experience of being a "real" player - you don't want to teach based on some memory of what real playing/performing had been like - memories decay and are subject to elaboration and falsification; you stop doing it and the next thing you know your teaching has nothing to do with reality.

KSV: When you were working as a lawyer was your music an outlet for you, something you looked forward to doing when you were out of the office and/or did it get to be something that was hard to juggle with your law work - or both?

IM: I was pretty good at compartmentalizing, I had two different personas with that. What might get hard was if I had a long/intense run at one of these, so I'd feel like that persona a little more, and it was hard to adopt the other persona outfit I had to wear as I was getting back to the other thing.

KSV: Have you gotten drawn into any community things because of your lawyerhood? I know about your work with the musician's union, for instance.

IM: Not so much - I wish I was a person more driven in that direction. The work with the union is motivated by other factors. A big one is that I found that lawyers treated each other with more respect and collegiality than classical musicians do (yes, even as opponents), but I had an early experience of playing in two places, one where the union was strong (and remains strong) and another where there was no union presence at all. The place with the union presence had people respecting each other and being collegial in the way I was used to with the law, while the other one did not. So I am a union guy - to me it's the foundation of the players treating each other better and not allowing anyone to play them off one another - to be good teammates on a real team, and an or-

chestra HAS to be a team. If I can keep that kind of thing going and help grow it elsewhere, that's why I'm in it.

KSV: So you still have your law license, correct?

IM: It is inactive - it was hard to get so I didn't want to turn it in - I couldn't quite face that yet, but maybe in another year I'll be Ok with it.

KSV: But no plans to return to law?

IM: Oh....God no.

KSV: Anything about it that you miss?

IM: I miss the relationships I had with the people I immediately worked for as a trial attorney - the people who were providing care and who needed my assistance to get a result in court, and who I needed to help me get those results. As time went on, they were the main reason I went to work. There was an MD I worked with in a hospital, and we had this great working relationship, enough so that I would look forward to coming to work each day to experience it (though we didn't have daily contact, it was frequent). I miss that MD and the many other people who were had similar roles. I miss some of the court staff that I had routine contact with for many, many years...so it's mostly the relationships and not the work itself. I don't mean to leave my colleagues out, but I was never exactly cut out to work in an office environment, made my own way with that lack of fit for many years, but increasingly felt more and more like a fish out of water with it. So there's maybe a little of something being thrown out with the bathwater, in getting free from it? - but it is what it is.

KSV: Any special plans, professionally speaking, for the future?

IM: To work until I die. There's a lot of old age in my family - the nice thing about music is it is a bottomless well for study. I've learned how to work with music notation software in the last year, and I can get obsessed with it - hours flying by while I do it and not realizing the time that has gone. Or instead, I'll learn about some new piece and it will become an ear worm for a month.... all of this was a gift from my Mom to me. She passed about two and a half years ago, and I don't have a day where I don't feel gratitude for that great gift.

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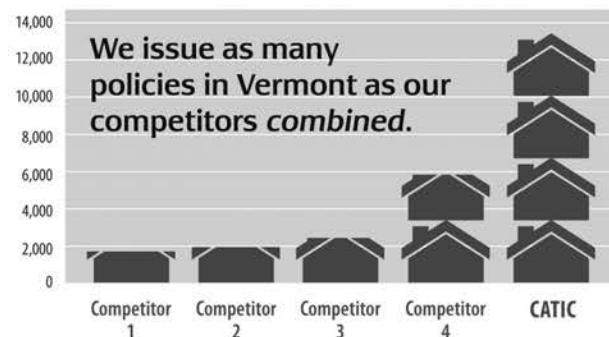
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WRITE ON

An IDEA for Legal Writing

In the two years since George Floyd’s murder in May 2020, interest in inclusion, diversity, equity, and accessibility (IDEA) has proliferated across corporations, non-profits, academia, civic organizations, schools, and governments. Companies and foundations have committed billions of dollars to IDEA initiatives – hiring consultants, convening committees, offering trainings, drafting policies, tweaking hiring and promotion practices, and donating funds and services.¹ Law firms and law schools are no different. Although large law firms continue to struggle with diversity, approximately seventy-five percent of firms in one survey commenced new efforts to address racial injustice after the death of George Floyd, and approximately seventy percent reported diversity and inclusion as a high priority.² Law schools too have recently “professed a commitment to improving representation and retention of black law students and lawyers, [and] implementing various diversity programs and initiatives.”³ Indeed just this year the ABA approved a requirement for “law schools to educate students about bias, racism and cross-cultural competency” – an outgrowth of a June 2020 request from 150 law school deans.⁴

With these IDEA initiatives have sprouted new IDEA resources and educational materials. This article examines one such (non-legal) resource: Inclusive Language Guides (“ILGs”).⁵ ILGs suggest using language to “activate the benefits of workplace diversity.”⁶ Without “human-centered, equitable language,” the theory goes, “we quash the valuable perspectives we have worked so hard to find.”⁷

ILGs’ purpose – to help people “communicate effectively with more people” across a “diversifying society and globe”⁸ – seems apt for legal writing. In fact, isn’t the central goal of all legal writing to communicate clearly and effectively? So what might we, as lawyers, learn from ILGs to become more effective – and inclusive – writers and advocates?

This article first compares inclusive language principles with principles of “Plain English” legal writing – a method taught widely in law schools today. This article focuses on “Plain English” legal writing techniques because that is both my preferred approach to legal writing and one that is common, if not dominant, in law schools today.⁹ To simplify the comparison, I have selected one representative ILG: The Acrolinx Inclusive Language Guide.¹⁰ After dis-

covering that Plain English legal writing and inclusive language principles have a lot in common, I then consider what more – beyond plain English – lawyers might do to make legal writing more inclusive.

I. Inclusive Language Principles and Plain English Writing

Acrolinx’s ILG begins with a plug for “Plain Language Writing,” which it defines as simplicity in “wording, structure, and design.”¹¹ The ILG touts Plain Language because it makes “information cognitively accessible for neurodiverse readers,” people with disabilities, and “culturally and linguistically diverse communities.”¹² It then provides the following tips for Plain Language writing:

- Choose the most commonly used words and words with fewer syllables.
- Shorten sentences to have one idea per sentence.
- Shorten paragraphs to have one topic per paragraph.
- Structure information in chronological order. That means writing information in the order of which they happen.
- Minimize cross-references.
- Limit sentence length to about 20 words.
- Choose active voice over passive voice.
- Use pronouns or write in the first person to help the reader put themselves in the story.
- Include pictures, charts, and highlight techniques to tell the story without words if possible.¹³

This list looks remarkably similar to many of the fundamental principles of Plain Eng-

lish legal writing taught in law schools.¹⁴ These principles include:

- Write in short sentences – on average 15-20 words.
- Use the active voice.
- Use strong verbs and avoid nominalizations.
- Keep paragraphs short with one topic per paragraph.
- Explain the facts in chronological order (with exceptions).
- Omit legalese and jargon when possible.
- Use words that most people understand.

The similarities between inclusive “Plain Language” writing and Plain English legal writing are unmistakable. But what about their differences? There are a couple: First, ILGs often instruct writers to use pronouns or the first person “to help the reader put themselves in the story.”¹⁵ In contrast, legal writers (at least Plain English disciples) strive to minimize pronoun use to avoid both ambiguity and misassigning a pronoun to someone whom we don’t know. The best legal writers also avoid the first person to remove themselves (the lawyers) from the document. That way the reader’s focus remains on the client and the case – not the lawyer or the lawyer’s own beliefs.¹⁶

Second, ILGs typically advocate for fewer cross references, or references to another portion of the same document or to a different text altogether. To be sure, too many cross references clog up a document and disrupt the flow. But cross references in legal writing may also have the reverse effect: they may decrease repetition and enhance clarity.

Principles	Inclusive Language	Plain English Legal Writing
Choose commonly used words and words with fewer syllables.	✓	✓
Shorten sentences to have one idea per sentence.	✓	✓
Shorten paragraphs to have one topic per paragraph.	✓	✓
Structure information in chronological order.	✓	✓
Minimize cross-references.	✓	
Limit sentence length to about 20 words.	✓	✓
Choose active voice over passive voice.	✓	✓
Use pronouns or write in the first person.	✓	
Include pictures, charts, and highlight techniques to tell the story without words if possible.	✓	✓

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Overall, however, the overlap between inclusive language and Plain English legal writing overwhelms their disagreements.

This strong correlation between inclusive language principles and Plain English legal writing raises a question: why not use inclusion to justify teaching Plain English to law students and lawyers? In other words, why not explain to our students, mentees, and law clerks that Plain English writing is better legal writing not only because it makes for clearer, more concise, and more persuasive writing, but also because it is more accessible to a diverse audience?

Highlighting the inclusive aspects of Plain English legal writing thus presents an opportunity: to teach students and lawyers that writing for a diverse audience is fundamental to being a good lawyer. When we write in a way that is respectful of and accessible to diverse readers, we better fulfill our obligation to “seek improvement of the law, access to the legal system, [and] the administration of justice.”¹⁷

II. Beyond Plain English

Besides adhering to Plain English legal writing principles, what else can we as lawyers do to make legal writing more inclusive? The ILGs offer some other ideas that apply nicely to the practice of law.

A. Listen first, and ask if you aren’t sure

Lawyers are often presented with facts in a vacuum. We may not know the individuals involved in a given matter, let alone what pronouns they use or descriptors they might apply to themselves. When we have an opportunity to interact with a client, opposing party, witness, or judge, listen to the words they use to describe themselves and use those when referring to them.¹⁸ This will not only make our legal writing more accurate and inclusive, but may make us better listeners as well.

B. Don’t generalize

Just as we should listen to how individuals describe themselves, we must not generalize beyond any one person. In other words, “customize identity descriptors for every person in the room.”¹⁹ Even family members or close friends may choose different descriptors for the same trait or background.²⁰

C. Emphasize people, not their disabilities

Plain English legal writing favors placing the subject and verb of a sentence close together at the beginning of a sentence. That way we understand right away who the actor is and what the actor is doing before we

digest what lies ahead. In the same vein, inclusive language principles teach us to focus on the person before introducing that person’s disability, diagnosis, or circumstance. For example, we might say “person with a disability” rather than “disabled” person.²¹ Or person “experiencing homelessness” (or houselessness) rather than “homeless person.”²² Similarly, avoiding labels – e.g., blind, deaf, dumb, wheelchair-bound, handicapped – that fail to recognize that a person is more than just their disability prioritizes inclusion and respect and acknowledges that “people with disabilities are more like people without disabilities than different.”²³

D. Be careful with imagery

As writers we often try to use creative, vivid imagery to bring our words to life. ILGs, however, teach us to exercise caution with our imagery choices for two reasons: first, certain imagery and metaphors may not translate to a diverse audience. Literal language may be preferable when clarity is key.²⁴ Second, certain imagery – e.g., dark, black, blind – may be offensive to some because those words refer to human traits but have negative connotations. That’s not to say that we should strip our writing of color or imagination, but let’s be thoughtful about word choices.²⁵

E. Understand that IDEA is not just about race

IDEA efforts proliferated dramatically in the wake of the death of George Floyd and others. Many of these efforts focused on fighting racial inequity, and rightly so. But now that many institutions are thinking about IDEA, let’s remember there is more to it than race. As we ponder how to make legal writing more inclusive, let’s expand our understanding of inclusivity along a number of dimensions:

Gender identity. Gender identity is “[o]ne’s innermost concept of self as male, female, a blend of both or neither – how individuals perceive themselves and what they call themselves.”²⁶ A person’s gender identity may be the same or different as the sex that person was assigned at birth.²⁷ When we encounter someone in our professional lives about whom we must write – a client, witness, opposing party – but we don’t know their gender identity, what’s a lawyer to do? Instead of making assumptions, we have some choices. The best option is to inquire, if possible. Otherwise, refer to the person by their name, or possibly their role in the case (“plaintiff,” “witness,” or “expert,” for example).²⁸ A third option: use nongendered pronouns (they/them) to refer to the individual.²⁹ Try also to avoid words or phrases that imply that gen-

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der is binary – e.g. “ladies and gentleman” – and avoid terms that exclude certain gender identities – e.g., mankind, manmade.³⁰

Mental and Emotional Health. To write effectively for a diverse audience, we must acknowledge that people have varying mental and emotional processing. To that end, consider refraining from using actual medical diagnoses to describe everyday feelings and moods.³¹ Words like depressed, OCD, ADHD, retarded, or demented trivialize those medical conditions, dredge up remnants of discrimination towards mental illness, and exacerbate stigmas attached to certain mental health diagnoses.³²

Cultural Diversity – Race, Ethnicity, Nationality, Religion. There is no easy way to refer to someone’s cultural identity if we do not know how they self-identify. Race, ethnicity, nationality, and religion may be related, or they may not be, and writers can offend and alienate readers by making assumptions about a person’s cultural identity. When we do not know how a person identifies, we can turn to some of our fundamental inclusive language principles: ask the individual, if possible. Avoid generalizing within groups of people. Or, be specific. For example, use “born in the U.S.” instead of “American” to acknowledge that there are other countries in the Americas besides the U.S.; similarly, use “born in Mexico” instead of “Hispanic” to acknowledge that many people from Spanish-speaking countries do not consider Spain to be their place of ancestry. When at a loss, be thoughtful, and acknowledge your mistakes.

* * *

This list touches on only a handful of inclusive language practices. There are many categories not mentioned above,³³ and even more ways to make language more inclusive. The purpose of this article is not to be comprehensive or prescriptive; it is to acknowledge an opportunity – as lawyers, writers, teachers, and mentors – to support a “paradigm shift” towards more inclusive communication.³⁴ There is so much more to say on this topic. Let’s say it in a way that all can understand.

Anna F. Connolly, Esq. is a Visiting Assistant Professor of Law at Vermont Law School. Prior to that she was a litigator at Cleary Gottlieb Steen & Hamilton LLP in New York City.

¹ See, e.g., Tracy Jan, Jena McGregor, and Meghan Hoyer, *Corporate America’s \$50 Billion Promise*, WASH. POST (Aug. 24, 2021), <https://www.washingtonpost.com/business/interactive/2021/george-floyd-corporate-america-racial-justice/> (“To date, America’s 50 biggest public companies and their foundations collectively committed at least \$49.5 billion since [George]

Floyd’s murder . . . to addressing racial inequality—an amount that appears unequaled in sheer scale.”); Candice Norwood, *Racial Bias Trainings Surged After George Floyd’s Death. A Year Later, Experts Are Still Waiting for ‘Bold’ Change*, PBS (May 25, 2021), <https://www.pbs.org/newshour/nation/racial-bias-trainings-surged-after-george-floyds-death-a-year-later-experts-are-still-waiting-for-bold-change> (noting that “[h]iring for experts who specialize in addressing racism, implicit bias, and diversity, equity and inclusion (DEI) has . . . accelerated in the year following Floyd’s killing”); Jen Colletta, *Number of the Day: DEI After George Floyd*, HUMAN RESOURCE EXECUTIVE (Apr. 1, 2021), <https://hrxexecutive.com/number-of-the-day-dei-after-george-floyd/> (noting that recent survey of human resource executives from many of the “largest global employers . . . [showed] 82% cited DEI” as a “top concern[.]”); see also Alex Hickey, *One Year After George Floyd’s Death, Corporate America Is Still Scrambling to Hire Chief Diversity Officers*, BUSINESS INSIDER (May 25, 2021), <https://www.businessinsider.com/chief-diversity-officers-in-demand-after-george-floyds-death-2021-5>; *One Year Later, George Floyd’s Death Inspires Corporate Leaders to Take Bolder Actions to Improve Diversity, Equity and Inclusion*, PR NEWswire (May 25, 2021), <https://www.prnewswire.com/news-releases/one-year-later-george-floyds-death-inspires-corporate-leaders-to-take-bolder-actions-to-improve-diversity-equity-and-inclusion-301298363.html>.

² See, e.g., Debra Cassens Weiss, *How Law Firms Reacted to Racial Injustice and the COVID-19 Pandemic*, ABA JOURNAL (Mar. 2, 2021), <https://www.abajournal.com/news/article/how-law-firms-reacted-to-racial-injustice-and-covid-19-pandemic>; see also Meghan Tribe, *Law Firms Call for Social Justice, Despite Own Diversity Issues*, BLOOMBERG LAW (June 4, 2020), <https://news.bloomberglaw.com/us-law-week/law-firms-call-for-social-justice-despite-own-diversity-issues> (describing recent law firm efforts to “root out systemic racism”).

³ *Law Firm & Law School Responses to the Black Lives Matter Movement*, FIRSTHAND: VAULT LAW (June 10, 2020), <https://firsthand.co/blogs/vaults-law-blog-legal-careers-and-industry-news/law-firm-law-school-responses-to-the-black-lives-matter-movement> (collecting comments from law schools and law firms about recent commitments to diversity).

⁴ Karen Sloan, *U.S. Law Students to Receive Anti-Bias Training After ABA Passes New Rule*, REUTERS (Feb. 14, 2022), <https://www.reuters.com/legal/legalindustry/us-law-students-receive-anti-bias-training-after-aba-passes-new-rule-2022-02-14/>.

⁵ In doing the research for this article, I reviewed over twenty ILGs from a mix of sources – academia, government, nonprofit and for-profit entities, professional associations, and international bodies.

⁶ Jackie Ferguson, *Say This, Not That: Activating Workplace Diversity Through Inclusive Language Practice*, THE DIVERSITY MOVEMENT and RELIAS at 5, https://thediversitymovement.com/wp-content/uploads/2020/11/WW-SayThis-whitepaper_201116-F.pdf [hereinafter *Say This*].

⁷ *Id.*

⁸ See, e.g., American Psychological Association, *Forward to EQUITY, DIVERSITY, AND INCLUSION: INCLUSIVE LANGUAGE GUIDELINES*, <https://www.apa.org/about/apa/equity-diversity-inclusion/language-guidelines.pdf>; cf. Conor Friedersdorf, *The Medical Establishment Embraces Leftist Language*, THE ATLANTIC (Nov. 13, 2021), <https://www.theatlantic.com/ideas/archive/2021/11/leftist-language-policing-wont-fix-health-disparities/620695/> (criticizing the American Medical Association’s and Association of American Medical Colleges’ ILG

because it “adopts language to advance an ideology rather than to communicate clearly”).

⁹ See Kathleen Dillon Narko, *Improve Your Legal Writing with Plain English for Lawyers*, ABA FOR LAW STUDENTS (Oct. 20, 2021), <https://abaforlaw-students.com/2021/10/20/better-writing-with-plain-english-for-lawyers/>; see generally *Plain Language in the Legal Profession*, U.S. GOVERNMENT, <https://www.plainlanguage.gov/resources/content-types/legal-profession/>. But I acknowledge that there are other pedagogies that would likely overlap less with ILGs.

¹⁰ *The Acrolinx Inclusive Language Guide*, <https://www.acrolinx.com/resources/the-acrolinx-inclusive-language-guide/> [hereinafter *Acrolinx*]. While no one ILG will represent all others, I have chosen Acrolinx because it embodies principles found in many ILGs and because it examines techniques for inclusive writing.

¹¹ *Id.* at 7.

¹² *Id.*

¹³ *Id.* at 8.

¹⁴ See, e.g., RICHARD C. WYDICK & AMY E. SLOAN, *PLAIN ENGLISH FOR LAWYERS* (6th ed. 2019); see also Narko, *supra* note 9.

¹⁵ See *Acrolinx*, *supra* note x, at 8.

¹⁶ Every legal writing principle comes with exceptions, and there are undoubtedly instances when pronouns and the first person are preferred. See BRYAN A. GARNER, *LEGAL WRITING IN PLAIN ENGLISH* 49 (1st ed. 2001).

¹⁷ MODEL RULES OF PRO. CONDUCT Preamble (AM. BAR ASS’N 1983).

¹⁸ *Say This*, *supra* note vi, at 8.

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.* at 14.

²² *Acrolinx*, *supra* note x, at 12.

²³ *Id.* Some people choose to use “identity-first language” instead of “people-first language,” but when we are uncertain about a person’s preferences, consider using people-first language. *Id.*

²⁴ Of course, we must always be mindful that certain literal descriptions – e.g., of a person’s body size or shape – might be inappropriate, even if literally correct. See *Say This*, *supra* note vi, at 17 (describing inclusive language around physicality).

²⁵ *Id.* at 9.

²⁶ *Sexual Orientation and Gender Identity Definitions*, HUMAN RIGHTS CAMPAIGN, <https://www.hrc.org/resources/sexual-orientation-and-gender-identity-terminology-and-definitions>.

²⁷ *Id.*

²⁸ To be sure, referring to people by their role in a legal proceeding has its own drawbacks. In some instances, these terms may stigmatize an individual (e.g., “defendant”) or may create confusion where there are multiple parties to whom a given term might apply.

²⁹ See generally Greg Johnson, *Welcome to Our Gender-Neutral Future*, 42 VERMONT BAR J. 36 (2016).

³⁰ *Say This*, *supra* note vi, at 11.

³¹ *Id.* at 15.

³² See *id.*

³³ One category not discussed is that of acquired diversity, or characteristics acquired over time such as age, education, veteran status, immigration status, etc. See *Say This*, *supra* note vi, at 21.

³⁴ *Inclusive Language Guide*, OREGON HEALTH & SCIENCE UNIVERSITY CENTER FOR DIVERSITY AND INCLUSION (Feb. 2021) at 4, https://www.ohsu.edu/sites/default/files/2021-03/OHSU%20Inclusive%20Language%20Guide_031521.pdf.



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WHAT'S NEW

Bar Foundation Welcomes New Executive Director, Jose Herrera

Jose Herrera is the new Executive Director for the Vermont Bar Foundation. He began in May of this year, succeeding the Foundation's longtime previous Executive Director, Debbie Bailey. Bailey retired in December 2021, and Interim Executive Director Josie Leavitt, who helped enliven and grow the Foundation during her tenure as Development Director and then Interim ED.

Herrera's nonprofit background, combined with a passion for creating partnerships and a philanthropic culture among his colleagues and community, will help advance the Foundation's mission of increasing access to justice for low-income and underserved Vermonters.

"We are thrilled to welcome Jose as our new Executive Director," says Board President Renee Mobbs. "Jose will bring a fresh perspective to our work, as well as a deep commitment to strengthening the Foundation's existing relationships and building new ones."

Herrera's hiring comes as the Foundation works to implement a new stage of strategic growth to capture new donors, make new and more meaningful partnerships, and reach even more Vermonters in need

of legal assistance.

"I am very excited to begin my new role as Executive Director of the Vermont Bar Foundation," said Herrera. "For over 20 years, I have worked to build mutually beneficial partnerships and increase the influence of my respective organizations. I'm thrilled to begin forming authentic relationships that will help the Vermont Bar Foundation increase its visibility and impact across Vermont, allowing us to raise the funds necessary for low-income Vermonters to have equal access to justice."

Herrera's background includes leading the member services team at the Arizona Society of CPAs (with over 6,200 members), serving as Vice Chairman of the Arizona Independent Redistricting Commission (where he worked closely with elected and appointed officials and community and business leaders), and fundraising for the Maricopa Community Colleges (helping them to achieve their \$50 million fundraising goal).

Most recently, Herrera served as an Executive Director of the Valley of the Sun YMCA, where he empowered the Board of Directors and community members to advocate on behalf of the organization



and influence a number of stakeholders to make necessary investments in programs and services.

Herrera has a Bachelor of Arts in International Affairs and a Master of Arts in Educational Leadership, both from the Northern Arizona University.



WHAT'S NEW

Bob's Back



Bob Paolini, Esq., has "un-retired." He returned as of July 1 to serve as interim executive director of the VBA. The vacancy left by Teri Corsones, who is now Vermont State Court Administrator, remains under recruitment at press time. (Details are available in the classified's section of the VBA website).

After practicing law in the Montpelier-Barre area and serving two terms in the Vermont House, Bob became Executive Director of the VBA in February 1996. He served in that role for 20 years, retiring in June 2016. Since then he has maintained a legislative presence with his own lobbying and consulting business. "I'm happy to return to the VBA as its interim director as the Board works to recruit a new director," he said. "I hope to hear from you as to how the VBA can continue to serve its members. Please reach out to me at any time." Bob's new email address is: bpaolini@vtbar.org.



BE WELL

Our Starfish Clients: The Power of Believing *Being a Lawyer Isn't Easy, But We Have the Power to Transform Lives and the Privilege of Being Transformed by some of our Clients*

The Starfish Story. We've all heard it. If you haven't heard it, I will summarize it here for you: Thousands of starfish had washed up on a beach after a big storm, drying out and dying. A young child was walking along the shore, picking up starfish and gently throwing them back into the ocean. Passersby jeered, "Do you realize there are miles and miles of beach? You can't possibly make a difference." The child paused, then bent down to pick up another starfish and gently throw the animal back into the water. "Well," said the child, "I made a difference to that one."

I met Anna in a hospital. Hours earlier, while alone in a bathroom, Anna experienced a terrifying explosive birth. Rescue took her to the hospital, and DCF got involved. The State requested emergency custody, and the Court issued an order to take Anna's baby from her.

I was a contracted family court public defender, and I was assigned to represent Anna. When I received the assignment, I wasn't given any contact information for Anna, but the hearing was scheduled for the next day. I knew I had to find her. After reading that Anna's baby was just hours old, I made the best guess I could and headed for the hospital. A lady in reception inquired about the nature of my visit. "I'm here to see Anna," I said. "She just had a baby." The woman nodded and handed me a visitor sticker. I hurried down the long hall and rode the elevator up to the birthing center.

When I met her, Anna was a wreck. Her skin was pale, and her hair was disheveled. At times, she looked dazed. Anna had a long history with substance use disorder, and she was a fugitive from justice and wanted in several states. But that wasn't what I saw when I looked at Anna. As I sat down in a chair beside her, I watched as Anna gently cradled her newborn daughter, stroking her soft black hair and kissing her sweetly. I saw a mother. I saw a future. I saw hope.

I was in the room when the police and DCF handed Anna the order stating that she was no longer her daughter's legal custodian. The order stated that she couldn't be alone with her child. I asked the hospital attendant what that meant on a practical level. They said that as much as they wanted to keep someone there, as important as

it was that a baby remain with her mother in the hours immediately after birth, they didn't have the staffing. The baby would be taken from Anna's hospital room. In response to that information, I decided to stay with Anna for several hours—to help allow that crucial bonding time while we figured out a plan.

That night, I stayed up writing a motion to try to return the baby to Anna's custody. In the morning, the police showed up at the hospital with handcuffs. They barely let Anna finish nursing her daughter before cuffing her and taking her to the courthouse. Any attempt to return the baby to Anna's custody was thwarted when the criminal court judge ordered her immediate incarceration. I remember looking at my client, shackled and leaking breastmilk, being hauled away less than 24 hours after giving birth. I remember her despondency. I remember holding her hands, looking her in the eyes, and telling her that she could get through this. It would be a ton of work, but we could work together.

Anna worked. She worked and worked and worked. She committed to her recovery and sobriety. She pumped milk. She hung on every word I spoke and followed every instruction I gave her. And because of Anna's hard work and relentless determination, Anna's criminal attorney was able to negotiate a global resolution. In family court, Anna and I were able to get her baby back, and Anna was able to start to build her life.

Today, Anna uses her life experience to help people who are struggling with substance use disorder. She has found her calling in helping others to heal through restor-

ative justice. A handful of years after she was a resident at an in-patient facility, Anna was hired to be a counselor.

While I credit Anna completely for her successes, she frequently informs me that I was a catalyst in her story. Anna recently gave an interview about her experience where she said, "[Meg] remained in high hopes of me; kept her faith in me. And that is exactly what I needed. We... people who are suffering from addiction are suffering, and we need connection. We need just one person to step up and say, 'Hey. I believe in you,' and actively show it. Not enable behaviors, but show that we're worth it and there's someone who believes in us."

Anna is my starfish. As attorneys, particularly as public defenders or public interest attorneys, it is easy to get overwhelmed. Our clients' needs are extensive and our caseloads are enormous. Even as we remain committed to zealous advocacy, it can become easy to feel defeated. Can we really make a difference? The answer is yes, and Anna's story illustrates just how much of a difference we can make simply by believing in our clients.

Anna is an inspiration. Since working on her case, Anna and I have remained in touch. She sends me updates on how she is doing, and photos of her daughter. I feel so fortunate to know Anna, and to have been a small part of her amazing story.

This story was submitted with "Anna's" permission and approval. Nevertheless, her name and other identifying information has been changed to protect Anna's identity and the identity of her daughter.





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Choosing Vermont



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*And you may find yourself driving
through a sideways snowstorm,*

*And you may find your gag reflex
triggered by the application
of manure on the fields,*

*And you may find yourself
earning a third of what your
law school buddy is making,*

*And you may find yourself
yelling at a bear that has
come up on your porch,*

*And you may ask yourself,
“Well, how did I get here?”*

A lawyer I worked with once told me about a couple from California who, one fine May, bought a house in Charlotte (Charlotte, Vermont, of course). They sold up within the year and went back to California. It was the flies. Then the winter. Many come to Vermont, but few are chosen. Vermont is the second least populated state in the nation with 623,000 residents by the latest count. Only Wyoming has fewer people (581,000). For those of us practicing law here, it is invariably the result of having set our sights on Vermont – to come here, to return here, and to abide.

Workforce Development is a major issue for the state. It's a hard fact that Vermont needs people to fill the jobs now on offer and to create the Vermont of tomorrow. This need extends to the legal profession. At the VBA we are hearing about difficulties recruiting new attorneys. So with this issue of the Bar Journal, we are focusing on

some personal stories about what it is that brought some of us to this place and why it is the only place many of us would consider living and working.

We will start with the Vermont stories of some of our Board of Managers and your editor. Each person has clearly made a choice and commitment to practicing law in Vermont. Going forward, we hope to highlight the stories of other attorneys who have committed their careers to Vermont. This includes those who have been working here for decades and those of you who have your sights set on moving here to work in Vermont law. We will also be inviting students at Vermont law school to submit essays about their Vermont experience – what they have found here, what they need to stay here. The aim is to provide reinforcement to those who are here, and encouragement and information to those who might also belong here.

Care to share your Vermont law career story? We'd love to hear it. If you want to answer the "Choosing Vermont Questionnaire" shoot me an email at kvelk@vtbar.org and I'll get one right out to you.

And now, (in alphabetical order) here's why some of us have chosen Vermont.

PAM EATON, ESQ. VBA BOARD MEMBER

Who are you and where do you work?

Pam Eaton, Director at Paul Frank + Collins P.C. in Burlington, Vermont.

If you're from away, what brought you to Vermont? I was born in Missouri, but knew I never intended to stay in Missouri

long term (that being said, I have held onto my Missouri cellphone number; it's one of the last connections I still have to my childhood in Missouri).

After high school, I did a tour of the US (Washington, DC for college; Crested Butte, CO for a stint as a ski bum; Spokane, WA for law school). From all my travels, I knew I wanted to live near ski mountains. I'd met my now husband in Colorado. He was from New Hampshire. After visiting his family in New Hampshire and exploring Vermont, we realized that Vermont had everything we wanted: mountains and being close to family.

For non-natives, why have you remained in Vermont? I love my small town! It is a great community, and I am happy raising my son in a place that feels safe whether we are walking to town or adventuring in the woods.

How, in your opinion or experience, is law practice in Vermont different from other places? Vermonters tend to be practical and that trait bleeds into the practice of law. The attorneys I've both worked with and opposed are willing to think creatively to find solutions that meet the needs of their clients. Also, in Vermont, even opposing counsel are friendly and professional. Once I'm out of the courtroom, I've talked to opposing counsel about the best place to find secret snow stashes, new craft brews, and/or discussed the VPR story we both heard on the way to the courthouse.

What are your three favorite places (mountains, lakes, restaurants, whatever)

er) in Vermont and why are they your favorites? I don't want to give away all of my favorites, but in the summer, I love heading to the bike trails of Blueberry Lake and then follow-up the excursion with a sandwich from the Warren Store. I also have a soft spot for the creemee stand down the street from my house. I may be biased, but the maple creemee is better than anywhere else in Vermont. Finally, I love the Green Mountain Inn in Stowe, Vermont--it is a special place, but is also where I got married.

When you travel in the Rest of America ("ROA") what makes you wish you were back here? I love coming home to the vibrant shades of green. I also love returning to Vermont because of the small-town feel. I love that there aren't box stores on every corner or McDonald's at every highway exit.

What's the number one bit of advice you would give to an attorney thinking of coming to work in Vermont? The work is fun and rewarding. Just because Vermont has a small population doesn't mean that we don't have our fair share of interesting cases.

**BOB FLETCHER, ESQ.
VBA BOARD MEMBER
AND PRESIDENT**

Who are you and where do you work? Hi. My name is Bob Fletcher, and I am one of the owners of a 7-attorney firm in Burlington. I am also the current President of the Vermont Bar Association.

For natives, why did you decide to stay in Vermont or to return? I was born and raised in Burlington, growing up in the South End less 10 minutes from where I work. I went away to CU Boulder for my undergrad degree. Colorado was terrific, and I enjoyed living and working there, but I couldn't get the Green Mountains out of my system.

My wife and I (born in South Burlington) felt like we had to raise our kids here. And why not? Green grass, multi-colored leaves, 5 seasons each 12 months, lakes, mountains, family and friends, clean environment, good and independent people who value hard work and independence. We came back in 1977, living in South Royalton and Bethel while I attended VLS. We moved back to Burlington to work and raise our family.

How, in your opinion or experience, is law practice in Vermont different from other places? I haven't practiced outside Vermont, so I am no expert. Vermont practice is collegial, respectful and coopera-

tive. It may be that way because the bar is small, and you can't afford to be a jerk today when you're likely to see the same attorney tomorrow. Besides, although the legal system is naturally adversarial (in most instances), I've found you can get better outcomes if you try to work to a sensible solution and respect the viewpoint of other parties as much as you want your client's viewpoint to be respected.

What are your three favorite places (mountains, lakes, restaurants, whatever) in Vermont and why are they your favorites? Tough question. Too many options. I'll try to limit my answers to a few highpoints.

I spent a lot of my "formative years" on Lake Champlain and I still can't get enough of it. It is a true gem, and an experience no one should miss. And it is so different from area to area. The Islands are beautiful with lots of small coves and anchorages. Malletts Bay is unique, but so is Valcour Island. The broad lake will test you when the wind is up, but Burlington Harbor, Shelburne Bay, Quaker Smith Point and Essex, New York are all worthy stops. The southern lake is narrower, with the Green Mountains on one side and the Adirondacks on the other. Stop in Westport, Basin Harbor or visit Fort Ticonderoga -- try it all!

Another passion is cycling. My kids and grandkids are into mountain biking, as are we. The Kingdom Trails are beyond description, in my opinion. Steeps, cruisers, berms, technical, uphill and down, and the views are breathtaking. When you're done, jump in the river or drive 20 minutes to Lake Willoughby and really cool off. I also enjoy gravel rides -- no traffic (generally), views, you set your own speed and vertical challenge, and get some exercise. If you don't stop along the way for a creemee, a coffee or a baked good, you've missed the point.

Skiing. Downhill or XC, doesn't matter which.

I enjoy eating at Pulcinellas in Shelburne, the Equinox in Manchester, and the Blue Paddle in South Hero (and lots of other places, trust me). The craft brew options here are unending and award winning, as is the ice cream, cheese, liquor, and about everything else.

When you travel in the Rest of America ("ROA") what makes you wish you were back here? See answer 1.

What's the number one bit of advice you would give to an attorney thinking of coming to work in Vermont? Talk to somebody (or several somebodies) who work here. You may hear things you like, things you don't and some that make you winch. But no one here is going to try and deceive you. But remember it isn't all



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about the practice. It's the place and people as well.

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ELIZABETH KRUSKA, ESQ.
VBA BOARD MEMBER
AND PAST PRESIDENT

Who are you and where do you work? I am Elizabeth Kruska. I'm a solo practitioner in Woodstock.

If you're from away, what brought you to Vermont? I'm originally from Kalamazoo, Michigan. I moved to Vermont to attend Vermont Law School. I had my choices narrowed down to Vermont or Miami, and every winter I wonder why I didn't pick Miami!

For non-natives, why have you remained in Vermont? I met my now-husband at Vermont Law School. He is originally from New Jersey and didn't have an interest in returning to New Jersey to practice. I didn't necessarily want to return to Michigan. We decided together we'd both try to stay in Vermont, and it ended up working out for us. We both preferred the less pressured pace of life. I quickly realized that it's easy to become a part of a community here – whether that is a geographic community or a community of people, like the bar. That was very appealing to me.

How, in your opinion or experience, is law practice in Vermont different from other places? I don't practice in any other states, but I do sometimes have to talk to lawyers in other states. I haven't had any bad interactions with lawyers from other states, but I often get the sense Vermont lawyers tend to be more friendly and often more practical than lawyers in other places.

What are your three favorite places (mountains, lakes, restaurants, whatever) in Vermont and why are they your favorites? I live in Woodstock, and I really like the village green. It feels like our whole town's front yard. It's a good place to watch the world go by, and to meet people. I suspect other town greens feel the same way! Second, my husband and I own a retired racehorse, and she's stabled at a farm on top of a hill near White River Junction. It's very quiet and beautiful and has views for miles. And the horse is incredibly happy there. Sometimes I just hang out there with her in her paddock while she grazes. It's nice. Last, I like the "Welcome to Vermont" signs – all of them. I love going places and doing things, but it's always nice to come home!

When you travel in the Rest of America ("ROA") what makes you wish you were back here? Billboards! I never realized how distracting they can be until I lived somewhere (here!) without them.

What's the number one bit of advice you would give to an attorney thinking of coming to work in Vermont? The Vermont bar is incredibly friendly and cooperative. Attorneys necessarily have to take adversarial positions, but generally Vermont lawyers are civil, courteous, and often really helpful. And because it's a small bar, there's no room to be impolite or discourteous, the way perhaps attorneys in big cities can be. So, while it can be challenging to live and work here in a lot of ways, it also can be very friendly and inclusive.



Kate Lamson, John Lamson, also an attorney who teaches law at Southwest Vermont Career Development Center, Josef Lamson and Penelope Lamson.

KATE LAMSON, ESQ.
VBA BOARD MEMBER

Who are you and where do you work? Kate Lamson; Public Defender the Bennington Office.

If you're from away, what brought you to Vermont? Like so many VLS alums, I

originally thought I wanted to go into environmental law, so the (always and forever no matter what US New and World reports) best environmental law school in the country brought me here!

For non-natives, why have you remained in Vermont? I left Vermont after law school thinking that it was too slow-paced and too rural. About a year after I was living and working in D.C., I took the wrong turn off of Dupont Circle. It turned into a multi-hour ordeal because there was too much traffic for me to turn around. While lost on some one-way street or another I remembered all the times I was lost in Vermont and how easy it was to turn around. Life in general is like that in Vermont, I find—it's easy to turn around when you feel lost, and there are always kind locals to help you find your way.

How, in your opinion or experience, is law practice in Vermont different from other places? In Vermont, what you do for a living is always (blessedly!) secondary to who you are. In a city you're constantly asked who you work for, what kind of law you practice, etc., but in Vermont people are just as interested in whether or not you garden or run marathons as they are in who you work for. There is truly a culture of working to live, and not living to work.

What are your three favorite places (mountains, lakes, restaurants, whatever) in Vermont and why are they your favorites? The Robert Frost trail in North Bennington is a magical little four-mile hike that takes you around Lake Paran and ends at the home that Robert Frost wrote "Stopping by the Woods on a Snowy Evening" in. It is equally beautiful in all the seasons. My husband's family owns some land in South Royalton that has a spring-fed pond where my children learned to swim and where we all camp—the water from the spring is the most delicious in the world and I swear it has restorative powers! The third place is the little village I live in, North Bennington. Sometimes when I'm walking the kids to school with the other families, I have to pinch myself it's all so safe and picture perfect—how does such a tiny little town have such a wonderful library? And school? And restaurant? All a short walk from my front porch.

When you travel in the Rest of America ("ROA") what makes you wish you were back here? When I got married a friend performed the ceremony, and so had to communicate with the town clerk about the license. When he was delivering his opening remarks he spoke about how he was so charmed by the fact that the clerk knew who my husband and I were and knew we

were getting married. Then the clerk, in the audience, laughed and waved at him and he could hardly believe it—that she was there. Vermont is one of those places that somehow matches expectations and then doubles down on them.

What's the number one bit of advice you would give to an attorney thinking of coming to work in Vermont? The winters are worth it!! And people really do remember your accomplishments more than they remember your mistakes.



Kevin Lumpkin and Rusty.

KEVIN LUMPKIN, ESQ.
VBA BOARD MEMBER,
CURRENT PRESIDENT OF THE
YOUNG LAWYERS DIVISION

Who are you and where do you work?
Kevin Lumpkin, Sheehey Furlong & Behm

If you're from away, what brought you to Vermont? I am originally from upstate New York but found myself attending the University of Texas for undergrad. It wasn't my scene, so I transferred to the furthest place I could imagine from Texas and ended up at UVM. Aside from attending law school elsewhere, I never left.

For non-natives, why have you remained in Vermont? I really value the community here, both legal and non-legal. Vermont is big enough that there is always something new to explore, but small enough to get to know your neighbors and colleagues.

How, in your opinion or experience, is law practice in Vermont different from other places? We are truly a "small pond" bar. Everyone is accessible, and we do well at drawing the line between advocacy and collegiality.

What are your three favorite places (mountains, lakes, restaurants, whatever) in Vermont and why are they your favorites? Mount Abraham, Lake Willoughby, and the Little Gordo creemee stand. What else could a person want? A gorgeous mountain, a gorgeous lake, and incredible creemees!

When you travel in the Rest of America ("ROA") what makes you wish you were back here? The sense of belonging and community I feel in Vermont.

What's the number one bit of advice you would give to an attorney thinking of coming to work in Vermont? Vermont attorneys are incredible accessible and giving of their time – send some emails, talk to some folks, and learn why we all choose to live and practice here!



KIM VELK, ESQ.
DIRECTOR OF EDUCATION
AND COMMUNICATION, VBA

Who are you and where do you work?
Kim Velk, Esq., director of education and communication for the Vermont Bar Association, Montpelier.

If you're from away, what brought you to Vermont? I was born and raised in upstate New York but got my bachelor's degree at McGill in Montreal. (Long story). After a few years back in New York working for various publications, I really wanted to go back to Montreal. I wasn't good at science (medicine was out) or math (no MBA for me) but I could talk and write so law school it was to be. While I was in law school my husband-to-be and I bought an old farm in the Northeast Kingdom of Vermont as a weekend getaway. Practicing law in Canada would have been hard and complicated, and I had a foot on the ground in Vermont. I knew I could write both the Vermont and New York bar exams with my McGill law degree, so Vermont was the place I decided to come for work.

For non-natives, why have you remained in Vermont? Of course, having made it through to a law license here, I had made an investment in working in Vermont.

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That said, I've never really been tempted to leave the state. The beauty of the place is hard to overstate or overemphasize. I often find myself driving or walking along, thinking about something perplexing, and I'll look up and think, 'that's beautiful.' The landscape gets into your bones. It's also the human scale of the place. In my first

job here as an associate in a small firm, one of the partners asked me to track down some individual. All he knew was her name and the town she once lived. (This was before the internet is what it is now). He told me to call the town clerk. I think it was in Cambridge. I, recently of Montreal and Albany, New York, was like, "how would they

know?" Anyone who has lived in Vermont for more than a few months could tell you how this story ends. The town clerk practically told me the person's life story. That really impressed me.

How, in your opinion or experience) is law practice in Vermont different from other places? I've only ever practiced in Vermont, but I have worked with other lawyers from other states and my brother is judge in Texas. I think one difference is that our small scale means you will be known. Rascally behavior and sharp elbows don't work for lawyers here.

What are your three favorite places (mountains, lakes, restaurants, whatever) in Vermont and why are they your favorites? The Nordic trails at Jay Peak – there is a unique magic there and I have a lot of history there now as well; the Cotton Brook trails in the Mount Mansfield State Forest in Stowe – same reason; the Inn at Shelburne Farms. The Inn was once the summer home of the Vanderbilt family. The first time I walked into the building, I felt, "I'm home." Also, see above, re "Vermont is beautiful." The view over Lake Champlain could break your heart.

When you travel in the Rest of America ("ROA") what makes you wish you were back here? Of course, it's nice to get away but at this point I couldn't put up with the terrible traffic, giant highways, and general bigness that characterizes the places I most often visit.

What's the number one bit of advice you would give to an attorney thinking of coming to work in Vermont? Be nice. Or, conversely, don't be a jerk. This goes for everyone, of course, but particularly in our small legal community.



Welcome to the Museum of Antique Office Supplies

New England lore often includes tales of the thriftiness of its inhabitants. We're described as "sturdy stock" who are pragmatic, inventive, and able to "make do." The "Old Farmers' Almanac" regularly features articles on money and time saving tips – often centered around coffee grounds, duct tape, re-purposed pallets, or daylight savings.

To say our law practice values these New England ethics, would, perhaps, be putting it mildly. Originating in the late 1930's the firm has been located at a variety of downtown locations, including a second-floor walkup, before acquiring its own Main Street real estate in 2017, when a circa 1845 Federal style dwelling became the repository for decades of office contents and ephemera. Staff have come to fondly refer to it as "The Museum of Antique Office Supplies."

In joining the firm in 2015 I saw firsthand the firm's dedication to reduce, recycle, reuse. The senior partner's desk is derived from a solid wood door, heavily shellacked with bar-top epoxy, resting upon two half-size filing cabinets on either end. It doesn't contain luxuries such as a charging station, internet cable ports, or even a center drawer. Until I went rogue and placed an order with M.B. Mason, it didn't have its own stapler or mouse pad, those were shared with the assistant in the next office. The "desk" is going on its seventh decade in use...

Until quite recently, carbon paper was still in active use in our practice. What is carbon paper? That's exactly what our young legal assistant asked, as its manufacture and sale had probably ceased before she was born. Apparently, sometime in the 1970's an office assistant ordered an abundance of bank deposit slips that required the process of slipping a sheet of carbon paper between the pages in order to create a duplicate record. By the time I arrived on the scene, the office was down to one sheet that had to be turned and repositioned in order to create the copy, because – well, by golly we hadn't used up the supply of slips yet!

The office possesses a gigantic late 19th century safe. When I say it is gigantic, I don't mean in the practical storage space sense, which it is sorely lacking, I mean in its weight and girth. Originally obtained as a cast-off from some other local business, it has been schlepped between office moves over the decades, including that un-

fortunate second-floor walkup. In the 2017 move, some of the staff who hadn't developed any attachment to it, hoped we could quietly move out of the leased office space and leave it behind for the unsuspecting future tenant. No such luck. Stronger sentiments prevailed, and a professional moving company was hired to lug it with us. I don't know that the 20-something moving team had ever encountered anything so heavy. Ironically, it ended up in the storage garage at the new office, as it turned out there was no practical space to put anything that imposing. Why is it still in the garage then you ask? Why because we might find a use for it. You never know.

It was only recently discovered that the bookkeeper's date stamp had expired with the 20th century. She could no longer stamp accurate dates on documents because the settings only went as high as 1999. For the past twenty plus years, staff have been tweaking the settings and manually adding the correct year to all our documents. Why? Well, because it works perfectly fine otherwise! Upon being convinced the firm could spring for a 21st century date stamp, the bookkeeper finds that the new stamp isn't anywhere near as satisfying to click onto a page. It doesn't trigger the same nostalgia of playing "librarian" as a kid. I guess newer isn't always better.

No one has figured out how to manage without our circa 1961 IBM Selectric typewriter yet. Although obtaining ribbons and cartridges for it can only be procured from

a 90-something retired IBM salesman who is still liquidating his original stock.

My latest discovery was that the abundance of rubber bands we seem to stock all dried and melded together in their original boxes. I'm quite sure they're likely residing at their third or possibly fourth office location. Next to a rock, yes literally a rock, which moved with us from previous tenancies, and which no one seems to know for what purpose it serves. However, giving it the "old college try" I strapped a large band around a pile of pending files on my desk, trying to maintain order. No worries or risk that there would be a sudden violent snap with possible injury resulting. In a matter of hours, the band had quietly expired on its own, cracking and crumbling rubber dust in its wake. No one could convince me otherwise; the boxes were going in the trash. But wait, doesn't the "Old Farmers' Almanac" have a use for disintegrated rubber bands?

Julia Compagna is an attorney with Sargent Law Office, PLLC in Morrisville, Vermont.



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The Vermont Bar Foundation — FAQ

What is the Vermont Bar Foundation?

The Vermont Bar Foundation is the leading private funding source for programs designed to increase access to justice for Vermonters. The Vermont Bar Foundation (VBF) is often confused with the Vermont Bar Association (VBA). In many cases the VBF is considered the fundraising arm of the VBA, however the Vermont Bar Foundation has an identity all its own. Since 1982, the Vermont Bar Foundation has been a part of every attorney's professional life and has funded programs that have forever changed the lives of Vermonters in all corners of the state.

How is it funded?

One of the major resources for the Vermont Bar Foundation comes from attorney's trust accounts, or IOLTA, and is mandated by the Vermont Supreme Court. Interest from these accounts are collected on a monthly basis from participating institu-



VERMONT BAR FOUNDATION

tions and delivered to the VBF. You may recall your very first introduction to the profession after admission to the Vermont Bar, which was likely a day conference up in Burlington. This was your "Spring Training" to get your ready for lawyering here in Vermont. Among the pamphlets you received, was likely a letter from the Vermont Bar Foundation instructing you to establish a client trust account, or IOLTA, as soon as you started your practice. As you can imagine, there are a variety of factors that can affect the amount of interest collected from Vermont attorneys each year. The most impactful include interest rates and the economy. The ebbs and flows of the economy and interest rates result in unpredictable collections each year. To that end, the Vermont Bar Foundation also solicits yearly for grants, gifts, donations, and bequests. You may remember a fellow colleague asking for your donation at a local bar meeting, or the donate option when you renew your license every other year.

The Vermont Bar Foundation has also made donating easy for the tech savvy members of the bar, by adding a "Donate Now" button to its website: vtbarfoundation.org/donate/

How are funds distributed?

The Vermont Bar Foundation offers Non-Competitive Grants and Competitive Grants, through the Honorable John A. Dooley Competitive Grants Program. The non-competitive grants program has benefited such organizations as Have Justice Will Travel, Vermont Legal Aid, Vermont Law School's Legal Clinic, and Vermont Bar Association's Legal Access Coordinator. The competitive grant programs require new applicants to complete their applications by March each year. You have likely had experience with one of the VBF competitive grant recipients and may not even know it. Past and current recipients include the Association of Africans Living in Vermont, NewStory Center Legal Assis-

tance Project, Addison County Prenatal Legal Support Project, Pride Center Vermont Legal Advocacy Program, Vermont Care Partners, WomenSafe Legal Assistance Program, Vermont Law School Veterans Legal Assistance Project, and Vermont Immigrant Assistance to name a few. (For more on VIA see the "Spotlight on Grantee" in this issue).

Looking for more information on the recipients? They can be found online at vtbarfoundation.org/success-stories/

What does the future of the Vermont Bar Foundation look like?

The Vermont Bar Foundation is excited to welcome José M. Herrera, its new Executive Director, to the VBF Team. Jose brings with him a wealth of knowledge and a fresh perspective to boost the VBF into the days ahead. Jose is aware of the challenges this, and every organization faces. His commitment to VBF programs is impressive. His expertise in foundational organization and fundraising is expected to increase the outreach of the VBF and to bolster the ultimate goal of promoting legal education and access here in Vermont. The VBF welcomes Jose and looks forward to growth his leadership will bring.

While we hope that this article answers some of the most basic questions about the Vermont Bar Foundation, we at the VBF have also made a commitment to educate the legal community and Vermonters on what the Vermont Bar Foundation is, what the VBF is hoping to accomplish in the future, and how we can all become an integral part of educating and providing legal access to all Vermonters. In an effort to get the word out, you will see more of us this year. We look forward to a bright future here at the Vermont Bar Foundation.

Sarah E. Wilson is member of the Vermont Bar Foundation Board and practices in Bennington, Vermont.



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The Vermont Bar Foundation Spotlight: Vermont Immigrant Assistance



VERMONT BAR FOUNDATION

At the height of Vermont's "Stay Home, Stay Safe" pandemic response, Vermont Immigrant Assistance (VIA) began receiving unusual calls for help from local youth shelters. Foreign-born U.S. citizens and permanent residents were fleeing unsafe family situations and turning up at shelter with no identification or proof of status, and no way to prove eligibility for status-sensitive benefits and services. In effect, missing paperwork was locking several young Vermonters in a limbo of congregate shelter with no prospect of transitioning into permanent housing to stay home and stay safe.

Thanks to support from the Vermont Bar Foundation (VBF), VIA student clinicians employed creative legal strategies to help these youth—including through legal orientation, creative FOIA records requests, and complex immigration applications—so they could prove their status and access the supports they needed to get jobs, rent apartments, and start their lives over.

This is just one way the VBF supports VIA to advance the immigration and related rights of the thousands of noncitizens living in Vermont. Since joining Vermont Law and Graduate School's South Royalton Legal Clinic in 2003, VIA and its students have delivered services to hundreds of noncitizens hailing from over 80 countries and living in all 14 counties of Vermont—benefitting thousands more through community legal education and administrative and legislative advocacy projects.

VIA's legal service offerings include immigration help for survivors of gender violence, trafficking, and other crimes in the U.S.; survivors of torture and persecution abroad; individuals fearing persecution if removed; and other community members at imminent risk of removal.

VIA's advocacy and reform efforts include providing trainings and technical assistance for lay and legal partners; preparing practice advisories and public comments on emerging law and policy; and advocating with governments and courts to promote

migrant justice at the state and national levels. Most recently, VIA joined the VBA Immigration Section at the American Immigration Lawyer Association's National Day of Action to share feedback with our federal legislators on local immigration justice barriers and proposed solutions.

VIA's interventions put noncitizens on a pathway to permanency that promotes family unity, community stability, and, in turn, community safety. Most urgently, they allow noncitizens to pursue employment authorization so they can work, participate in banking and financing, receive health insurance and financial aid, and pursue professional licensing. Providing these services from within Vermont Law and Graduate School's learning environment allows VIA to draw from and contribute to innovations in the field while preparing the next generation of Vermont lawyers for practice.

In 2020, VBF support allowed VIA to expand its impact by hiring a second supervising attorney and opening an office in Chittenden County, where 85% of Vermont's noncitizen population resides and where Vermont bases most of its immigration infrastructure. This expansion enabled VIA attorneys and students to continue securing victories for noncitizens statewide, even as COVID-19, a dramatic administration change, the fall of Kabul, and the war on Ukraine brought the U.S. immigration system to a grinding halt. The VBF has generously sustained this expansion by selecting VIA to host the incoming Vermont Poverty Law Fellow for a two-year project focused on migrant justice from 2022-24.

VIA is grateful to the VBF and to all of its supporters for expanding access to critical legal services in Vermont. We hope for your continued support, and encourage you to connect with us by calling 802-831-1500 or emailing JMartinDiaz@vermontlaw.edu or bstokes@vermontlaw.edu.

Jill Martin Diaz and Brett Stokes teach the Vermont Immigrant Assistance clinic

at Vermont Law and Graduate School. Jill previously served as an Immigrant Justice Corps Fellow at Sanctuary for Families New York, and as the Vermont Poverty Law Fellow at Vermont Legal Aid. Before joining VIA in April 2022, Brett worked for several years in private practice in Denver, Colorado, where he provided direct legal services, pro bono legal support, and bilingual Know Your Rights presentations to community members and partner providers. Jill, Brett, and their student clinicians work from offices in Burlington and South Royalton and represent noncitizens in humanitarian matters statewide.



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Joy Karnes Limoge – A Varied Career, Including Pro and Low Bono Work

Joy Middlebrook Karnes Limoge, a solo practitioner in Williston, is one of 4 winners of the 2022 VBA Pro Bono Service Award.

Attorney Joy Karnes Limoge has solid Vermont roots. She is a graduate of Burlington High School, the University of Vermont and Vermont Law School. She was admitted to the Vermont Bar in 1995, and has since practiced a mix of business, real estate, creditor and corporate law. Her reputation and business acumen has reached across the US and Canada.

Soon after completing law school, Joy attended a ski show in Las Vegas with her fiancé, a credit manager. Joy was intrigued with the need of the recreation industry to secure debt, particularly to file and perfect UCC liens. That trip inspired Joy to set up her own company. It grew to provide this service to 150 different companies in the US and Canada.

For many attorneys, that lien service company would have been more than enough for a lifetime of work. But Karnes Limoge eventually felt the tug to engage in a more traditional practice of law. She talked with a local attorney about clerking with him to learn real estate law; recognizing her talent and drive, he put her in touch with Wells Fargo, which hired her as closing counsel. After several years there, Karnes Limoge merged her loan-servicing work with her business skills into a new solo law practice in Williston.

Joy often finds herself reaching out to do something different. She soon added general counsel work and contract preparation for local business to her law practice areas. Then she worked with a local businesswoman who was a guardian on a number of probate matters, and became interested in probate work. Attorney Norman Smith also encouraged her interest after she worked with him on a particularly challenging adult involuntary guardianship matter. "You should consider doing some of this work", he said, and told her about the VBA's low bono program.

Most of the pro bono work Karnes Limoge did in the first two decades of practice had been informal matters. "I'd do a simple will, and write it off if I knew the clients couldn't afford it," Karnes Limoge said. But with Attorney Smith's prompting, she took her first adult involuntary guardianship matter in 2019.

The arrival of the COVID pandemic presented an opportunity for expansion in her newest practice area. "I didn't have to go

to court as the probate hearing were all remote. I can do a lot more cases more cost effectively." Meetings with clients, too became remote as COVID put an end to visits in homes and hospital rooms. Karnes Limoge visits with them over cell phones or sets up zoom calls through family and facilities. She checks in virtually too, with social workers, staff nurses, and parents of special needs young adults. There is an advantage to the clients as well. "They don't have to be in a setting—a courtroom or my office—that they are unfamiliar with. That lessens stress and angst."

Since 2019, Karnes has taken 125 low bono guardianship matters, representing respondents in probate divisions in Addison, Caledonia, Chittenden, Franklin, Lamoille, Rutland, and Washington Counties. She soon came to be known as the go-to lawyer when a probate court faces a backlog and runs out of local attorneys.

Karnes Limoge encourages more lawyers to take on representation of respondents in adult involuntary guardianship matters. "There is such a need", she notes. "And what if it were your parent, or your child in need of help? It really brings this down to a personal level." Karnes also feels that the experience has made her a better advocate.

Karnes Limoge finds the low bono guardianship work, "one of the most rewarding things I've done. I've met some of the coolest people as a result." She particularly enjoys working with and learning from some exceptional probate judges. She recounted a particular in-person guardianship hearing (pre-COVID) when her young client with limited vocabulary kept repeating the word "Batman". She realized that the judge bore some resemblance to the fictional superhero. When she explained the connection, the judge went right along with the reference, and even gave the young man an endearing nose-to-nose "boop."

When the VBA and Vermont Law School started a small business low bono project in February of 2022, Karnes Limoge was



one of the first to take a case. Small business low bono is a good fit for her law practice, where she serves as general counsel for a number of area businesses, and helps with entity formation, HR, and commercial contracts. "It is wonderful to get to know these new business people—they are just lovely." Business clients referred to the VBA by the Community Navigator program at VLS have been coached well, and come prepared and are proactive in what they need for their business. Karnes feels small business low bono work appeals to transactional attorneys who want to give back—"the old guard is retiring"—and for the newer attorneys coming in who want to do pro bono work.

Her public service doesn't stop with pro bono and low bono legal work. "When I get bored, I find something else to do. I'm not a slacker," she laughs. Her energy and commitment to public service has led her to train as an EMT and an advanced rescue diver, to campaign for State Senate, and to serve three terms as Williston Select Board member.

And with it all, Joy Karnes Limoge keeps taking those low bono cases.

Mary Ashcroft, Esq. is the Legal Access Coordinator at the Vermont Bar Association.



Matthew C. Garcia – Practicing Law “To Be Useful”

Attorney Matthew C. Garcia of White River Junction is one of 4 attorneys honored with the 2022 VBA Pro Bono Service Award.

The statistics alone are impressive.

Matt Garcia has accepted 140 cases under the VBA's County Low Bono Project since 2012, representing respondents in adult involuntary guardianships in Addison, Caledonia, Orange, Orleans, Rutland, Washington, and Windsor Probate Courts. He volunteers as a guardian ad litem and has trained and mentored other lawyers in the art of representing indigent respondents. He has served on numerous non-profit boards and is presently Executive Director of Windsor County Mentors, a non-profit group promoting positive one-on-one intergenerational mentor relationships in the Upper Valley. Garcia is satisfied with his second career in public service—and it shows in his positive outlook on life and his quirky sense of humor.

Garcia was born in Charlotte, NC into a family of limited means. He moved north to attend Dartmouth College, then relocated to the business world of Manhattan following graduation. “Having a career was important to me,” he remembers.

Matt found his first career path in publishing. He became so adept dividing, monetizing, and trading in the subsidiary rights associated with written works that many of his colleagues assumed he was an attorney. But he admits that his real interest in the law was piqued when he was between jobs and binge-watched Court TV: “I loved the people on it—they were intelligent, clear and fact-based.”

After 15 years in New York City, Garcia decided it was time for a change. “The first half of my life was about me—accumulating what I needed to make me happy. Then I reached a point when I started asking ‘what I can do for other people?’”

Remembering his love of the Dartmouth College environs—and his love of Court-TV—Garcia enrolled in Vermont Law School. He bought a house in White River Junction, an easy commute to campus. “I never planned to practice law. I went to law school just for a lark.” But after graduating from VLS and passing the bar in 2005, Garcia knew he must do something useful with his new law license.

He started as a trial court law clerk in northern Vermont, working for Judges van Benthuyssen, Teachout, Zonay, Manley and others, learning from each and savoring the variety of legal work and personalities

he encountered. Garcia tried brief stints as a health care policy analyst in Legislative Council and as a civil attorney in a private law firm. But the best fit came when he opened his solo law office in his home in White River Junction.

Attorney Linda Williamson, a mentor and “best buddy,” helped him set up his practice. At about the same time, both lawyers had discovered the VBA's new low bono project, and signed up to take adult involuntary guardianship cases. Garcia likes the discrete nature of these cases. “They typically have a lifetime of a few months—you get in and get out”, although he admits to having a few guardianship cases that have become complicated and gone on for a while. “But that just makes them interesting.”

Garcia recommends adult involuntary guardianship cases to newly admitted attorneys. “You get great experience, get your feet wet in court, the cases are mostly easy, and the court staff and judges are extremely grateful for your help.”

Garcia has used his small law practice as a springboard to public service. In addition to the guardianships, which form the bulk of his practice, he helps non-profit groups with entity formation, and drafts the occasional will for a neighbor. “I don’t do it for the money—I do it to be useful”, he says. “If a court calls me to take a case, I usually say yes, because I know they’ve already scraped the bottom of the barrel to get to me.”

Garcia finds great satisfaction in representing respondents, generally the elderly and disabled young adults. “No one wants a guardian, no one wants to be helpless. But there is a good feeling about getting people the help they need when they are not able to care for themselves.”

Garcia's public service has extended to volunteer work on non-profit boards of directors for Valley Court Diversion, Good Neighbor Health Clinic, Listen and Health Care and Rehabilitative Services. He is now Executive Director of Windsor County Mentors, a group founded as Windsor



County Partners in 1974 by Judge George F. Ellison and others to address the growing challenge of juvenile delinquency. Garcia is a strong advocate of mentoring. “There’s lots of research on mentoring and it’s almost universally shown to have a positive influence on kids.” Mentoring increases the likelihood of graduating from high school, and often turns formerly shy and withdrawn children into happy and self-confident youth.

With his resources and experience from his first career as a Manhattan businessman, Attorney Matthew Garcia has crafted a second career of public service to benefit his neighbors in the Upper Valley. He invites his colleagues in the legal profession to join his efforts. If you want to volunteer as a mentor, or take a low bono guardianship case, Matt would be happy to talk with you.

Mary Ashcroft, Esq. is the Legal Access Coordinator at the Vermont Bar Association.



Joy and Matt can't do it all.
Sign up to take low bono cases for less fortunate Vermonters through the VBA's VOCA, Small Business and County Low Bono Projects. Check us out here: <https://www.vtbar.org/serve-the-community/>

Resources for Attorneys and Courts Working with Justice-Involved Veterans

The Veterans Justice Outreach Program (VJO) is a nationwide program run by the VA that is designed to assist veterans who have been caught up in the justice system. Vermont has a VJO program based at the White River Junction VA Medical Center in White River Junction and provides VJO services to every county in Vermont as well as all of the western counties of New Hampshire.

The aim of the VJO is to avoid the unnecessary criminalization of mental illness and extended incarceration among veterans by ensuring that eligible, justice-involved veterans have timely access to Veterans Health Administration (VHA) services, as clinically indicated. **VJO specialists provide direct outreach, assessment, and case management for justice-involved Veterans in local courts and jails and liaison with local justice system partners.**

Most veterans who are in jail or prison will eventually reenter the community. VA's Health Care for Re-entry Veterans (HCRV) program is designed to promote success and prevent homelessness among Veterans returning home after incarceration.

HCRV services include:

- Outreach and pre-release assessments services for Veterans in prison,
- Referrals and linkages to medical, mental health and social services, including employment services on release,
- Short-term case management assistance on release.

The Veterans Health Administration VJO program is staffed by Veterans Justice Outreach and Re-entry Specialists James Bastien, LICSW MHD CMT-P and Michael Owens, MA, LICSW.

James is located at the VA Burlington Lakeside Outpatient Clinic, 128 Lakeside Avenue #260, Burlington, VT 0540. He can be reached by phone at 802-281-9214 or email at james.bastien@va.gov. He covers the following Vermont Counties: Bennington, Rutland, Addison, Chittenden, Grand Isle, Franklin, Lamoille, and Washington Counties.

Michael Owens, MA, LICSW covers Essex, Orleans, Windsor, Windham, Orange, and Caledonia Counties in Vermont as well as Cheshire, Sullivan, Grafton, and Coos Counties in New Hampshire. Michael is located at the WRJ VA Medical Center in

White River Junction Vermont. Michael can be reached at 802-299-8175. His email is Michael.owens3@va.gov.

The VJO Program is part of the VA's wider effort to combat homelessness and suicide by veterans.



CROSSWORD PUZZLE

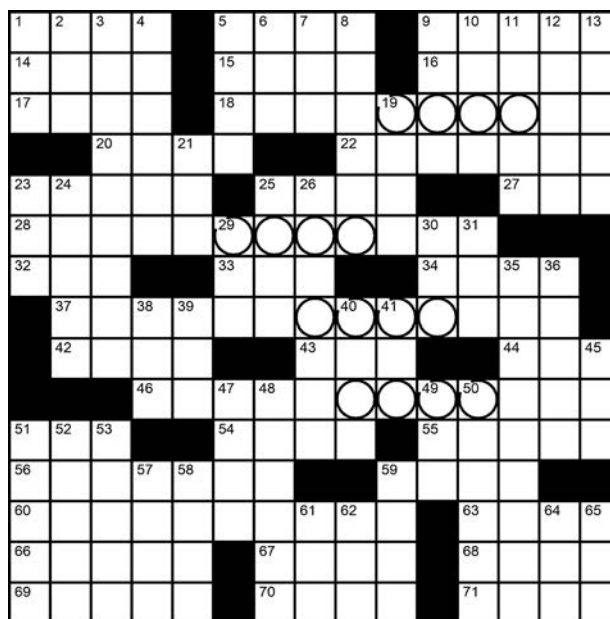
by Kevin Lumpkin, Esq.

Kevin is a litigation partner at Sheehey 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 Tuesday-level difficulty. Many thanks to Jim Spink, Esq. for test-solving this puzzle. See page 32 for the Spring Journal's Crossword Solution.

Across

- End notes?
- Snag
- Rubbish
- Hat's edge
- Prefix with zone or vision
- Egypt's Sadat
- Adroit
- Stowe or Aspen
- Metadata field in an email production
- Filings, say
- Fiji alternative
- Editor's "forget that"
- WSJ competitor
- Beatles hit or train-centric board game
- Grand finale?
- 23-Across, par exemple
- Hip bones
- Jet-setting
- Nebraska native
- McKellen or McEwen
- Hawkeye's pride
- Derogatory term for frequent IP litigants
- Deg. for a creative type
- Poverty, metaphorically
- Type of wrench
- Nook, e.g.
- Grand
- Controversial measures for personal injury litigation or, read differently, a hint to this puzzle's theme entries.
- Change up
- Rita's role in West Side Story
- Hand or foot
- Fencer's implement
- Cardiologist's tool
- High shots
- Request from a host



Down

- THC counterpart
- Lode load
- Tough
- Vermont co.
- Seed
- Regret
- Horace's ____ Poetica
- OK ____ (online comeback)
- Football's J.J., T.J., or Derek
- Not pro
- Faint
- Light brown
- Young partner
- Indian flatbread
- Number of female governors Vermont has had
- And so on (abbr.)
- Labor Day baby, e.g.
- Now!
- On the road, say
- Leader of Turkmenistan?
- Morse code morsel
- Inventor Whitney
- LIKE THIS CLUE
- Spry
- Alley-____
- Actress Arthur
- Breakfast grains
- Explosive stuff (abbr.)
- AOL alternative
- Birch, e.g.
- Talking-to
- Genre for Megan Thee Stallion
- 1963 Broadway smash
- Self-referential puzzles
- Facade
- Hawk's home
- Abbr. on a memo
- "Shoot!"
- CPR providers
- Musician Yoko
- "Spare" part
- Gun
- "Sure thing"

VBA CLE Coming Attractions

Watch our website for our virtual offerings & save these dates!

BACK TO SCHOOL SPECIAL: September 7, 2022

The Business of Law: Practice Pointers for New Vermont Attorneys* (2.0 MCLE)

Jeanette Eicks covers helpful tips for attorneys recently admitted in Vermont and/or starting a new practice in the state.

All Things Deeds and Conveyances* (1.0 MCLE)

Join Jim Knapp for a discussion of the forms of deeds used in Vermont, the common forms of tenancy and how to create them, drafting effective property descriptions, embedding easements and encumbrances in the deed, and the ever present – “was this wrong”, tales of woe caused by poorly drafted instruments of conveyance. This program will focus on the basics and is meant for those recently admitted in Vermont.

September 30, 2022

VBA 144th Annual Meeting at Lake Morey Resort in Fairlee

In person, with remote Zoom webinars the following week.

Check our CLE calendar for details!

October 6 & 7, 2022

Basic Skills in Vermont Practice and Procedure*

(1.0 - 6.0 MCLE, including 1.0 ethics)

A series of five (5) webinars totaling 6.0 MCLE credits on the basics of Vermont law geared towards newly licensed Vermont attorneys.

**Rules 12(a)(1) and 15(c) approved and certified*

More programs will be added as they are confirmed.

Save These Dates!

Pro Bono Conference - October 20, 2022 (State House, Montpelier)

Holiday Bankruptcy CLE - December 2, 2022 (location TBD)

YLD Mid-Winter Thaw - January 13-14, 2023 (Omni, Montreal)

VBA's 66th Mid-Year Meeting - March 31, 2023

(The Equinox Golf Resort & Spa, Manchester)

And don't forget to check our website for the LIVE webinar and webcast options as well as the latest titles in our digital library!

"I Had No Idea My Client Was Going To Do That!"

I love a good story, particularly when a valuable lesson can be learned from its telling. Here are two memorable ones.

A long-term client reached out to his attorney with a quick question about an airplane he owned. The plane had been under renovation, which included a substantial upgrade, for some time. Due to time delays and cost overruns, a significant fee dispute had come into play. Figuring that possession of the plane would strengthen his position in the fee dispute, the client reached out to his attorney to ask if he could remove his property from the repair facility. For reasons unknown, the attorney failed to take any time to discuss the situation in depth. Instead, he made the decision to quickly share a technically correct answer. His reply was along the lines of "yes, recovery of property you already own is not illegal. You have a right to its possession" and he left it at that. The client shortly thereafter successfully recovered the property and was subsequently arrested due to the manner in which the recovery was done. Eventually the client incurred a substantial loss as a result of a civil suit brought by the repair facility. Of course, this client then sought recovery from the attorney alleging negligent advice. The attorney tried to defend his actions by essentially saying

"Not only did I never tell him to go and take possession of the plane, I had no idea he would try something like that! This one's not on me." Suffice it to say, that defense didn't fly. Pun intended.

My next story involves an attorney who was representing the executor of an estate. This attorney would later describe the situation as his having little involvement because the client was really running the show. Apparently, all the client wanted was a little advice and direction from time to time. At one point, this client reached out to share that she disagreed with a conclusion the Commissioner of Accounts had reached regarding the calculation as to how certain funds should be distributed. The attorney casually shared that he too disagreed with the Commissioner's conclusion and also let the client know that if an issue were to ever arise, he would speak with the Commissioner in order to clear up the confusion. Unfortunately, this client took that response as an implicit okay to go ahead and she disbursed the funds in accordance with her interpretation of the will. Needless to say, the Commissioner did not approve the accounting and now there was a problem.

Here are the takeaways.

I get that at times it can be tempting to take the easy way out when a client asks a question. If nothing else, quickly spouting off some generic or technically correct advice or sharing an off-the-cuff comment can certainly save some time. Regardless of your reasoning, a decision to take the easy way out is never a good idea. That's a takeaway.

It also matters not if the reason you decide to take an easy way out is because you truly believe you don't have the time, view the question as unimportant, are talking with a non-client, are talking in a casual setting, or are just saying what you think your client wants to hear so you can move on. These are all rationalizations; and when rationalizations are used to justify a decision to take an easy way out, trouble may be just around the corner. Such advice, which really is the equivalent of giving advice in a vacuum, is problematic because you are failing to consider how the person you are speaking with might rely upon or act on the advice. This too is a takeaway.

Giving advice in a vacuum is rarely appropriate, particularly in the absence of adequate and documented disclaimers. Even if technically allowable under some defined set of circumstances, doing so fails to take into account the realities of the attorney-client relationship. Clients do expect their attorney to stand by any and all advice given and the client will consider an attorney's attempt to claim an intentional limited knowledge of the circumstances as irrelevant. The client will still seek to hold their attorney accountable for any unanticipated fallout that occurs once the client acts on the advice received. Again, a takeaway.

But wait, there's more.

There is also an ethical component to this. Consider ABA Model Rule 1.4 Communication, which states in section (b), "A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation." This makes it quite clear. At a minimum, the attorneys in the two stories above should have taken the conversations further by inquiring about their client's proposed course of action. By not doing so, these two attorneys allowed their clients to act without the benefit of

Here's the Spring Journal's Crossword Solution!



legal advice given with full awareness of the entire situation. Had these two attorneys made an effort to take into account what their clients were thinking, the advice would have been, out of necessity, quite different.

In the end, a defense along the lines of "I had no idea my client was going to do that" is no defense at all, even with perceived short unimportant calls where one is tempted to not take the time to ask the right questions. When situations like the above arise, there is no middle ground. There really are just two options. One is to

decline to provide any advice and the other is to take the time to give a competent, thorough, and reasoned response based upon full awareness of the client's situation. Come at it from a different perspective by trying to put yourself in your client's shoes. Would you expect anything less when asking your attorney a question? Call me a skeptic if you must; but I seriously doubt it.

Since 1998, Mark Bassingthwaight, Esq. has been a Risk Manager with ALPS, an attorney's professional liability insurance carrier. In his tenure with the company, Mr.

Bassingthwaight has conducted over 1200 law firm risk management assessment visits, presented over 400 continuing legal education seminars throughout the United States, and written extensively on risk management, ethics, and technology. Mr. Bassingthwaight 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.



"I Had No Idea My Client Was Going To Do That!"

Lake Morey is calling ...



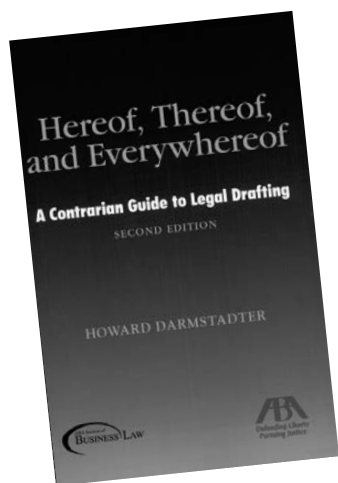
Don't miss the
**144th Annual
Meeting**
of the VBA.

Sept. 30
in Fairlee at the
Lake Morey Resort.

CLEs, Scenery,
Camaraderie.

See the VBA website for
details and registration.

BOOK REVIEW



"Hereof, Thereof, and Everywhereof: A Contrarian Guide to Legal Drafting"

by Howard Darmstadter, Esq.

Reviewed by Devony Wilmot

Second Edition 2008, published by
American Bar Association
Section of Business Law

It's not a cookie-cutter. It's a cookie, after all. LOL. Yes, I used LOL in a professional book review because it is accurate. I literally laughed out loud when I read this phrase, and I have shared it with more people than I can count, and not just in legal circles. I've expressed this sentiment to regular people who, like me, speak and understand plain English. This book is more than just educational; it is also entertaining. So, what exactly is a cookie? According to Darmstadter, documents that are used repeatedly with minor changes are frequently derided as cookie cutters, but the template of the document is the cookie-cutter, and the resulting document is the cookie.

This book deserves an original analysis. This book review is neither cookie-cutter nor cookie; it encapsulates my entire understanding of Howard Darmstadter's counsel as it applies to the subject matter hereof. On the diligence or lack thereof with which legal documents are drafted, Darmstadter takes a dissenting position. As he deciphers actual passages of poorly written legal text, provides practical examples of how to improve it, and delivers quick-witted takeaways that will keep you

recalling his advice long after you've put the book down. Everywherof Darmstadter's humor permeates the book and transforms dull into delight.

Howard Darmstadter retired from the legal profession in 2008 but continued to be a member of the American Bar Association's Business Law Section until recently. Darmstadter joined Smith Barney in 1985, and following a series of acquisitions, the firm became Citigroup. He left Citigroup as Senior Counsel—Corporate Law, where he focused on commercial and securities law. He also taught philosophy and legal drafting as an adjunct professor.

"What you possess in your hands is not quite a textbook," Darmstadter writes in the preface. A good drafting textbook, in his opinion, is one that teaches the reader the majority of what they need to know in order to draft a legal document. "It should be brief, thorough, and authoritative," he argues, "but this work is discursive, incomplete, and contrarian." This book is best defined as a companion to a legal drafting textbook, according to Darmstadter. I was terrified when I read this. I felt unprepared to read this book as a first-year law office study program student without a complementary textbook. Rather than abandoning it, I began looking for a companion textbook that was concise, thorough, and authoritative. Darmstadter seemed like a good place to start. I asked him for a recommendation on a legal drafting textbook after a quick internet search yielded his email address, and he emailed me back within 24 hours with a recommendation. Darmstadter's approachable personality, eagerness to engage with readers, promptness of response, and suggestion of a legal drafting textbook won me over. Darmstadter gets five stars from me because he was eager to be a resource beyond the 227 pages of the book.

Darmstadter's use of plain English and comparisons of legal drafting to things in everyday life were helpful to me as a novice in legal drafting. As a result, I was able to connect with his lessons and internalize them. Because legal documents, particularly agreements, should have a beginning, middle, and end, they are compared

to stories. So, according to Darmstadter, the action does not peak with a denouement (a phrase I had to look up in the dictionary like many others in the book), the final part, when all loose ends are tied together, in a well-crafted agreement. Darmstadter compares the creation of a legal document to that of a news story, which begins with the most significant elements and ends with the least relevant details. Do not confuse this reference to a news story with an eleven o'clock news broadcast, where viewers must sit through kitten videos, a man who had 90 covid-19 shots to sell fraudulent vaccination cards, and the world's largest taro root before the most important news report airs.

All of the potential targets of poor drafting are addressed in this book, including archaic phrases, legalese, imprecise language, and tangled sentences. Clear short sentences, according to Darmstadter, make complex issues easier to understand for the reader. The first step in developing improved legal documents is determining your audience. While Darmstadter had the luxury of knowing his first audience of educated business people by name, we all have the ability to write using language that is easily understood.

As a result of reading this book, I was driven to improve not just my legal writing skills, but also my reading and comprehension skills. I opened and attempted to study my stock investment prospectus, and voted by proxy on stock shares in my mutual funds. A good book expands your knowledge, whereas a great book gives you wisdom and inspires you to take action. A Contrarian Guide to Legal Drafting inspired me to improve my legal drafting one word, one line, one sentence, one section, and one document at a time.

Devony Wilmot is a Law Office Study Program participant being supervised by John Marchica, Esq., of Springfield, VT. Prior to pursuing law studies, Devony obtained a BS in finance, an MBA, and worked for 20 years in the commercial real estate industry.



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.

IN MEMORIAM

J. Paul Giuliani, Esq. *January 23, 1944 – July 12, 2022*

John Paul Giuliani passed away on July 12, 2022. He was born in Montpelier Vermont on January 23, 1944, the son of SSGT Peter Giuliani, USMC and Pauline (Provost) Giuliani. After graduating from St. Michael High School, Paul attended and graduated from the College of the Holy Cross. Following service as an officer in the U. S. Navy, he earned his law degree from Boston University School of Law, and returned to Montpelier where he was in private practice from 1970 until his death. Paul's work took him to every corner of the state of Vermont, representing and advising large and small local government units. Much of his work involved public finance and the construction of municipal projects. He was fond of saying there were very few places in the state where he could go without knowing someone, or being able to point to a school or municipal building that he helped to finance. His professional life and career were extensive and varied. He was proud of his family history and involvement in the community. Paul would describe himself as a native Vermonter, a first generation American, and a genetic Republican. On October 9, 1971 Paul and Marie Bonnie MacHarg were married in Amityville, New York. They made their home and raised their children in Montpelier. Paul is survived by his wife Bonnie, and their sons John, Matthew, Daniel, James and David, and their spouses and children. He is also survived by his brother, Peter A. Giuliani and his wife, Leslie of Weston, CT.

A Tribute to Co-founding Board Member, J. Paul Giuliani, 1944-2022

Our friend and organizational co-founder J. Paul Giuliani dedicated his life to sustaining and improving his hometown of Montpelier, Vermont. In his professional life, Paul provided legal advice and guidance to the elected and appointed officials of Vermont's municipalities. He was respected throughout the state for helping communities find ways to finance improvements to become more vibrant and livable. For many years, as Montpelier's city attorney, Paul guided our councils, mayors, and managers through various public finance and construction projects, as well as other legal issues to come before this great city. In his free time, Paul served on various local boards and committees, lending his charm, wit, and expertise to the furtherance of their varied goals and programs.

A lifelong Montpelierite, Paul saw the need for an organization dedicated to making his hometown an even better place to live, work, and visit. He donated his time, energy, and professional expertise to help establish and run the Montpelier Foundation. The mission of the organization is to enhance the community's ability to make valuable capital investments to improve the quality of life for local residents and visitors. During Paul's tenure, the organization provided crucial financial support to projects such as the renovation of the Montpelier tennis courts, the construction of the War Memorial, the improvement of the community playground, and the extension of the bike path. The organization is in the planning phase for a capital campaign and is currently working on a plan to honor Paul's legacy.

Montpelier itself is a better place because of the life and efforts of Paul Giuliani. We are going to miss him dearly.

~ Bill Cody, on behalf of the Board of Directors of Montpelier Foundation

Peter Joseph Morrisette *May 9, 1943 – July 26, 2022*

Peter Joseph Morrisette, age 79, of Lyndonville, died peacefully on July 26, 2022 due to complications from cancer. Peter was very active member of the Lyndonville community, a world traveler, and devout family man.

Born on May 9th, 1943, in Providence, Rhode Island, Peter moved to Lyndonville at the age of 9, when his parents moved to town to run the May Store, the Five-and-Dime on Depot Street. For the next 70 years, Peter's permanent address would remain the house on Williams Street that his parents first bought.

Before graduating from Lyndon Institute in 1961, Peter scored the winning, and only, touchdown of the St. J – L.I. football game his senior year. He attended Dartmouth College, and graduated with honors in history in 1965. During his summers in Lyndonville, his jobs included helping to build the Post Office in Lyndonville, and painting the Tap and Die manufacturing building.

Up for an adventure, during the spring of his junior year at Dartmouth, Peter left New England for the first time traveling with his college roommate to Omaha, NE to visit his roommate's girlfriend. While there, he was fixed up on a blind date with Sherlyn Berg of Amarillo, Texas, who would become the love of his life. Peter and Sherlyn were married in 1966 in Amarillo, and

would have celebrated their 56th wedding anniversary on August 20th.

After college, Peter attended Boston College Law School, from which he graduated with honors in 1968. Peter and Sherlyn moved to Vermont, and he began a long and successful law practice, initially in St. Johnsbury, and eventually in Lyndonville. During his legal career, he served as President of the Caledonia County Bar Association, Agent for the Town of Lyndon, and was admitted to try cases in front of both the Vermont State and United States Supreme Court.

Always a leader in the community, Peter served the town of Lyndon in multiple ways. He was a member of the Executive Committee, and Treasurer and President of Lyndon Institute, and was made an honorary life-long Trustee. He served as President of the Lyndon State College Foundation. He was a member of the Lyndon Planning and Development Board, President of the local Lions Club, and served on the boards of the Lyndon Outing Club, Lyndon Ice Hockey Association, the Darling Inn Meal Site, and the building committee for the Powers Park during the building of the new pool. He was also on the board of the Lyndon Little League, and coached countless kids on multiple teams. Peter also served on the board of The Howard Bank, and as a Corporator for the Passumpsic Savings Bank.

Peter and Sherlyn became avid travelers after their children were grown. They traveled to, and spent the night in, all fifty states, and visited over 100 countries. Their travels were carefully documented by Peter's photography, and Sherlyn's organization, with a written description of the date and location written on the back of every photo before being placed in albums.

Peter is survived by his two sisters Anne Brown and husband Dick of Lyndonville and Laura Morrisette and husband George Blazczynski of Arlington, Massachusetts; his wife, Sherlyn of Lyndonville; two children, Amy McGarry and husband Daniel of Kennebunk, Maine, and Mark Morrisette and wife Wendy (LaClair) of Falmouth, Maine; and four grandchildren Connor McGarry, and Andrew, Peter, and Catherine Morrisette, and many nieces and nephews.



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 (see p. 6), and your Vermont law practice journey for “Choosing Vermont” (see p.20).

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