

# THE VERMONT BAR JOURNAL

232

Winter 2023, Volume 48, No. 4



**Let's Talk About  
Civility and  
Professionalism...**

**Afghanistan's  
Imperiled Women  
Judges and Their  
Connection to Vermont**





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# PRESIDENT'S COLUMN

## "Civility and Professionalism"

I am concerned about a decline in civility and professionalism among lawyers in Vermont. Of course, this concern is not a new one, especially among VBA Presidents. President (and subsequent Second Circuit Judge) Peter Hall wrote about it in his President's Column back in 1995;<sup>1</sup> so did President (and now Chief Superior Judge) Thomas Zonay in 2005.<sup>2</sup>

But given the stressful challenges we have faced in recent years (particularly COVID-19 and its consequences), it has been suggested that things actually have gotten a bit worse.<sup>3</sup> As VBA President, I have the benefit (some might say burden) of hearing reports from the field. I hear stories of lawyers berating court clerks, refusing to grant extensions or engage in settlement discussions, and failing to return calls and emails. I hear about lawyers acting disrespectfully in court (including on video court appearances via Webex), being obstreperous in discovery, and advancing arguments supported merely by bluster and hyperbole, rather than by the careful legal analysis and pragmatic thinking that is expected of us.

This is unacceptable. Now, it's not entirely clear to me how pervasive this problem is, or the extent to which these general perceptions and this anecdotal evidence signify a new, disturbing trend. That's why the VBA has launched a (short) survey on civility and professionalism. We want to obtain meaningful data points from Vermont lawyers, judges, court staff, paralegals, and other participants in our legal system about what's going on, and how it compares to years past. (If you haven't already responded to the survey, please do so!)

Regardless of what the survey tells us (and it will tell us much), there is no question that we can do better. Even those who are highly skeptical of our efforts to improve attorneys' behavior will concede the value of self-examination.<sup>4</sup> With this in mind, I respectfully submit that there are many reasons why you should try harder to embrace civility and professionalism.

Here are two of them:

**First, you will serve your clients better.** Bad behavior increases client costs, and delays the resolution of cases.<sup>5</sup> Don't waste your client's time and money fighting over things that you ought to know won't matter in the end.<sup>6</sup> Try not to personalize things; remember, in significant ways, you want to work *with* your adversary. That is, you want them to pay – or to accept – a dollar amount, or agree to a course of ac-

tion, that you and your client consider reasonable and appropriate, so being nasty and unreasonable and unprepared almost certainly isn't the best strategy for getting there.

To take a simple example, sometimes your client (or you) will need an extension. Therefore, if only as a matter of self-interest (apart from the inherent value of being kind) your instinct should be to immediately accommodate your colleagues' request for one. As I routinely say, "I always give extensions because I always need extensions."<sup>7</sup>

If you are civil and professional, you will do much better in settlement negotiations and in business dealings. You will do much better in front of judges and juries and others who hold your client's fate in their hands.<sup>8</sup> And, believe it or not, your clients will respect you more: lawyers who are civil and professional are viewed as more effective than those who aren't.<sup>9</sup> Incivility and unprofessionalism will undermine your clients' confidence not only in you, but in the justice system generally.<sup>10</sup>

**Second, you will be happier.** Attorney wellness is a major focus of the VBA, and a requirement under the ethics rules.<sup>11</sup> The fact is, our jobs are often very stressful, and we should not add to that inherent stress.<sup>12</sup> It is perhaps obvious, or at least fair to conclude, that incivility causes stress;<sup>13</sup> at the very least, studies consistently show that incivility and unprofessionalism make the practice of law "less satisfying."<sup>14</sup>

When we analyze what makes lawyers happy, two answers invariably surface: mastery and relatedness. "Mastery" is what you attain by adhering to the principles of professionalism, which include improving your knowledge of the law, being diligent, and being cognizant of the meaningful role you play in our society as a lawyer; "relatedness" is your level of civility: how you connect with counsel, the courts, your clients, and the public.<sup>15</sup> Being civil and professional will make you happier.

In sum, being civil and professional will make you a more effective lawyer, and a happier lawyer.

\* \* \*

At the upcoming VBA Mid-Year Meeting on March 31 (at the Equinox Resort in Manchester), Judge Mary Miles Teachout, Bar Counsel Michael Kennedy, and I will present an enormously entertaining<sup>16</sup> and



Andrew Manitsky, Esq.

instructive CLE on civility and professionalism. We will look at the issue from the perspective of judge, disciplinary counsel, and practitioner. We will discuss more precisely what we mean by "civility" and "professionalism,"<sup>17</sup> and (more of) the reasons for you to embrace both. We will show you compelling examples of attorney behavior, both good and bad, as well as the consequences of bad behavior under the ethics rules and case law. We will offer ideas about why lawyers sometimes fall into the trap of incivility and unprofessionalism. And we will present the results of the VBA survey, which we expect to be enlightening. We promise to have answers and insights, and we look forward to seeing you there.

In the meantime, please think about the two reasons I mentioned above. And, as always, please let me know how we at the VBA can serve you, and help you better serve your clients, and the public.<sup>18</sup>

<sup>1</sup> Hall, Peter W., "Let's Work Together to Improve the Profession," 21-OCT VTBLJD 7 (1995) (explaining that we must "concentrate on our professionalism" and work on "improving our professional competence").

<sup>2</sup> Zonay, Thomas A., "The President's Column – Do You Miss Mayberry?", 30-WTR Vt. B.J. 3 (2005) (discussing the "perceived decline in civility").

<sup>3</sup> See, e.g., Kennedy, Michael, "Five for Friday #223: Judge Peter Hall," [www.vtbarcounsel.wordpress.com/2021/03/12/five-for-friday-213-judge-peter-hall/](http://www.vtbarcounsel.wordpress.com/2021/03/12/five-for-friday-213-judge-peter-hall/) ("Lately, I've often noted my concern at the rise of incivility in the profession").

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<sup>4</sup> See, e.g., Ryan, Kevin F., "Lex et Ratio...Professionalism and the Practice of Law (Part One)," 27-SEP Vt. B.J. 7 (2001) (acknowledging the "value of the self-examination prompted by the cries of critics" while arguing generally that "the responses of the bar to the perceived crisis of professionalism have been meek, ineffectual, largely symbolic, and unpromising").

<sup>5</sup> See, e.g., National Center for Principled Leadership & Research Ethics, *Survey on Professionalism: A Study of Illinois Lawyers* (2021) ("Illinois Survey") (67% of lawyers stating they "strongly agree" that incivility/unprofessionalism leads to an increase in litigation/transaction costs; 79.6% of lawyers stating they "strongly agree" that incivility/unprofessionalism makes it more difficult to resolve a matter).

<sup>6</sup> I saw this frequently in my days as a New York City litigator in the 1990's. I see it much less frequently here in Vermont, but I still see it.

<sup>7</sup> See also Rachlin, Robert. D., "Seven Habits of Effective Lawyers," 33-SUM VTBJ 22 (2007) ("The lawyer who shows kindness and consideration to an adversary will eventually be in need of it himself"); VBA *Guidelines of Professional Courtesy* (1989) ("A lawyer should act with courtesy and cooperation"). This is not to suggest that extension after extension after extension should automatically be granted. To be sure, sometimes people will try to take advantage, and sometimes courts will reject even a stipulated extension request. One way you might effectively address this issue is to expressly state that an extension is a "final" extension. In my experience, this will comfort both the court (which is under pressure to move cases along) and the clients on both sides.

<sup>8</sup> See generally Reavley, Thomas M., "Rambo Litigators: Pitting Aggressive Tactics Against Legal Ethics," 17 Pepp. L. Rev. 3 (1990) (discussing the demonstrably "unsatisfactory results of unprofessional conduct...[L]ack of civility does not win cases; it often loses them. Civility, in fact, brings advocacy to the fore and focuses the case where the focus ought to be") (internal quotation and citation omitted).

<sup>9</sup> Gassman, G. and Olivera, E., "Defining Civility as an Attorney," *American Bar Association*, [www.americanbar.org/groups/tort\\_trial\\_insurance\\_practice/publications/the\\_brief/2019-20/fall/defining-civility-an-attorney](http://www.americanbar.org/groups/tort_trial_insurance_practice/publications/the_brief/2019-20/fall/defining-civility-an-attorney) (January 21, 2020) ("Research shows that lawyers who exhibit civility and professionalism get higher ratings and are viewed as more effective lawyers").

<sup>10</sup> *Illinois Survey* at 14 (66.6% strongly agreeing, and an additional 23.8% somewhat agreeing, that incivility/unprofessionalism harms the public's and clients' confidence in the justice system). See also Greico, Jennifer, "A Renewed and Much-Needed Conversation on Civility," *Mich. Bar Journal* (December 2018) ("civility and professionalism improve clients' confidence in the system").

<sup>11</sup> See [www.vtbar.org/attorney-well-being/](http://www.vtbar.org/attorney-well-being/) ("Attorney well-being is a critical component of our duty to represent our clients with competence") (listing resources suggested by the *Vermont Commission on the Well-Being of the Legal Profession*); Rule 1.1, comment [9] ("Maintaining the mental, emotional, and physical well-being necessary for the representation of a client is an important aspect of maintaining competence to practice law"). References herein to the "ethics rules" or to a "Rule" are to the Vermont Rules of Professional Conduct.

<sup>12</sup> The negative effects of stress are well-documented and too numerous to name. See, e.g., <https://www.apa.org/topics/stress/body> (describing how stress impacts all systems of the body).

<sup>13</sup> See, e.g., Kennedy, M., *Ethical Grounds*

(March 10, 2021) <https://vtbarcounsel.wordpress.com/2021/03/10/lawyers-incivility-factors-in-substantially-reduced-fee-award/> ("In my opinion, incivility by lawyers contributes to stress and negatively impacts lawyer well-being"). There appears to be a vicious circle at work here, with incivility causing stress, and stress causing incivility. Other wellness issues may be implicated as well. See Buchanan, Bree, "Breaking the Cycle of Incivility Through Well-Being," ABTL Report (Los Angeles, Summer 2019) ("While I don't propose that maintaining consistent professionalism is a curative for alcoholism or depression, I do believe that a more civil work world can create an environment in which these disorders are less prevalent, and all lawyers can experience a heightened sense of well-being").

<sup>14</sup> *Illinois Survey* at 15 (74.7% of respondents strongly agreed that uncivil/unprofessional behavior makes the practice of law less satisfying, with an additional 17.4% somewhat agreeing; only 5.3% strongly or somewhat disagreed).

<sup>15</sup> Davis, Paula, "What Makes Lawyers Happy? It's Not What You Think," *Forbes* (Dec 19, 2017) ("Chronic incivility depletes the legal profession's one true resource – its people"), citing Krieger, Lawrence S., "What Makes Lawyers Happy? A Data Driven Prescription to Redefine Professional Success," 83 Geo. Wash L. Rev. 554 (2015). Note that "autonomy" is also identified as a factor in lawyer happiness.

<sup>16</sup> Query whether this might be a bit of "puffery" on my part. The good news (for me) is that "puffery" is generally not considered a statement of fact, and thus not a violation of Rule 4.1 ("Truthfulness in Statements to Others") ("certain types of statements ordinarily are not taken as statements of material fact"). See also, State Bar of California Formal Opinion 2015-194 ("puffery and posturing...are generally permissible because they are not considered statements of fact").

<sup>17</sup> In short, "civility" refers to politeness, courtesy, and cooperation; "professionalism" refers to upholding and going beyond the minimum standards set forth in the ethics rules, which include the duty of competence (Rule 1.1), the duty candor (Rule 4.1), and the prohibitions on engaging in conduct that is dishonest or that is prejudicial to the administration of justice (Rule 8.4 (c) and (d)). It bears noting that both terms have been subject to criticism. See, e.g., Dillard, Coshandra, "Who Decides What's 'Civil?'," <https://www.learningforjustice.org/magazine/who-decides-whats-civil> (August 1, 2018) (noting that "the concept of civility has also been used as a tool of oppression" and has "colonial roots"); Ryan, *supra* (arguing that the term "professionalism" has come "hackneyed" and "banal" and "lacks meaning in general").

<sup>18</sup> You are reading the last footnote, and I'm impressed with your thoroughness. *Accord*, Rule 1.1 ("Competent representation requires...thoroughness") (emphasis added). If you send me an email mentioning "footnote 18," you will get a special "shout out" by me at the Mid-Year meeting, and perhaps by Bar Counsel Michael Kennedy in an upcoming blog post.



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# PURSUIITS OF HAPPINESS

## Eve Jacobs-Carnahan, Attorney → Artist

**KSV:** Hi Eve – and thanks so much for agreeing to talk with us about your “Pursuit of Happiness.” As you know, for this feature, we interview attorneys with interests, avocations, vocations, what have you, outside of the practice of law that help keep them balanced or provide fulfillment. You had a long career as an attorney in Vermont and you are now a professional artist who has attracted a lot of attention for your knitted sculpture that explores themes of democracy. I want to hear all about that, but let’s start at the beginning. Can you tell me a little about your origins? Where did you grow up?

**EJ-C:** I grew up in Niskayuna, NY, in the Capital District of New York. It’s the home of the General Electric research lab. My father was a physicist at GE and my mother was a social worker who served on lots of community boards and planning committees.

**KSV:** What did you want to be when you were kid?

**EJ-C:** I didn’t have any particular plan back then.

**KSV:** What were your favorite subjects in school?

**EJ-C:** I liked social studies and math.

**KSV:** Did you think then that at some point you might be a full-time artist? Was art always an interest for you in your formative years?

**EJ-C:** I never considered becoming an artist when I was young but appreciating art every day was pretty much ingrained in my life. We had original artwork in my home when I was growing up. It included paintings by my mother, who took art classes in the community, and work by my grandfather, plus work by artists that he collected. My mother did pen and ink drawings in sketchbooks whenever we went on family vacations. Visiting art museums was a staple on most of our family travels when I was a kid.

**KSV:** Tell me about your decision to go to law school. When did you make that? What moved you in that direction?

**EJ-C:** I became interested in government and politics in high school. The women’s rights movement, especially the effort to



Eve in her studio with one of the green herons from *Gerrymandering the Marsh*.

pass the federal Equal Rights Amendment, inspired me to become a lawyer. I majored in history and political science in college and did internships with the Corporation Counsel’s Office of the City of Schenectady and with a state legislator in New York.

**KSV:** Where did you go to law school?

**EJ-C:** The University of Chicago.

**KSV:** Did you have an idea about what kind of legal work you wanted to do in your career at that point?

**EJ-C:** I thought I would like to do public interest law or possibly work for government. Those were not common career plans among my U of C classmates. Most of them were aiming to work for major corporate law firms in Chicago, New York, and LA.

**KSV:** Can you outline your legal career for me?

**EJ-C:** My first year out of law school, I clerked for Justice Herbert P. Wilkins on the Massachusetts Supreme Judicial Court. Then I went to Bingham, Dana & Gould and did corporate litigation for two and a half years. I received great training at Bingham, but I could see that I was not going to be happy there in the long run. After my first child was born, my husband, who was from Vermont, took the position of Librarian of the Vermont Historical Society. I figured I’d be able to find a position as a lawyer in Vermont state government once we moved up here.

**KSV:** Tell me about your work as a Vermont AAG.

**EJ-C:** I started in the AG’s Office in 1990 handling disciplinary cases before professional licensing boards for nursing, real estate professionals, psychologists, and other professions. After several years, my responsibilities within the Civil Division expanded to litigation defending the State of Vermont and its employees. I handled some challenging and exciting high-profile cases in the lower courts and on appeal. These included *Baker v. State of Vermont*, the same sex-marriage case, and the State’s response to the St. Francis Sokoki Abenaki petition for recognition before the Bureau of Indian Affairs. My most significant work was in the area of election campaign financing. In 1999, I was given the task of defending the State’s newly

enacted statute limiting campaign expenditures. I was lead trial counsel for the case known as *Randall v. Sorrell* that was ultimately decided by the U.S. Supreme Court in 2006. I ended up with a specialty defending Vermont’s election campaign financing laws and bringing civil enforcement actions. I handled cases against the Republican Governors’ Association, Vermont Right to Life, the Vermont Democratic Party, and some Progressive candidates.

**KSV:** What place did your art occupy in your life while you were a working lawyer?

**EJ-C:** It started as a creative outlet, a way to exercise a different part of my brain after spending hours and hours reading and writing legal memos and briefs.

**KSV:** Did it get to be something that was hard to juggle with your law work?

**EJ-C:** During most of the 27 years I worked in the AG’s Office, I worked about 80% time. In the early years, I had a part-time schedule in order to take care of my children. At other times, that schedule provided me with time to serve on the Montpelier School Board and the Beth Jacob Synagogue Board. It also allowed me to spend time in making art. I think that really helped recharge my energy so that I was a more productive and effective lawyer.

**KSV:** Can you tell me about your process of transition from attorney to artist. Wasn’t it



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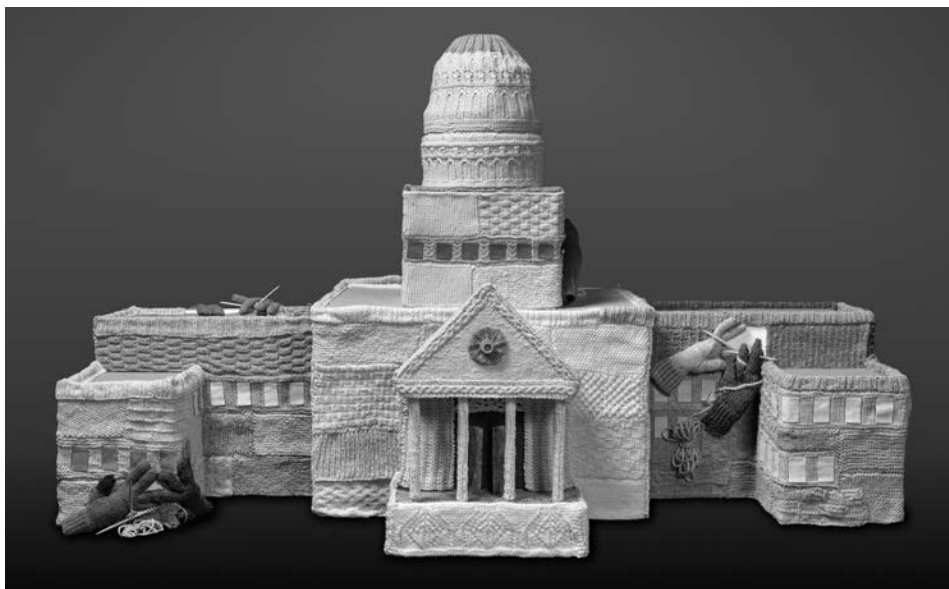
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*Knit Democracy Together, collaborative sculpture, yarn, felt, knitting needles, enamel, foam board, rigid foam, metal tin, dowels, 41 x 68 x 33 inches. © 2021 Eve Jacobs-Carnahan. Photo credit: Paul Rogers Photography.*

a VBA sponsored art exhibit where you got your start as an exhibiting artist?

**EJ-C:** The first time I showed my art in public was at a VBA conference in 2002 in an exhibit called Expressing Dimensions. The piece I showed was called *Hat for Two Sides of the Brain*. It had a three-dimensional pink peony bursting out of one side and a black and white checkerboard with a mathematical formula on the other side.

**KSV:** Where did things go from there?

**EJ-C:** After that I began submitting my work to juried art shows around the country. I took courses in art and textile techniques over the years to improve my skills, but the first time I really thought of myself as an artist was when I went to a week-long sculpture workshop in 2016. Then in 2017 I had an artist residency at the Vermont Studio Center in Johnson. That residency gave me a view into the lives and thinking of the other artists who were there. I felt I could hold my own in conversation with them.

**KSV:** Is it accurate to say that yarn is your chief medium?

**EJ-C:** Yarn and other textiles play a prominent role in my artwork. I describe my artwork as mixed media knitted sculpture.

**KSV:** Why this particular medium?

**EJ-C:** The first reason is because I was comfortable with knitting. I learned to knit as a child, and as I got older, I knit more and more complicated sweaters and shawls. Then in the mid-1990s I discovered there were artists who used knitting in artwork. And powerful artwork too. They used the emotional power of knitting and its domestic associations to bring sensitivity to serious subjects. It changed my whole perspective on knitting, and I began experimenting on my own.

**KSV:** The work that brought you to our attention at the VBA was your “Knit Democracy Together” project. One result of that project was the knitted model of the Vermont state house that was on display this fall at the Capitol. I saw it there. It was amazing. I know the Vermont piece was part of a wider project. How did it begin?

**EJ-C:** Strangely enough, it began at a conference for artists and scientists at the ECHO Center in 2019. The conference was about how to use storytelling through art to communicate about the environment. A couple of the presenters had put together public art projects that really engaged their communities. I wanted to do something like that. But I realized I was a layperson when it came to environmental issues. Now, election law and campaign finance issues – that’s something I knew!

**KSV:** How did the project develop?

**EJ-C:** I was familiar with some social action knitting projects that other artists had done, such as Cat Mazza’s Nike Blanket Petition and the Crochet Coral Reef Project organized by Christine and Margaret Wertheim. I decided to hold 90-minute knitting circles where crafters would make pieces of a collaborative sculpture of a state capitol. During the circle I give a presentation about the U.S. electoral process. The first circle was supposed to take place in March 2020, but because the pandemic hit, I had to switch gears and hold them on Zoom. I finally was able to hold in person circles in the fall of 2021.

**KSV:** Where have you held those circles?

**EJ-C:** I’ve held knitting circles in Vermont in conjunction with VPIRG, Vermont Humanities, local libraries and museums. I held a one on Zoom in Chicago and another in Rochester, NY. I guided the groups in those



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*Gerrymandering the Marsh, detail view of installation, 43 x 144 x 108 inches.  
 © 2021 Eve Jacobs-Carnahan. Photo credit: Paul Rogers Photography.*

states to create knitted sculptures of their state capitol sculptures.

**KSV:** Were you explaining the US Electoral Process while the circle was knitting away? Were people asking questions? What was the vibe?

**EJ-C:** The whole point of the knitting circles is to demystify the electoral process. I want to increase general understanding of the process so people can recognize misinformation. I also want to motivate people to get involved in protecting voting rights. The topics I've addressed have varied. At first, I talked about public financing of election campaigns. But as misinformation about the 2020 election spread, I talked about voting by mail and the process of counting votes and certifying elections. I've also talked about gerrymandering and ranked choice voting – ways to either distort or enhance the representative nature of our elections. Knitting circles are such a wonderful setting, because you can bring people together who don't know each other. Yet, participants come into the space with a shared interest in knitting or crochet or crafting. I attract civically minded crafters who are intrigued by the idea of working together on a collaborative project while deepening their knowledge of the electoral system. Some people ask questions, and some are content to sit quietly and absorb what's going on. And, since everyone is working with their hands, it's perfectly acceptable to be quiet.

**KSV:** Can you describe the physical structure you created for the Vermont project? How was it all put together?

**EJ-C:** The sculpture is loosely based on the Vermont State House. It is 5 feet long, 3 ½ feet tall, and nearly 3 feet deep.

I made the structure out of carboard and foam board and covered it with the knitted pieces crafted by participants at Vermont knitting circles. The crafters chose their own yarn and stitches, so each rectangular block reflects the individuality of its maker. Surrounding the building, extending another two feet are knitted lawn and gardens. Project participants from Vermont and New Hampshire gathered at the State House in person and stitched these pieces together while the sculpture was there on display.

**KSV:** Can you talk a little about the meaning you intended for it to convey? There are some knitted gloves, for instance, holding knitting needles as part of the sculpture. What did you intend by adding those?

**EJ-C:** There are lots of metaphors in this sculpture. The individually crafted blocks reflect people in the community represented in the legislature. The hands are all different colors, just like the people in the community. They hold knitting needles to show that their work is ongoing. Democracy requires maintenance.

**KSV:** If people are interested in getting involved in upcoming Knit Democracy Together projects, how can they do that?

**EJ-C:** People can follow the project by joining my email list through the website <https://knitdemocracy.org>. I plan to continue holding knitting circles with the project through 2024. I am also working on expanding the project outside of Vermont.

**KSV:** I think it's fascinating that your work as an attorney has poured over very directly into your subsequent career as an artist. Would you say that's a fair statement?

**EJ-C:** Absolutely.



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# Thank you, Anne!



**Anne Cramer will be retiring after a 40-year career with Primmer.**

Primmer Piper Eggleston & Cramer PC thanks and recognizes our colleague, Anne E. Cramer, for her leadership and myriad contributions to the firm and to our local and statewide communities.

Anne is retiring from a forty-year career where she has remained at the forefront of health law, with a national reputation for her wisdom and expertise. She made a name for herself as a frequent lecturer on ground-breaking laws. She provided counsel to hospitals, nursing homes, community mental health agencies, physician groups, various trade associations, including the Vermont Association of Hospitals and Health Systems, and other health care interests.

We also want to shine a light on her contributions to her alma mater, Blair Academy, on whose Board of Trustees she has served since 1992. Anne was the first woman to receive their Alumnus of the Year award and received the school's highest honor in 2021, the Citation of Merit. She was also inducted into their 2019 Athletic Hall of Fame.

**Anne, we thank you for your leadership. We thank you for your inspiration, and we thank you for your fearless trailblazing. We are forever grateful for your contributions and wish you lots of snow in your retirement.**

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Anne established and grew a seasoned health law team at Primmer, now lead by Shireen Hart, who will continue to serve the firm's healthcare clients. Visit [primmer.com](http://primmer.com) for more information.



**KSV:** Of course, 'Knit Democracy Together' is not the total of your artistic output. Tell me what else you have done?

**EJ-C:** I have made sculptures depicting plants and birds. These explore the human interaction with nature, often pointing the negative impact of our behavior.

**KSV:** Can you tell me a little more about the sources of your inspiration? I see from your website, <https://evejacobs-carnahan.com/>, that birding, gardening, and cross country skiing are prominent among them.

**EJ-C:** I am especially attracted to birds and use them as a stand-in for people. We relate to birds easily because they are present everywhere that people live, whether city or small rural town. My father, the scientist, was an avid birdwatcher. He dragged my brother and me out birdwatching on many occasions. I did not appreciate it at the time, but now I enjoy the excitement of identifying a new bird or recognizing a familiar one.

**KSV:** I took particular note of your "Gerrymandering the Marsh" installation that you describe on your website. That seems like another big project for you that was inspired in its inception by your work in election law. Can you describe that project?

**EJ-C:** This installation started with a single sculpture of a green heron. I was attracted to the colors of the feathers on their back. Depending on the sunlight, they can look green, blue, or grey. I first saw green herons in Florida, and then began to spot them up here near bodies of water. Sometime after I made the first heron, I was trying out ideas in my head on ways to explain gerrymandering. I had a vague notion that I could arrange different birds into voting districts and show boundary lines manipulated to distort the voting power of one group over another. I also thought it would be cool to include salamanders, since the term for gerrymander originates with an 1812 political cartoon characterizing a Massachusetts electoral district as a monster salamander. That's when I realized the green heron was perfect for this story, because it eats small amphibians like salamanders. With that idea in mind, I created six mixed media knitted green herons, each about two feet tall. Then I made nine clay salamanders. I grouped the herons and salamanders into five districts with three creatures in each. I divided them in such a way that the herons had a majority in three out of five districts, even though they were a minority overall. I set the creatures on large cubes printed with maps of modern gerrymandered districts from around the U.S.

**KSV:** Has it been exhibited or are there plans for that?

**EJ-C:** I am currently looking for an appropriate exhibition space for the installation.



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**KSV:** Tell me about some of the other highlights you've had in your career as an artist.

**EJ-C:** One highlight was receiving the First Place Mary R. Koch Memorial Award in a national fiberarts exhibition at the Wichita Center for the Arts in 2015 for my environmental sculpture "Knotweed: Not Safe." It came with a monetary prize, which was nice, but the irony of the award was priceless. The award is named for the mother of the Koch brothers, major funders of dark money contributions to political campaigns. Basically, the people who oppose the type of campaign financing work I did at the AG's Office! More recently, I received a fellowship from National Arts Strategies. I was named one of 25 Creative Community Fellows in New England for 2022. The fellowship included a year-long program of training in using the arts as a catalyst for social change and community engagement.

**KSV:** How about the challenges?

**EJ-C:** The biggest challenge has been learning how to run a small business. As a lawyer for state government, I never had to look for clients or deal with financial aspects of running a law firm. I'm making up for that now as I make decisions on how to spend re-

sources on things like marketing and professional development.

**KSV:** Where are you focusing your energy right now?

**EJ-C:** In the first half of 2023, I'm focusing on making new artwork. I will be spending more time in the studio this spring, exploring some new textile techniques and trying out ways of combining knitted surfaces and clay. I hope this will recharge my creativity before returning to holding more Knit Democracy Together circles later in the year.

**KSV:** Any work that you're planning that you can preview here?

**EJ-C:** I'm not sure where the new work is going to go. I'm sure it will include issues of democracy, but they might take a more personal direction. I'm as curious as anyone to see what direction the work takes.

**KSV:** Eve, thanks so much for agreeing to answer my questions and for sharing your work with us.

*Do you want to nominate yourself or a fellow VBA member to be interviewed for Pursuits of Happiness? Email [info@vtbar.org](mailto:info@vtbar.org).*



# WHAT'S NEW

## Sixth Annual Martin Luther King, Jr. Middle School Poster-Essay Contest

Maeve Daloz Winning MLK Poster 2023



Each year, a committee comprised of representatives from the VBA staff, the VBA Diversity Section, and the VBA Young Lawyers Division, chooses a quotation by the Dr. King to inspire Vermont's middle school students to participate in a Poster-Essay Contest. This year's quotation came from a sermon Dr. King delivered in 1957: "Life's most persistent and urgent question is, what are you doing for others?"

Each year, after removing the names and identifying information from the entries, the judges choose a winner, a first runner-up, and a second runner-up. The judges this year were impressed with the thoughtful responses of all the contestants.

Several entries focused on the hard times that COVID had brought to them personally or to the wider community. Others reflected on how help from others was critical to them in getting through difficulties they had faced. Some highlighted their gratitude for parents, helpful professionals, such as doctors, nurses, and teachers. Some told stories about times that they had helped others. It was clear that each entrant had thought long and hard about Dr. King's quotation and its meaning in their lives and for the life of the community.

In addition to being published in the *Vermont Bar Journal* and on the VBA website, the winning entries were displayed at the VBA Young Lawyer's Division Mid-Winter Thaw in Montreal over the 2023 Martin Luther King, Jr. holiday weekend. They will next be displayed at the Vermont Supreme Court. In addition, the winners and their families will be invited to an award ceremony with Governor Scott followed by a meeting with Supreme Court justices. The date for the ceremony remains TBD at the time of publication, but the hope is to have it sometime in early to mid-March. All entries outside of the top three were awarded honorable mentions, and all were well deserved.

### 2023 Winners

**Maeve Daloz**, an 8<sup>th</sup> grader at U32 in Montpelier, took the first-place award. Her skillful drawing of a hand reaching down to pull up another, rising from the darkness, was an economical and effective visual representation of the quotation. Her essay, which is printed in full below, was a touching personal account of how a friend had taken trouble to help when she was feeling depressed. She noted that small kindnesses, although maybe not on the scale with Dr. King's achievements, "really do matter."



**William Cunningham**, an 8<sup>th</sup> grader at Mater Christi in Burlington, was awarded first-runner up. His very accomplished poster featured a pair of drawings. One shows a person in darkness, chained to wealth. The essay explains that this represents being self-centered and doing nothing for others and so leaving no lasting legacy. In the other drawing, a person is helping a hungry child. The essay explained that help provided to another will have changed a life and so changed the world.

**Hannah Drury** and **Zofia Willis**, also 8<sup>th</sup> graders at U32, teamed up to create a poster and essay that took the second runner-up award. Their entry demonstrated great originality by *not* including a drawing. Instead, they compiled a series of encouraging text messages, arranged them in columns, and printed the series in black and white. The striking format draws the viewer in to study the details, and the text messages embody an actual kind gesture. "What can you do for others" made them think of what others had done for them, inspiring them to show the messages from their parents offering regular support and encouragement.

The VBA congratulates the winners and all the participants.

**Winner, Vermont Bar Association  
2023 Martin Luther King, Jr.  
Middle School Poster/Essay Contest  
by Maeve Daloz**

Martin Luther King Jr was a great person who was always fighting for others. In many ways his kindness changed the world. He was always thinking of other and helping people as much as he could. He inspired many people and changed many unjust laws oppressing people of color. Admittedly not all of us can be as great as Dr King but I believe little kindness can still make a big difference.

I often get depressed for no apparent reason. When this happens often being alone makes it worse but I don't necessarily want to be around people. This happened to me while I was away at a summer camp last summer. I had gone up to my room trying to suppress tears when a few minutes later, I heard a hesitant knock on the door. It was one of my roommates who had come to check on me. They explained that when they were sad they didn't want to be alone and asked if I wanted to talk. It made me feel alot better just talking. Though they did not literally offer me their hand, they pulled me out of the darkness of my own mind and back into the light. Ever since then I've tried more and more to empathize with other people and try to help them when possible.

What this person did for me was not earth shattering and didn't save the world but they helped me when I needed it and I think these little kindnesses really do matter. Showing someone you care can help more than you think.



First Runner up MLK Contest William Cunningham



Second Runner Up Poster by Hannah Drury and Zofia Willis

# WHAT'S NEW

## Introducing the VBA's Brown Bag Law Study Program

The Vermont Bar Association has a long-term focus on developing a diverse, knowledgeable, and vibrant bar. In furtherance of this goal, the VBA announces a new program of CLE courses focused on the basics of law: "The Brown Bag Law Study Program" (BBLS).

Vermont is famous for being one of the few states where people can still study for the bar exam under an apprenticeship model. Vermont's law office study (LOS) program allows participants to study 25 hours a week for four years with a Vermont attorney or a judge instead of going to law school. The parameters and requirements of the program are set out in Rule 7 of the Rules of Admission to the Bar of the Vermont Supreme Court.<sup>1</sup>

The BBLS was inspired by the need to enhance learning opportunities available to candidates in the LOS program. It will also be useful for licensed attorneys with gaps in their knowledge, or who need a refresher on fundamental principles in specific areas of law practice.

In most cases, LOS participants get detailed training in the areas of law in which their sponsor practices. It is unlikely, however, that most will get an introduction to, much less an actual course of study in, those areas in which the sponsor doesn't practice.

The BBLS is not intended to be a bar review course. Instead, volunteer presenters, all experienced practitioners, will offer one or two zoom webinars each month focusing on key terminology and concepts that are fundamental to attorney competence and which form the basis for testing areas of the Uniform Bar Exam (UBE). Note: because the bar exam doesn't test Vermont local law, that will not be the subject of the courses offered.

The UBE tests in some combination of these areas of: Business Associations, Civil Procedure, Conflict of Laws, Constitutional Law, Contracts, Criminal Law and Procedure, Evidence, Family Law, Real Property, Secured Transactions, Torts and Trusts and Estates. Ethics is also tested in a component of the exam. Students at the BBLS will be provided with an introduction to the key terminology and concepts in each of these areas.

Courses will be offered for \$25 each for LOS students and at the regular rate (\$35 per credit hour for VBA members, \$90 per hour for nonmembers). In addition to the reduced cost for these sessions, the VBA is offering free membership through August 31, 2023 for LOS students.

Here's a link (<https://vtbar.formstack.com/forms/?5115399-IKq8rPbHap>) to the special VBA member application form to sign up. Registration for the classes is through the CLE calendar on the VBA website.

Questions? Email [info@vtbar.org](mailto:info@vtbar.org) with "Brown Bag Law Study" in the subject line. The classes will carry CLE credit consistent with the length of each program. The programs will be recorded and made available through the VBA's digital library shortly after presentation.

The first three sessions have been scheduled for February, March, and April 2023. (See below). Sessions will run from 11:30 to 1 PM. The VBA is continuing to recruit instructors in several areas so if you're interested email the VBA.

### Now on the CLE Calendar at the VBA Website

**February - Real Property.** The real property program will explore key terms and concepts in the area of real property law. The focus is on general common law, not on the specifics of Vermont law and practice. Topics to be addressed include: freehold estates, future interests, the rule against perpetuities, easements, mortgages and recording systems. There will be some fact patterns interspersed among the discussion of the subjects related to various issues with examples of analysis of the fact patterns in the context of the legal principles under consideration. The BBLS Course will consist of two 90-minute webinars taught by Jim Knapp, Esq., co-chair of the Real Property Section of the VBA. The sessions are scheduled for February 15 and 22, 2023. They will begin at 11:30 AM and end at 1 PM.

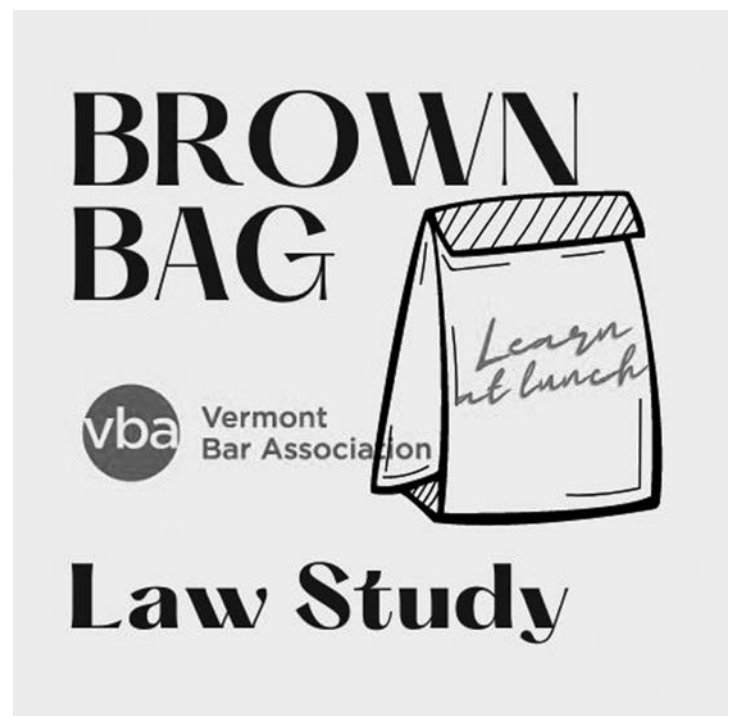
**March - Contracts.** Contracts are one of the foundational topics in the law. An understanding of basic contract principles is a key skill in the analysis of legal

issues. The contract program will offer a review of terms and concepts in the areas of: contract formation, consideration, statute of frauds, contract conditions, Uniform Commercial Code - Article II - Sales and defaults and remedies. Benjamin Deppman, Esq. co-chair of the VBA Real Property Section, will lead the two 90-minute webinars on March 22 and 23, 2023. They will begin at 11:30 AM and end at 1 PM.

### April - Criminal Law and Procedure.

Criminal law covers the substantive law of crimes, such as the elements of offenses, (what makes an act larceny or assault etc.?) along with the rules of accomplice liability. Criminal procedure consists of the rules and constitutional considerations that govern criminal investigations and prosecutions. Our BBLS courses in these subjects will be two 90-minute sessions co-taught by VBA Board Members, Jordana Levine, Esq., who practices in criminal defense at Marsicovetere & Levine Law Group in White River Junction, and Alfonso Villegas, Esq., a deputy state's attorney in the Washington County State's Attorney's office. The classes are scheduled for April 11 and 12, 2023 and will also be taught from 11:30 AM to 1 PM.

<sup>1</sup> <https://www.vermontjudiciary.org/sites/default/files/documents/LOS%20Info.pdf>





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**Burlington, Vermont (December 21, 2022):** After almost eight decades of serving clients in Vermont and elsewhere, Lisman Leckerling P.C. will be closing its doors on December 31, 2022.

- Carl Lisman will be moving toward retirement. You can reach Carl at [clisman@lisman.com](mailto:clisman@lisman.com) or (802) 657-7225. His mailing address will be P.O. Box 728, Burlington, Vermont, 05402.
- Bill Leckerling will be opening Leckerling Law PLLC with offices in Burlington and Stowe. Bill will continue his focus on negligence and litigation matters. Beginning January 1, 2023, he'll be at [wmleckerling@leck-law.com](mailto:wmleckerling@leck-law.com) or reach him via his website [www.leck-law.com](http://www.leck-law.com). His direct dial number will continue to be (802) 657-7250. His mailing address will be 998 South Main Street, Suite 122, Stowe, Vermont 05672.
- Rick Kozlowski will continue his estate planning and corporate practice. Beginning January 1, 2023, he'll be at [rkoz@lisman.com](mailto:rkoz@lisman.com), or reach him via his website: [vermontestateplan.com](http://vermontestateplan.com). His direct dial number will continue to be (802) 657-7235. His mailing address will be 25 Victoria Drive, South Burlington, Vermont 05403.
- Chris Jensen will continue and expand her practice in common interest community law, including representation of developers, managers, lenders, homeowner and condominium associations and owners, and will continue her employment law practice as Of Counsel with Primmer, Piper, Eggleston & Cramer, PC. You can contact her at [cjensen@lisman.com](mailto:cjensen@lisman.com) until December 31, 2022; beginning January 1, 2023, she'll be at [cjensen@primmer.com](mailto:cjensen@primmer.com); her direct line will be (802) 660-3312.

It's a bittersweet change as we've all enjoyed practicing together and we plan to collaborate in the future whenever we can.

## BE WELL

### Re-Thinking Your Approach to Happiness and Well-Being in 2023

*"I don't call them New Year's Resolutions. I prefer the term: casual promises to myself that I am under no legal obligation to fulfill."*

~ Anonymous ~

Another new year has begun and many of us may have started it by shining a critical light upon our lives with the goal of implementing changes for our greater good. As a result, some of us set high aspirational goals that may be difficult to achieve during the short and cold winter days. This is a seasonal time when our mood-stabilizing serotonin levels are already dipping, and we may feel mildly (or not so mildly) depressed. When we add the pressures of our challenging new year's resolutions to our uninspired emotional state, it can be a stressful recipe for self-inflicted frustration and disappointment.

Thus, this article is a proposal to re-think how we approach the new year, which may enable us to increase our overall well-being

by making better choices and creating new habits. The goal is to breathe new meaning and a greater sense of purpose into your life by making simple, small, but profound adjustments. Essentially, take active ownership of the directionality of your life in a sustainable paradigm – not one that will leave you feeling disappointed and possibly in worse shape than when 2023 began.

The "Re-Thinking Concept" was created by Adam Grant<sup>1</sup>, an organizational psychologist and author who studies how humans find motivation and meaning in their lives. As attorneys, we are keenly familiar with the concept of intelligence, which is seen as the ability to think and learn information. But there is a different, and possibly more important, form of intelligence that may matter more in terms of increasing overall well-being: the ability to re-think and unlearn. We do not lose integrity by changing our minds. Instead, it can be seen as a mark of gaining deeper wisdom and understanding. It means you have actually engaged in

a deeper form of learning. Something that I regularly teach in my mindfulness sessions and CLEs is the difference between "knowledge," which I see as the gaining of new information, and "wisdom," which I perceive as the integration of knowledge through embodied experiential practices. Wisdom cannot be gained by merely acquiring knowledge. It only comes from integrating that knowledge through experiencing it. As Adam Grant explains, "your opinions are what you think today. But growth comes from revising those views tomorrow... There is strong evidence that letting go of ideas, goals and habits that are no longer serving you well, can improve your mental health and your success." The start of the new year is the perfect time to re-think and unlearn old assumptions. So, consider this inquiry: what is one part of your life that you would like to re-think?

Thus, to start our 2023 re-thinking process, we must determine the umbrella under which we will create our new plan for

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our lives, and there are few motivations that take priority over the achievement of happiness. In the United States, the pursuit of happiness is so prized that it is one of the three unalienable rights in our Declaration of Independence (July 4, 1776), “We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness.”

We want to be happier humans in our personal and professional lives, but the sole pursuit of happiness has been shown to be detrimental to our overall well-being. Adam Grant points to psychological research studies, which found that the more people value happiness, the less happy they often become with their lives. There are four possible explanations why this occurs. First, when we are searching for happiness, we get too busy evaluating life to determine why our lives are not more joyful than actually experiencing it. And, as the practice of mindfulness teaches, the wisdom within any moment is gained by embracing and experiencing it fully - staying present with what is arising from moment-to-moment, as opposed to critiquing it. Second, we are striving for moments of peak happiness, overlooking the fact that present-moment happiness depends more on the frequency of positive emotions than their intensity. An example of this is to go on a trip, move to a new location, or get a new job, which is merely changing our surroundings with the goal of enhancing our levels of happiness. As Ernest Hemingway wrote, “you can’t get away from yourself by moving from one place to another.” As Adam Grant explains, our happiness often depends more on what we do than where we are. It is our actions, not our surroundings or things, that bring us meaning and belonging. Third, in our hunt for happiness we over-emphasize pleasurable moments and experiences at the expense of seeking a life of deeper meaning and pur-

pose in our life or work. The goal is to avoid searching for the ideal job that brings us a sense of happiness and instead pursuing professional endeavors and opportunities that connect us with a deeper purpose and sense of meaningful contribution. Finally, a fourth explanation is that many American’s pursuit of happiness can be an individualistic and solo endeavor that ultimately leaves us feeling lonely. To shift this paradigm, we can learn from cultures where people prioritize social engagement over independent activities.

I know that throughout my life the most meaningful professional experiences are those where I embodied my skills and experience in a way that benefited others. Finding ways to be in service to others has been the biggest gift I could give to myself. Adam Grant has a test to determine meaningful work, just ask yourself: “If this job didn’t exist, how much worse off would people be?” As philosopher John Stuart Mill explains, “Those only are happy who have their minds fixed on some object other than their own happiness. On the happiness of others. On the improvement of mankind... Even on some arduous pursuit followed by, not as a means, but as itself, an ideal end. Aiming thus at something else... They find happiness, by the way.”

Being a lawyer can sometimes feel like a lonely and insular path that one must walk alone without support or help from others, even when we are following our passions and living a life of meaning and purpose. And this “do-it-alone mentality” can lead to unhealthy and negative coping mechanisms to prop up our stressful lives. So, as we look ahead in 2023 with goals of increasing our overall well-being, we do not have to upend our entire current professional paths to re-think some of the ways we move through the world. Major changes or resolutions are not the goal here but making smaller adjustments that can breathe new meaning into our days. One methodology is to become an internal ar-

chitect of your current job or role, known as job crafting,<sup>2</sup> a process by which a person changes their daily actions to better fit their values, interests and skills. The goal is to bring yourself fully to your professional roles, such that it may not be a part of your job, but it is part of you that you bring forth to share with others. We don’t have to stay tethered to old images of where we want to go or who we want to be.

The simplest way to start re-thinking our 2023 options is to question what we do daily. Start by applying three simple, but profound, levels of inquiry to the one part of your life you would like to re-think: (1) humility to reconsider past habits and modes of being; (2) vulnerability to question our present decisions; and (3) open curiosity to reimagine our future actions. The answers to these questions may lead to a deeper discovery of hidden motivations that can expand your planning from the familiar habits to a deeper sense of purpose and meaning. Re-thinking liberates us to do more than merely update our knowledge and opinions. It is a tool for living a more fulfilling life connected with others and yourself, while increasing our overall well-being as lawyers.

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**\*\*NOTE: I have begun to build a community of mindful legal professionals through the bi-weekly VBA virtual mindful moments sessions and am open to exploring in-person monthly options to support our overall well-being. Please contact me at [anderson\\_samara@yahoo.com](mailto:anderson_samara@yahoo.com) to discuss further.\*\***

<sup>1</sup> Adam Grant, *Think Again: The Power of Knowing What You Don’t Know* (2021).

<sup>2</sup> Jane E. Dutton and Amy Wrzesniewski, *What Job Crafting Looks Like*, Harvard Business Review (March 12, 2020).





# WRITE ON

## Is There a Place for Plagiarism in Law Practice?

Legal writing professors are currently engaged in a spirited debate about the merits of plagiarism in law practice. This may surprise you because plagiarism—using the words of another without attributing the source—is a serious offense in law school and every other educational setting. Indeed, the admonition against plagiarism does not end in school: Courts have disciplined attorneys who plagiarize. Courts call plagiarism “reprehensible,”<sup>1</sup> “unethical,”<sup>2</sup> a “scarlet letter,”<sup>3</sup> and “wholly intolerable in the practice of law.”<sup>4</sup> I am sure most of you reflexively agree that plagiarism is unethical and is just as unacceptable in practice as it is in school.

Yet, recently, legal writing professors are challenging us to rethink this basic assumption. These professors forthrightly and unapologetically defend plagiarism in practice. Before explaining their thesis, I want to be clear at the outset that advocates of plagiarism do not seek to justify a stray missed citation, or a paraphrase that really should have been a quote. No, they defend wholesale copying of large parts of other attorneys’ work product. For example, the centerpiece of Professor Andrew Carter’s provocative article, *The Case for Plagiarism*, is the notorious story of an Iowa attorney who copied seventeen pages of an article on bankruptcy he found on a New York law firm’s website into his nineteen-page brief without attributing the source.<sup>5</sup> After the bankruptcy court discovered the plagiarism, it chastised the lawyer and ordered him to enroll in a law school ethics class.<sup>6</sup> Then the Iowa Supreme Court publicly reprimanded the lawyer.<sup>7</sup> This would strike most lawyers as an impossible act to defend, but Professor Carter takes on the challenge. These bad facts make Professor’s Carter’s persuasive argument all the more remarkable.

How do he and the other professors supporting plagiarism in practice convince the reader of their thesis? The appealing angle they pursue is that using the work of other authors can enhance access to justice. Their theory is that lawyers might be more inclined to represent indigent and other clients who cannot afford to pay for costly original research and writing if the lawyers can simply adopt the work of others. Large law firms have motion and brief banks that associates in the firm use repeatedly, the thinking goes, so why not allow solo practitioners and lawyers desiring to represent the interests of the less fortunate to use the

work of others in the same manner to even the playing field. Professor Carter summarizes the argument succinctly: “simply put, plagiarism saves time and money.”<sup>8</sup>

Access to justice is a serious problem in Vermont. The Vermont Supreme Court, the Vermont Bar Association, Vermont Legal Aid, and other organizations serving at-risk clients have all recognized this growing problem and have taken steps to address it. Together, they formed the Vermont Access to Justice Coalition, which submitted a Report to the Vermont Legislature in 2020 calling for more funding to provide legal assistance for low-income communities.<sup>9</sup> Given the “justice gap” between those who need legal assistance and those who can afford it, an argument for plagiarism based on access to justice may be appealing to those who care about providing representation to low-income communities. If lawyers can take on more *pro bono* work by using the work of other lawyers, then perhaps we should be encouraging plagiarism, not punishing it.

The pro-plagiarism scholarship is thought-provoking. It “invites us to rethink core values and reprioritize competing interests.”<sup>10</sup> The scholarship addresses concerns about plagiarizing in practice thoroughly and convincingly. The arguments in favor of plagiarism are persuasive, as I will explain below. But, ultimately, I remain conflicted by the claim that lawyers should be allowed to borrow the work of others to improve access to justice. Though advocates insist that plagiarizing does not violate any rules of professional or ethical conduct, I am not entirely convinced.

In this column, I will first present the pro-plagiarism argument in the best light, for it has many attributes. I will then explain my hesitancy at fully embracing the argument. In sum, allowing lawyers to plagiarize the work of others—even in the name of access to justice—implicates the professional and ethical values of competency, candor to the court, and integrity. The purpose of this column is to start a conversation with the bench and bar about whether plagiarism should be allowed—and even encouraged. I am interested in hearing the views of judges and practitioners—and needy clients—as I wrestle with my own divergent opinions on the topic.

### Arguments in Favor of Plagiarism in Law Practice

The pro-plagiarism argument begins with the unassailable premise that the “legal profession was built on borrowing.”<sup>11</sup> Lawyers frequently use legal forms. In fact, the Vermont Judiciary encourages the use of forms, with literally hundreds of forms available for use free-of-charge in its online “Forms Library.”<sup>12</sup> With a legal system based on *stare decisis*, “an expectation of plagiarism is baked into our common law system.”<sup>13</sup> Originality is not a prized value in law practice. Instead, so the argument goes, a lawyer should prioritize the legal and financial interests of their client over any pride in authorship. In their forthcoming article, Professors Megan Boyd and Brian Frye put it this way:

Imagine telling a client that you could prepare a filing for them in an hour by copying an existing filing and making relevant changes, or you could prepare an equivalent filing in 20 hours by writing it from scratch. No client would request the novel filing, as it would be a waste of the lawyer’s time and the client’s money.<sup>14</sup>

From this (perhaps deceptively) appealing premise, Boyd and Frye then claim boldly that “effective plagiarism is an essential skill—if not the essential skill—of lawyering.”<sup>15</sup>

Of course, in addition to responsibilities to their clients, a lawyer also has a responsibilities to the judicial system as an officer of the court, and plagiarizing seems to violate these responsibilities. Courts that discipline lawyers for plagiarism generally rely on Professional Conduct Rule 8.4(c), which prohibits “dishonesty, fraud, deceit, [and] misrepresentation.”<sup>16</sup> This premise, too, seems unassailable: A lawyer who plagiarizes is submitting a brief to the court representing it as their own work product when in fact it is not. That is, the lawyer is misrepresenting the true author of the brief.

Yet the intrepid defenders of plagiarism have a response, and a convincing one at that. Professor Carter frames the misrepresentation inquiry in terms of detrimental reliance:

The operative question becomes whether the courts rely to their detriment on a presumption that the analysis and writing in a brief are original. Asked another way, relying on a pre-

sumption that a brief is an original work product, does a court take some material action it would not take if the court was aware that the brief in question was largely plagiarized? Plainly the answer is no.<sup>17</sup>

Professor Carter supports this conclusion with a lengthy string cite of cases where courts insist that their judgment was not influenced by the poor briefing or other bad behavior of the lawyers before them.<sup>18</sup> Judicial opinions addressing plagiarism and other misbehavior by lawyers often include lines like, “We separate the merits of the issues raised from the conduct of counsel,”<sup>19</sup> and the “Court’s opinion has not been affected by defense counsel’s unprofessional submission.”<sup>20</sup> Professor Carter thinks this is the appropriate response to plagiarism. He argues that the alternative, a court deciding differently had it known the lawyer’s work was not original, is “deeply problematic” because “courts are charged with resolving cases based on the force of the arguments presented, not their originality.”<sup>21</sup> Other scholars agree:

[T]he court’s purpose in reviewing a brief is not primarily to evaluate the personal creativity and skill of the lawyer, but to learn the law, apply it to the facts, and decide the controversy. Most unacknowledged copying does not degrade the integrity of the court, given its purpose.<sup>22</sup>

For readers not entirely convinced by the logic of this argument, this is where access to justice could sway the undecided. Again, the Vermont Judiciary and the Vermont Bar take access to justice seriously. The Preamble to the Vermont Rules of Professional Conduct makes this clear:

A lawyer should be mindful of deficiencies in the administration of justice and of the fact that the poor, and sometimes persons who are not poor, cannot afford adequate legal assistance. Therefore, all lawyers should devote professional time and resources and use civic influence to ensure equal access to our system of justice for all those who because of economic or social barriers cannot afford or secure adequate legal counsel.<sup>23</sup>

It seems a small step from this lofty command to plagiarizing on principle. This is what proponents of plagiarism mean by “reprioritize[ing] competing interests.”<sup>24</sup> If a lawyer must choose between representing a poor client using plagiarized material or foregoing that representation because they do not have the time or financial resources to write original work, should access to justice prevail in this conflict?

As you mull over your answer, keep in

mind what the Vermont Access to Justice Coalition said in its Report: “[T]he vast majority of litigants with critical legal issues represent themselves in court,” but “self-represented litigants are often at a loss to begin presenting their case.”<sup>25</sup> Allowing lawyers to plagiarize in an effort to address the crisis in access to justice in Vermont might be one way to begin addressing the “justice gap.” One professor in support of plagiarism in this circumstance has made the point starkly: “When some lawyers incorporate pre-drafted material into their work, they are taking from the haves to serve the needs of the have-nots.”<sup>26</sup>

Access to justice and the low-value of originality in practice address concerns about a plagiarizing lawyer’s ethical responsibilities to the court and the client, but what about the interests of the lawyers who are plagiarized? Proponents of plagiarism have a ready response to this concern as well. Professor Carter, for one, acknowledges that briefs can be copyrighted, but he argues that the “public good” derived from plagiarizing amounts to a “fair use” of brief and therefore the plagiarizer is not subject to copyright infringement.<sup>27</sup> In defense of his fair-use argument, Professor Carter first repeats the access-to-justice claim copyright infringement. Professor Carter also suggests that the policy behind copyright protections—“incentivizing writers to do their very best work by providing them a protected economic interest in their final product”<sup>28</sup>—does not apply to lawyers writing briefs: they are already duty-bound to represent their clients zealously. Adding a protected copyright interest to this obligation will not result in a better brief.

In addition to repeating the access-to-justice argument, Professor Carter offers a second argument in favor of plagiarism as fair use, one I find intriguing. Professor Carter argues that the “democratic value” of the law’s evolution and development is furthered by lawyers borrowing from the work of others and, conversely, hindered by lawyers protecting their briefs from copyright infringement:

Attorneys are officers of the court and the key players in our adversarial system . . . All lawyers participate in this exercise; each one of our briefs becomes part of the repository of arguments through which the law evolves. From this point of view, to allow attorneys to hoard their arguments with copyright protection upends the genius of the common law.<sup>29</sup>

Perhaps rhetorical eloquence gets the best of Professor Carter here, but there is an element of truth to what he says. It can be empowering and ennobling for lawyers to see themselves as part of the law-making process—not just advocates trying to

persuade but actual participants in the development of the law. When a lawyer’s role in the judicial process is viewed in this light, briefs can be thought of as part of the public record just like judicial opinions. Borrowing from them freely to advance justice and the law is a democratic value we should encourage.

The articles I have referred to in this column are lengthy, and space constraints only allow me to highlight some of their salient points. Suffice it to say that these articles and the robust debate in the legal writing community have opened my eyes to a new way of thinking about plagiarism. Law school is different from law practice. We care about plagiarism in law school and penalize those who commit it because the emphasis in law school is on learning and evaluation. This is not the focus or priority of law practice, where advancing the best interests of the client and improving access to justice take priority over originality. Reading these articles has persuaded me that there may be a place for plagiarism in law practice. When one considers the crisis in access to justice, perhaps Professor Carter is right: “While plagiarism might be a sin in the academy, in other professional contexts, it can be a virtue.”<sup>30</sup>

### Concerns about Plagiarism in Law Practice

But still . . . I have some concerns about allowing let alone encouraging plagiarism in law practice. My concerns center on the Rules of Professional Conduct relating to competence and candor to the court, as well as a more general concern, not necessarily tied to any Rule of Professional Conduct, about personal integrity. Though I am intrigued and in certain respects persuaded by the argument in favor of plagiarism in practice, I will next briefly explain concerns that temper my enthusiasm.

First, I worry that when a lawyer copies the work of other lawyers they may not be competently representing their client. The Vermont Rules of Professional Conduct require competent representation.<sup>31</sup> Competent representation means the lawyer must have the “legal knowledge, skill, thoroughness and preparation necessary for the representation.”<sup>32</sup> The comments to the rules note that one factor in determining the requisite legal knowledge is “the preparation and study the lawyer is able to give to the matter.”<sup>33</sup> A lawyer who finds an on-point argument in another lawyer’s brief can be given credit for good researching skills and for knowing a good argument when they see one. But has a lawyer who plagiarizes entire arguments really gained “legal knowledge” of that argument through sufficient “study”?

Writing is a thinking process, copying is

not. How will the lawyer fare at oral argument, when they are asked to defend their position? For some lawyers, copying the work of others might be just the first step in developing a thorough knowledge of the law. But for those lawyers who are content to copy an argument and rest on its persuasive appeal, this may not suffice for competent representation. In his defense of plagiarism, Professor Carter concedes that a lawyer who writes their own brief obtains a “fuller command” of the argument.<sup>34</sup> But, sticking to his thesis, Professor Carter insists that many clients “in need of legal services simply do not have the resources to pay for their lawyer’s ‘high-end’ cognitivist endeavors.”<sup>35</sup> One response to this concession is, at what cost access to justice? The impoverished client may escape the cost of original writing when their lawyer plagiarizes the work of others, but that client’s interests may not ultimately be served by an attorney who, in essence, is faking it.

Second, a lawyer who copies large portions of another lawyer’s work and submits it as their own work is not really being candid with the court. The Rules of Professional Conduct require “candor” with the court.<sup>36</sup> “Candor” is defined as “honest or sincere expression.”<sup>37</sup> How honest is a lawyer being with the court when they pass off the work of others as their own? Pro-plagiarism advocates point out that the Rules of Professional Conduct do not explicitly prohibit plagiarism. Advocates add that, in filing a brief, “the lawyer is not certifying the document is original.”<sup>38</sup> Still, to me there is something unseemly, if not unethical, about a lawyer copying seventeen pages of a nineteen-page brief and not telling the court about the true source of the argument. That is not being candid with the court.

Third, copying the legal work of others without attribution implicates a lawyer’s personal and professional integrity. The Preamble to the Rules of Professional Conduct note that, while the Professional Conduct Rules govern a lawyer’s conduct, “a lawyer is also guided by personal conscience and the approbation of professional peers.”<sup>39</sup> Personal conscience keeps most lawyers from plagiarizing, however busy they are and however poor their clients are. I worry that “plagiarizing on principle” can quickly become a habit. A lawyer, trying to help a worthy client who cannot afford original work, copies the work of another. If that effort meets with success (i.e., victory for the client), this may encourage the lawyer to plagiarize again. Soon, plagiarism is part of their practice. Perhaps, when rethinking core values, access to justice may prevail over personal integrity, or even bolster it: a lawyer has done well if they can help a needy client at little expense by plagiarizing. But, in the long run,

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institutional solutions to access to justice are better for the profession—and for our personal integrity—than the stop-gap approach of plagiarizing.

## Conclusion

Legal writing professors have embarked on a refreshing second-look at plagiarism

in the last few years. Scholars have argued that plagiarism has a place in law practice as an appropriate means to address the crisis in access to justice. Long considered anathema in the legal academy and the legal profession, plagiarism is now being defended by some as a means for the “haves” to give back to the “have-nots.” This is a healthy discussion, and I have been invigo-



rated by it. But I stop short, for now, of embracing the concept and cannot overcome my lingering doubts. With this column, I hope to spark a conversation on plagiarism with the Vermont bench and bar I will leave it to readers to offer more certain convictions—one way or the other. The most I can muster right now is a conflicted and lukewarm response.

*Greg Johnson, Esq. is Professor of Law and Director of the Legal Writing Program at Vermont Law and Graduate School.*

<sup>1</sup> *Pagan Valdez v. Laboy Alvarado*, 145 F. Supp. 2d 146, 160 (D. Puerto Rico 2001).

<sup>2</sup> *Iowa Supreme Ct. Bd. of Pro. Ethics and Conduct v. Lane*, 642 N.W.2d 296, 299 (Iowa 2002).

<sup>3</sup> *Iowa Supreme Ct. Bd. of Pro. Ethics and Conduct v. Cannon*, 789 N.W.2d 756, 759 (Iowa 2010).

<sup>4</sup> *DeWilde v. Gannett Publ'g Co.*, 797 F. Supp. 55, 56 n.1 (D. Maine 1992).

<sup>5</sup> Andrew M. Carter, *The Case for Plagiarism*, 9 Univ. Calif. Irvine L. Rev. 531, 532 (2019).

<sup>6</sup> *Id.* (citing *In re Burghoff*, 374 B.R. 681, 687

(Bankr. N.D. Iowa 2007)).

<sup>7</sup> *Id.* (citing *Cannon*, 789 N.W.2d at 760).

<sup>8</sup> *Id.* at 536.

<sup>9</sup> The Vermont Access to Justice Coalition, *Renewing Vermont's Commitment to Access to Justice 1* (2020) ("Vermont faces significant challenges in meeting the goal of providing access to justice for all litigants in its civil courts.").

<sup>10</sup> Rebekah Hanley, *Yes, We Can: Embrace the Case for Plagiarism to Enhance Access to Justice*, 5 Stetson L. F. 1, 5 (2022).

<sup>11</sup> K.K. Du Vivier, *Nothing New Under the Sun – Plagiarism in Practice*, 32 Colo. Law. 53, 53 (2003).

<sup>12</sup> See Forms Library | Vermont Judiciary

<sup>13</sup> Carter, *supra* note 5, at 554.

<sup>14</sup> Megan E. Boyd & Brian L. Frye, *Plagiarism Pedagogy: Why Teaching Plagiarism Should be a Fundamental Part of Legal Education*, Wash. U. L. Rev. (forthcoming) available at <http://ssrn.com/abstract=3819847>

<sup>15</sup> *Id.* at 14.

<sup>16</sup> Vt. Rules of Pro. Conduct 8.4(c); see, e.g., *Lane*, 642 N.W.2d at 299 (calling plagiarism "a misrepresentation to the court.").

<sup>17</sup> Carter, *supra* note 5, at 540.

<sup>18</sup> *Id.* at 541 n. 54.

<sup>19</sup> *Id.* (quoting *United States v. Jackson*, 641 F.3d 1213, 1219 n.2 (9th Cir. 1995)).

<sup>20</sup> *Id.* (quoting *Vasquez v. City of Jersey City*, 2006 WL 1098171, at \*8 (D.N.J. March 31, 2006)).

<sup>21</sup> *Id.* at 540.

<sup>22</sup> *Id.* at 540 n.53 (quoting James Peterson and Jennifer Gregor, *Attorneys at Work: A Flexible Note of Plagiarism*, Law 360, October 7, 2011, at \*8).

<sup>23</sup> Vt. Rules of Pro. Conduct pmbl. (6).

<sup>24</sup> Hanley, *supra* note 10, at 5.

<sup>25</sup> The Vermont Access to Justice Coalition, *supra* note 9, at 3.

<sup>26</sup> Hanley, *supra* note 10, at 9.

<sup>27</sup> Carter, *supra* note 5, at 549-50.

<sup>28</sup> *Id.* at 550.

<sup>29</sup> *Id.*

<sup>30</sup> *Id.* at 535.

<sup>31</sup> Vt. Rules of Pro. Conduct R. 1.

<sup>32</sup> *Id.*

<sup>33</sup> *Id.* at cmt. 1.

<sup>34</sup> Carter, *supra* note 5, at 545.

<sup>35</sup> *Id.*

<sup>36</sup> Vt. Rules of Pro. Conduct R. 3.3.

<sup>37</sup> Merriam-Webster Dictionary, available at [www.merriam-webster.com](http://www.merriam-webster.com)

<sup>38</sup> Boyd & Frye, *supra* note 14, at 6.

<sup>39</sup> Vermont Rules of Pro. Conduct pmbl. (7).



## 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.

This month's crossword is not legally themed, but the legal themes will return in the future!

*Note: For those readers who regularly solve the New York Times crossword, this puzzle is about a Wednesday-level difficulty.*

*See page 44 for the Fall Journal's Crossword Solution.*

### Across

1. Boot-shaped country
6. Tach. readings
10. Tries a blue square, say
14. "Honest."
15. Wind
16. Shut up
17. Bob Dylan recently won one
18. Unconscious state
19. Tilikum, e.g.
20. Dictatorial\*
23. Spanish seasoning
24. CPR provider
25. Gourmet\*
31. Funeral blazes
35. TV friend of Jerry and George
36. Rowers
38. Night before
39. The so-called fourth dimension
40. Rich dessert
42. Not free
43. \_\_\_ Maria
44. Travels
45. Peloponnesian War winner
47. Passover feast
49. Mr. Fixit\*
51. Actress Whitman
53. 100%
54. Part of a hurricane, or a

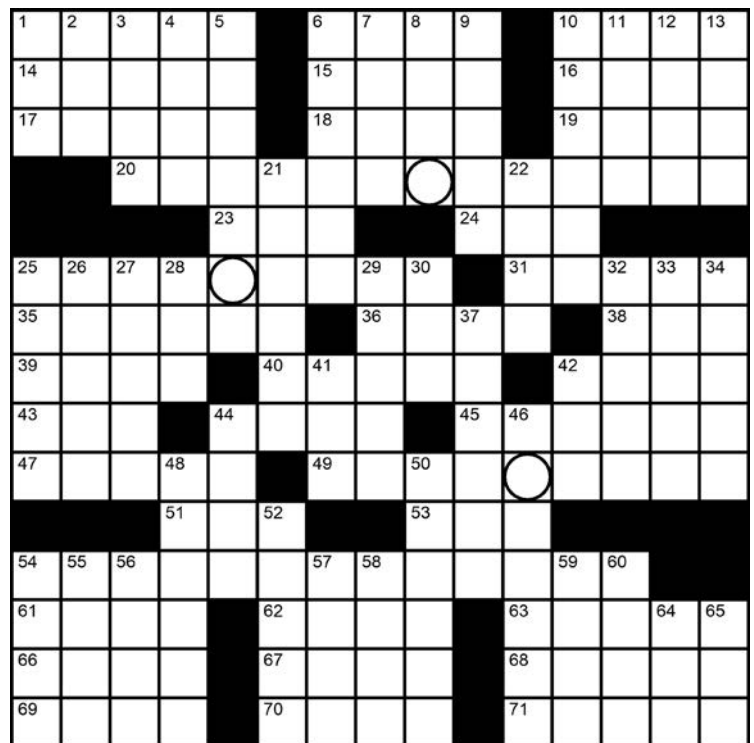
phoenetic hint to the starred

answers in this puzzle

61. Shed
62. Beer ingredient
63. Raise a glass
66. Stubborn animal
67. Mayberry boy
68. \_\_\_ Island (one time immigration hub)
69. Greek counterpart to Mars
70. Unleashes (on)
71. American competitor

### Down

1. Quaint lodging
2. Also
3. Actress Jessica
4. Stead
5. Gorbachev predecessor
6. Soda brand since 1905
7. \_\_\_ Unfortunate Souls ("Little Mermaid" song)
8. Character in La Bohème and RENT
9. Online magazine launched in 1996
10. Not Baby, Scary, Posh, or Ginger
11. Olympian Strug



12. Machu Picchu dweller
13. Pal of Cartman on South Park
21. Must
22. Concert equipment
25. Apps still in development
26. Martini garnish
27. Called
28. Compete (for)
29. Like the myth of Ragnarok
30. Bit of body art, for short
32. Violate a treaty, maybe
33. Broadway musical set in Argentina
34. Many a family car
37. Treat a road again
41. "The Star-Spangled Banner" contraction

42. It's usually 3, 4 or 5
44. Steffi of tennis
46. Flew
48. Overdoes it
50. Alternatives to runs
52. Zeitgeist
54. Oscar winner Stone
55. B.Y.O.B. part
56. "The Beguiled" actress
57. Arizona tribe
58. The Iliad, e.g.
59. Part
60. Promenade
64. Lab order?
65. "3-1-1" org.

# Vermont Law and Graduate School Student “Choosing Vermont” Essay Contest Winners

In the summer and fall issues of the *Vermont Bar Journal*, we asked our fellow attorneys to tell us something about why they have chosen to live and work in Vermont. For this issue, we asked students from Vermont Law and Graduate School to chime in. We incentivized them, a little at least, with an essay contest. Students working toward a legal degree at our state’s only law school were asked to send the Journal 500 to 750 words on why they decided to come to Vermont for their legal educations, and what their plans are, or maybe are not, for working in Vermont.

The winning essays are below. The winners will get a student membership in the VBA for the duration of their law school careers. For the spring issue, we will be back to asking working Vermont attorneys to share their stories. If you’re interested in being included, send an email to [kvelk@vt-bar.org](mailto:kvelk@vt-bar.org). For now, thanks to VLGS students Emilie Winter and Patrick El Saddik for telling us why they chose Vermont.

## Emilie Winter

If someone had told me pre-pandemic that I would attend law school and move to Vermont, I would not have believed them. I am a born and raised city kid, and prior to the pandemic, I was working in education. Although public service permeated most of my adult life, I, like many others, felt compelled to shift gears and pursue law following the murder of George Floyd and the rise of the Black Lives Matter movement. In 2020, I was living in Brooklyn, protesting on the streets, conducting mutual aid efforts, and learning about community organizing. Brooklyn’s activist community exposed me to restorative justice, which gave us an innovative framework to address harm and repair interpersonal relationships among organizers and community members. Restorative justice brought me a sense of hope, because it provided a non-punitive way to hold individuals accountable. Yet, law and policy decided the extent and speed of reforming the criminal justice system: law either inhibited or generated the systemic change I was so eager to see. I wanted to study restorative justice before obtaining my JD, and Vermont Law and Graduate School (VLGS) was the only law school I found that offered an MA in Restorative Justice. Vermont also practiced what they preached when it came to restorative justice: the state enacted 28 V.S.A. § 2a, making restorative justice prin-



*Emilie atop Camel’s Hump on a nice day.*

ciples an active part in shaping the criminal legal system. This statute is materialized in Vermont’s court diversion programs, the community justice centers across the state, and other countless efforts. The MA program at VLGS and Vermont’s commitment to restorative justice enticed me to move here. Incidentally, I was also thrilled to go backpacking more and enjoy the great outdoors.

I moved to Vermont last year to pursue the MA degree, and this brave little state quickly captivated me. While I was studying at VLGS, I began volunteering with Montpelier’s Community Justice Center (CJC) so I could see how restorative justice was put into practice. I also interned with the Vermont Attorney General’s office doing legislative and court diversion work. I was surprised how swiftly these opportunities came to me in just a few months of living here. I was also delightfully surprised when I developed meaningful ties with individuals I worked with. I admired the state’s tight knit network, and how professionals in this network genuinely cared about the communities they served. In last year’s legislative session, I noticed how legislators were receptive to hearing different perspectives, and how their receptivity made reform feel within reach. I witnessed the tangible impact that law and policy can have in the lives of Vermonters when legislation I tracked could change the outcome

of my work with the CJC and with VLGS’ expungement clinics. Working in a small state like Vermont allows professionals to leave an imprint in their communities. This imprint is even greater because the culture already cultivates kinship and support. Although there are hurdles and challenges here like any other place, the attentiveness and approachability I felt at the CJC, Attorney General’s Office, State House, and my law school made me want to stay. I was also swayed by the quality of life and work-life balance present in Vermont. I started the JD program this fall at VLGS, and I hope to practice in Vermont after I graduate.

However, there are other practical factors that may limit my ability to stay in Vermont. I am concerned about the limited job opportunities in the state, particularly when it comes to geographic location and career growth. I worry about the salary and income potential compared to the cost of living. Time will tell if I have the financial means to stay here and what career opportunities will be available once I graduate. Nonetheless, Vermont has proven to generate the change I was eager to see in my activist days. Vermont demonstrates that restorative justice is not only possible, it’s part of the social fabric of how Vermonters treat one another. I hope to contribute to reform efforts and serve Vermont communities once I graduate.

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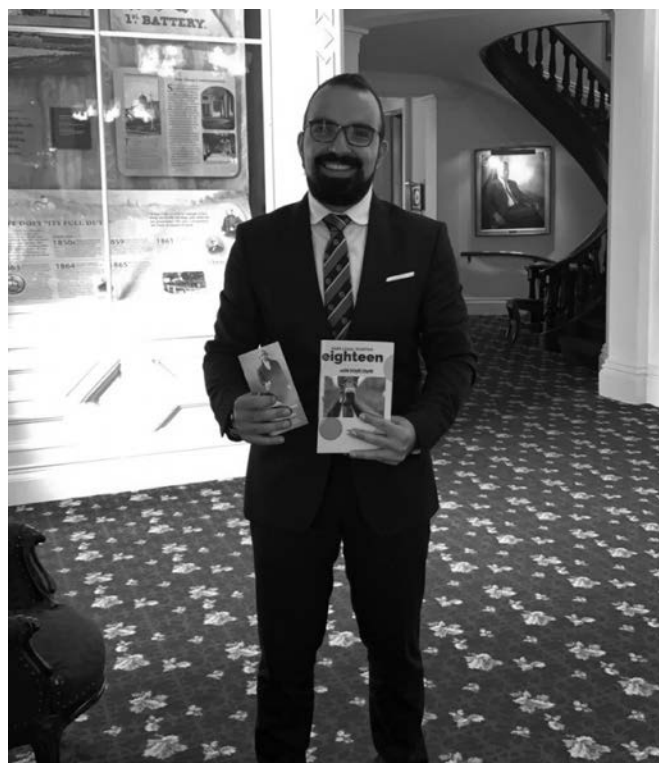
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Patrick on tour at the Vermont State House.

### Patrick El Saddik

Marhaba! (Hello in Arabic)

My name is Patrick El Saddik, I am from Beirut, Lebanon a small country overlooking the Mediterranean Sea. How would I end up all the way in South Royalton, Vermont to pursue my Juris Doctor degree? First of all, while visiting the US and suddenly stranded due to the pandemic, my aunt Ronda Akl, Esq. inspired me and pushed me to pursue my dream job to become an attorney. While quarantined, I studied for and took the LSAT and applied to many schools around Upstate New York so I can be near my family. During this process of exploration, I discovered Vermont Law School now called Vermont Law and Graduate School. What I liked the most about this school is that they are so welcoming and caring, the only thing that they care about is the person. It seemed to me that other schools were more focused on numbers and money. During my application process I talked to many administration members and one that stood out was Mrs. Katie Merrill. After my phone call with her, I knew that I wanted to be accepted in this school and I lost interest in other schools. Fast forward to my huge move to VLGS, during my first semester I had a lot to prepare for school. Also, as a foreign student studying in the US I had a number of personal matters to resolve such as opening up a bank account, applying for a social security number, insurance, and obtaining a driver's license. It is a long process with a lot of documents needed. But luck-

ily, Vermonters were so helpful and understanding.

The other important part of this journey is meeting my classmates from all over the states and from all over the world. This diversity made me discover every state and know more about them in one place. Because we live in a small town everyone knows or wants to know each other and help as much as they can to survive the three years of law school. I have come to appreciate the comradery and patchwork of classmates which is the key to being successful.

Let us not forget the phenomenal work of the administration staff and deans who also play a big role in advancing the school and keeping this family environment. In Lebanon, I was a college administrator and I have seen nothing comparable to VLGS. Everyone here wants to help and they really go out of their way to help each student be successful.

I would like to thank VLGS and State of Vermont for taking care of me during my stay and ensuring my success as an advocate. Vermonters and VLGS both have a place in my heart because while I was here, I did not feel I am away from my home country and my family. As I start my career, I will be coming back to Vermont to visit or do business in the "Green Mountain State." Vermont has truly been a welcoming introduction to the US during a most stressful time for me and for the country. I am honored to take kindness of Vermont with me wherever I go.





# Afghanistan's Imperiled Women Judges and Their Connection to Vermont

The official announcement came at the end of November. The 2023 Carl and Susan Bolch Prize for the Rule of Law was to be awarded to the International Association of Women Judges (IAWJ) in recognition of the organization's efforts to evacuate, support, and resettle Afghan women judges who, because of their gender and work as judges, have faced persecution and violence since the Taliban took control of the country in late 2021. (The Bolch Institute's Announcement of the Prize and Related Background is reprinted in the following pages). The IAWJ will be honored at a ceremony at Duke University on March 1. The Bolch Prize is not the first recognition that the IAWJ has received for its efforts to help their sister judges in Afghanistan, but it is a major one. The prize includes custom artwork and a "significant monetary award."

Afghanistan is a long way from Vermont, and even the IAWJ, which is based in Washington, DC, seems a long way from the Green Mountains. The link is there, however, and has been for years in the person of the Hon. Patricia Whalen, (ret.). Judge Whalen is a longtime member of the IAWJ and she is currently working "24/7" from her home in Westminster, Vermont, to get women judges out of Afghanistan, and to help those who have been relocated around the world.

Whalen's career has been defined by her efforts to help women and children. Before she went to law school, Whalen came to the aid of a neighbor who had been beaten so badly by her husband that the woman lost a pregnancy. The husband then shot himself in the foot, and his wife got off her hospital bed to attend to him. "That taught me what I needed to know about domestic violence," Judge Whalen said.

That incident also inspired in her a desire to improve the legal system for such women. Whalen started law school in 1976. She went to school and worked part time at the Brattleboro Women's Crisis Center, which she had helped found. When she got her law license, having made a special study of battered women's issues during law school, she went to work at Vermont Legal Aid representing women, children, seniors and low-income clients. In 1990, Gov. Madeleine Kunin appointed Whalen to the Vermont Bench as a family court magistrate. Her career would eventually take her far away, to the International War Crimes



U.S. Supreme Court Justices Sandra Day O'Connor and Ruth Bader Ginsburg pose for a picture at the U.S. Supreme Court during the first exchange program coordinated by the IAWJ in 2003. Photo courtesy of the IAWJ.

Court in Sarajevo, but not before she made her mark on Vermont.

It was during her time as Vermont judge that Whalen forged the ties with women judges in Afghanistan that are now being pulled on, hard. "Women judges, who were the backbone of Afghanistan's judicial system and upheld the rule of law, remain in danger. They are forced to hide in their homes with their families, unable to go out for fear of being recognized," she said. "We have seen great acts of kindness and assistance to date, but there is more that needs to be done."

We sat down with Judge Whalen to hear the story of Afghanistan's women judges and their connection to Vermont: where it began, where it is now, and the prospects for a happy, or at least a safe, ending.

**KSV:** Congratulations to you and all your colleagues at IAWJ on the Bolch Prize. It's a great achievement. I'm guessing you would rather that the work you've all been doing was not urgently necessary. Is that a fair statement?

**PW:** Yes, I have been working to end violence against women since the seventies but at 75, to be doing this now, makes me question what I and others have accomplished. For much of my life I focused on

the quality of women's lives. Now, I feel like I am just trying to help them survive.

**KSV:** We're going to get into the current difficulties, but let's start with how you first got involved with the women judges of Afghanistan. How did that all begin?

**PW:** In 2003, I attended an IAWJ/NAWJ conference in Washington, DC. Judge Shireen Fisher introduced me to Marzia Bazel, a judge from Afghanistan. Marzia was commenting on how advanced the technology was in the courtrooms she was visiting in DC. She wanted educational programs for her sister judges but worried they could not relate to the high-tech courtrooms she had seen in Washington. Many of their courtrooms in Afghanistan did not even have electricity. I suggested they come to Vermont. It would be a good learning laboratory without the flash. On the Amtrak ride home, I sketched out a three-week legal education program. The first program was held in 2004. It continued for 10 years after that.

**KSV:** Can you describe the program that you put together for them?

**PW:** First, I wanted it to be more than a traditional legal education exchange. It was important to me that they saw our lives and

our problems. Three other women joined me, from different fields of expertise, Julie Peterson (government), Connie Woodberry (education) and Ann Fielder (health care). Together we pooled our resources to design a homestay experience which would expose the women to Vermont women and how we lived. To understand our justice system is to also understand who we are as a people. To understand our Afghan sisters, we learned as much as we could about Afghan culture and history. In the end we designed a program that made sense to us. If we went to Afghanistan, what would we want to do and see? That was our starting point.

**KSV:** Tell me a little about that first class in 2004.

**PW:** It was a wonderful group of four women. It included Judge Anisa Rasooli, who later became the first woman to be nominated to the Afghan Supreme Court.

**KSV:** Where did they stay?

**PW:** Judge Anisa and another judge, Judge Hamida, stayed with me and the other two stayed with one of our homestay volunteers. The homestay was the most important part of the program where we could share our lives.

**KSV:** How was the program supported?

**PW:** We partnered with the IAWJ to do this program. The IAWJ applied for federal funding through the State Department. The first two weeks were in Vermont and the third was in DC. This last week was run by the IAWJ staff and Judge Vanessa Ruiz of the DC Court of Appeals. Primary funding was through the Department of State [DOS]. Locally, in Vermont, we had help from Ben and Jerry's, the Sisters of Mercy, and many volunteers throughout the state.

**KSV:** What kinds of things did they do in Vermont?

**PW:** Each day was primarily set aside for legal training, visiting courts, and attending the Vermont Judicial College. We held workshops on public speaking and women's leadership. Evenings were designed around a themed dinner, women in law, women in health care, women in religion, women in government, women in education etc. Each dinner was hosted by a volunteer in her home with invitations to local women in that field. We would exchange views and discuss mutual problems. We had much in common, probably to everyone's surprise. We visited food shelf programs, looked at low-income housing, examined community solutions for cleaning up the Connecticut River, visited battered women shelters, spent time discussing everything from parking meters to taxes and

meeting with local police to discuss community policing. In addition, we took them for medical checkups and visits to the dentist and eye doctor as needed. As much as possible we looked at programs that were run by community volunteers and looked at the social responsibility of being a citizen.

We also had fun, we played volleyball, took them bowling, did yoga, hiked, wrote poetry and went shopping.

**KSV:** What about the rest of the program – the non-Vermont aspects?

**PW:** The DC program exposed them to the federal system and they experienced life in one of our cities. Each year they were the guests of the women justices at the Supreme Court. Ruth Bader Ginsburg gave them a tea each year. One year they were invited to the White House for a lunch with Laura Bush. Judge Vanessa Ruiz hosted them in the courts and she has remained a constant advocate for them.

**KSV:** Do you know how many women participated in all over the life of the program?

**PW:** Thirty five. At the time that was a third of the women in the Afghan judiciary

**KSV:** Fair to say that this was done without a lot of fanfare? Why was that?

**PW:** We agreed this program was entirely for them. They requested no publicity and no pictures on the internet. There was still an awareness and a fear that direct ties to the US could harm them. We had a total media blackout.

**KSV:** Did you ever travel to Afghanistan yourself?

**PW:** Yes.

**KSV:** When did you go and what was the purpose of your trip?

**PW:** In February 2007, I was invited to visit the judges, be part of a cultural exchange program they designed and to be the keynote speaker at the first conference of the newly formed Afghan Women Judges Association.

**KSV:** How were things shaping up for the women you'd been working with at that point?

**PW:** There were 100 women judges in Afghanistan at that time. Ninety-two of them made it to the conference from all over the country in winter. The judges were so eager to learn and make a difference. The justice system provided almost no access to women and it suffered from corruption. It was still, at that time, plagued with appointed judges who were illiterate. Very few courtrooms had electricity and they still used scribes to record court proceedings. In contrast, the women were educated with



The Hon. Patricia Whalen (Ret.).

law degrees, many had master's degrees, and some were considered scholars in their field. They were excited for the future of the country. Most had only known conflict. They wanted peace and security, and they wanted their country to have a strong, educated, independent judiciary.

**KSV:** When did the program wrap up?

**PW:** 2014

**KSV:** Did you maintain your ties with the Afghani women you'd met through the program?

**PW:** Yes, with many of them and the IAWJ remained committed to finding opportunities for the judges, held continuing education programs and hosted them at conferences and trainings around the world.

**KSV:** Let's talk about your friend Judge Anisa Rasooli. You've talked a lot about her to me and in other interviews. I saw at least one reference to her as the RBG of Afghanistan. Can you tell us about her?

**PW:** Anisa is from a large family, known for their public service. Each of her siblings is famous in their own right. Doctors, lawyers, professors, they are a remarkable group, dedicated to an Afghanistan that serves its people. Anisa is a strong advocate for women's rights, worked on reforms for their juvenile court and later on the reform of women's prisons. She served as president and was a founding mother of the Afghan Women's Judges Association (AWJA). She was nominated twice for the Afghan Supreme Council. First by [former Afghan President Hamid] Karzai and that vote failed to pass by only a few votes. [Former Afghan President Ashraf] Ghani then

appointed her but that vote was never held due to the Taliban takeover. She sat on all major courts including a court to fight government corruption. I watched her in court, sitting with a calm dignified demeanor but exercising firm control. She has both the respect of her colleagues and much self-respect, not always easy to obtain, in a culture which holds women in little value.

**KSV:** Where is she now?

**PW:** Poland

**KSV:** How did she get there?

**PW:** Anisa was the first judge we were in contact with. Along with Nafisa Kabuli, the current president of the AWJA, they made three attempts to get into the airport in August of 2021. With the help of Senator Leahy, we had arranged for both judges and their families to get on a US plane once they got into the airport. All three attempts failed. We were desperate. A Polish lawyer, Anna, came to the rescue. She was able to get the Polish Foreign Ministry to execute a "Mission Impossible" extraction plan. It worked, but once they were brought inside the airport, we only managed one teary phone call. While waiting for the US plane, a Polish military jet arrived first and they were taken to Warsaw. No one thought anything about this. Even the DOS representative we were working with said it was okay to get on the plane. If she had gotten on an US transport, she would have been eventually brought directly into the US. No one was thinking of immigration, the problems incurred by a Polish rescue and what it would take to get her to the US.

**KSV:** What had you hoped for her relocation – and what has foiled those hopes?

**PW:** Anisa and her family want to come to Vermont. Everything is waiting for them here. Amila Merdzanovic from the Vermont the U.S. Committee for Refugees and Immigrants (USCRI) program in Colchester, a host of volunteers from Supporting and Helping Asylees & Refugees (SHARe) in Norwich area, and Pamela Custer, a teacher at Hanover High that has been shepherding the teen family members, all have put in countless hours working towards their relocation. Yale has offered her a fellowship which she will be able to commute to.

I expected to share foliage week with her in October of 2019. But it has been over 16 months of untangling bureaucratic snafu's, mismanagement, pleading with caring and uncaring government officials, writing letters, the list goes on. Three times we thought we had them here, only to be disappointed again. Meanwhile, the woman they call the RBG of Afghanistan, sits in Warsaw waiting to come here.

**KSV:** That must be terrible and frustrating on so many levels. What do you think it's going to take to unknot the situation?

**PW:** I no longer have any idea. We have tried everything. A call from the White House may work. We have tried everything else.

**KSV:** I've heard some success stories about Afghans getting asylum in the USA. In fact, there's an article in this issue of the Journal that highlights the successes that the Association of Africans Living in Vermont have had in getting Afghan Asylum seekers to Vermont. Is that not a route open to the women you're working with?

**PW:** No, it's not. It's immigration apples and oranges. The Association of Africans in Vermont is doing great work, but they are dealing with a different group of people, the ones who got into the airport. 79,000 Afghans made their way into the airport and got out on US planes. To the credit of the US, they did not leave them behind. These 79,000 were allowed in on port parole or humanitarian parole, and thus now need to request asylum. When Judge Anisa was brought into the airport, she was put

August of 2021. We all saw it happen on TV. Where were you as things were melting down over there?

**PW:** I was at our summer camp on Lake Dunmore, living the retired life, entertaining family and friends.

**KSV:** What was going on in your life at home at that moment?

**PW:** I was busy. I was writing a book about my time in Sarajevo and what I learned about myself living and working abroad and what I learned about war. I had written a number of short stories about my experiences and was being encouraged to put them together in a book.

**KSV:** So all this brought a big change to you! About how many women had moved into the Afghan judiciary during that interval from 2003 to 2021

**PW:** At the time of the Taliban takeover there were 270 women judges in Afghanistan. Some of them were retired.

**KSV:** Were you hearing from the women you had gotten to know through the education program?

***"We would exchange views  
and discuss mutual problems.  
We had much in common,  
probably to everyone's surprise."***

on a Polish military jet and therefore the nightmare began. Arriving on Polish soil put her, unknowingly, in a different situation. First the US had to identify and resettle the 79,000 who made it into the airport and left on US planes. We have several judges who did manage to do that. After months of intense negotiations with DOS, we were also able to secure a pathway into the US for all our judges who we could not resettle elsewhere, including the judges stuck in Poland. They are allowed to apply for P1 visas and if approved, will be able to come in as refugees. There is no requirement for them to apply for asylum. They have a pathway to citizenship. The problem with P1 visas is the time it takes to process. It is draconian due to our dysfunctional immigration system. Judge Anisa has been waiting 17 months with no clear end in sight. If she had gotten instead on a US plane, she would have arrived 16 months ago.

**KSV:** Let's back up to the beginning of the crisis. Afghanistan fell to the Taliban in

**PW:** In January of 2021, everything changed. Judge Zakia Herawi, along with another woman judge, was assassinated in Kabul on her way to work. Zakia had been in Vermont in 2009 and everyone was devastated. This was not an isolated incident. Between 2015 and 2020 it is estimated over 300 judges, prosecutors and other justice sector workers were killed or injured or abducted. The killings were part of an orchestrated campaign targeting public figures working towards a more equal and inclusive Afghanistan. Women leaders were especially targeted in an effort to intimidate not only women holding public office but women generally. The IAWJ held its biennial conference in New Zealand. Participating remotely were over 30 Afghan judges. Judge Anisa and Judge Nafisa spoke at the conference about the insufficient court security which left them vulnerable to violence. Some judges had been attacked at their desks and in their courtrooms, as well as on their way to work. As precautionary measures, judges were advised to change their clothes, vehicles, and travel times



constantly, and had been given guns and trained on how to use them. Many had recruited family members as private security guards. In response for their request to help them, Justice Glazebrook of the New Zealand Supreme Court, and current president of IAWJ, formed an Afghan Support Committee. I am a member of that committee. The AWJA was also going through reorganization and working with the Max Planck foundation and the IAWJ on leadership goals so we were having frequent conversations.

**KSV:** What were you hearing?

**PW:** In July of 2021, we had a zoom meeting with about 30 judges in Kabul. We never got to the scheduled agenda. The judges wanted to talk about what would happen if Kabul fell. No one wanted to leave, they were defiant but scared. There was no talk of a "Taliban 2.0." They knew the Taliban and felt fundamentally they had not changed and there was no real place for women in their world. The judges began to talk about needing to leave and asked if it came to that, would we be able to help them. Without having any idea of how, we of course, said yes.

**KSV:** And the concern, of course, was that things would be deadly dangerous for these women in a Taliban-controlled country.

**PW:** Yes, in private talks with Anisa and Nafisa, they had little concern for themselves, only that the children in their family would be educated. They knew the Taliban would cut off education for girls. Another generation or more would be lost. And Anisa didn't want the boys in her family exposed to male toxicity and dominance.

**KSV:** Were you still involved with IAWJ at that point?

**PW:** Yes, I have been a member since 1991. Being on the committee was my most recent involvement.

**KSV:** Did you expect at that moment that the stable nations of the world would ride to the rescue?

**PW:** Of course, isn't that the role of governments? I always believed that we also had a legal obligation under the responsibility to protect doctrine. It was clear to me that we would begin to see violence and persecution of women. The act of deliberately erasing women from society could inflict such serious psychological harm that it could give rise to a form of genocide, one never explored before.

**KSV:** But that help didn't come, did it?

**PW:** No, it was chaos. Groups associated with the military had access to information and resources we did not. Civil soci-

ety groups had little to no government assistance. We were completely on our own.

**KSV:** What happened instead?

**PW:** Well, we all saw the news reports but living it moment by moment with the judges was terrifying. Everyone was so scared. We set up a 24/7 hotline for the judges to communicate with us. Sen. Leahy's aide, Tim Rieser, was enormously helpful. He connected us with a State Department official who was in the airport. He tried to help us but we were outside of the military inner circle. The first week was this huge learning curve of who could help us and there was much we probably missed. We had IAWJ members assisting our committee of seven. We enlisted the support of a women judges who had been in the military. The most pressing concern was the need to protect the judges' identities, work histories and records. We asked the judges to email us anything they wanted to preserve. On our committee was a former UK immigration judge who gave the judges a list of documents that might prove useful in the future. Data was flying in and we had no idea how to manage it. My son Isaac, who is a software developer, arrived for his summer vacation at our lake house. He took one look at what was happening and said, "I am going home and will create a system for you." He gave up his vacation to create a program and became an unofficial member of the committee. This database and program, we still use every day, and as a tool it has saved lives by giving us the means to quickly alert people of danger. It allows us to answer questions of immigration officials around the world and stay in communication with 254 judges and their family members, which total over 1800 people.

Mostly in the beginning, we stopped sleeping. Everyone was up 20 hours at a time. Every moment there was some kind of crisis. Our core committee was seven people: two from the US, myself and Judge Vanessa Ruiz, a judge each from Australia, the UK, Canada, New Zealand and Spain. Together we covered the clock and the issues as they arose. Each of us were constantly calling our governments. Eventually, we divided up issues and hours of the day so we could get some sleep. The other judges took time off from work to do this committee work. After the first month, they needed to return to work but every spare minute was and is still devoted to this.

**KSV:** Can you elaborate a little more on your role in trying to help sort this out?

**PW:** I am a member of the team. At first, we all did everything together. Now we have learned how best to divide responsibilities. We have a Command Central chat group and as issues arise, we take

individual responsibility to solve the problem. As I am the only retired member, I must do much of the fundraising. As a US member, Vanessa and I handle communications with the State Department, our congressional members, US immigration issues and maintain contact with the judges coming to the US. We also have weekly contact with the pro bono lawyers representing our judges around the world. Some of us maintain weekly contact with our partner organization, the Jewish Humanitarian Response. All of us are in contact with the judges around the world and our IAWJ judges who assist with resettlement. Judge Shireen Fisher is an example. Shireen was a Vermont judge who also became an international judge and sits on the Residual Mechanism for the Special Court of Sierra Leone. She resides in Ireland and took responsibility to resettle the judges evacuated there. For the most part, our responsibilities are fairly fluid. We still are just figuring out things as we go along.

**KSV:** How many people have you gotten out?

**PW:** We have gotten out 197 judges and over a thousand family members with 54 judges and their remaining families still inside Afghanistan.

**KSV:** I read where your UK colleague, Lady Helen Kennedy, called this a "Schindler's List" moment for the women judges of Afghanistan. Can you speak to that?

**PW:** My moment came around three in the morning that first week. We were trying to get a few judges into the airport. With the help of the Polish Special Forces, we had a chance. The soldiers told us to have the judges draw "PL" on the outside of their hands and a "J" on the palm inside to identify themselves to the soldiers standing on the wall by a gate who would help them enter. It was now dark so the hand signals did not work. A soldier suggested a sign with a code word. He instructed them to make a sign that says KRAKOW. He said, "We will never forget." When I saw the sign, I started to cry. Having presided over a Srebrenica genocide trial in Sarajevo, I realized the potential for what every woman was facing. I knew then we couldn't stop what we were doing, we had to persevere.

**KSV:** For the ones who have made it out, what issues emerged when they were evacuated?

**PW:** All the issues of being a refugee. And they are enormous, from reestablishing yourself from scratch, to mourning your loss of self, your family left behind and a country you believed in. The issues are different country to country. Some countries are more welcoming than others, some

have better benefits than others. Much depends on the judge herself. Does she speak the language of her host country? Is she able to go back to school and re-train? But the everyday practical problems are the same everywhere. Housing is difficult to secure. The judges had a comfortable life in Afghanistan. It is not clear when any of them will be able to have that level of comfort or security again. But for our judges who are in lily pad countries waiting to get resettled, the reality is crushing poverty, endless boredom, difficulties getting medical care and constant worries about those left behind.

**KSV:** Can you tell me more about how Sen. Leahy's office was involved in this effort?

**PW:** We would be nowhere without his help. Tim Rieser, on his staff, has been a constant source of advocacy, advice, and assistance. They pushed since day one for Judges Anisa Rasooli and Judge Nafisa Kabuli to come here. Unfortunately, they are still stuck in Warsaw. The immigration knot is beyond comprehension. But despite the Senator's retirement, both Tim and Aileen

Spain is doing the same. All of us are working on securing resettlement for the judges both inside and those we have moved to Pakistan. In Pakistan, everyone is eligible to pursue P1 visas to the US, the time frame is somewhere between one and two years. For us, this means we also must support them while they wait as they have no personal assets or a way to work. For the judges, the wait is almost a bar to them coming. Two years of waiting with children who cannot attend school, living in marginal circumstances where they are still afraid as Pakistan is not secure. It is a nightmare. This is our pressing concern. Additionally, the judges in Poland are no longer welcome there due to the Ukrainian crisis. Getting them out is now my top concern.

**KSV:** I hope the Bolch Prize will add public awareness and resources to you all. Are you going to North Carolina to collect the Prize in March?

**PW:** Yes, I will go along with Justice Glazebrook, Justice Ruiz (US), Justice Lynch (Canada), Judge Tupman (Australia) and Judge Walsh from the NAWJ who heads US resettlement. Our interpreter Farah,

**KSV:** If someone wants to help, do you have any suggestions about what they can do?

**PW:** Donations to either the IAWJ Afghan rescue fund or to the Jewish Humanitarian Response. Also, just plain advocacy. Because of the earlier program, Vermont has a strong connection to these women. Calling our congressional representatives and pushing them to help is still needed and necessary. On the federal level there is much to be done in our broken immigration system.

**KSV:** Do you see any end in sight for this work? What's the bad ending?

**PW:** For us, it will end when we get the last judge out and resettled. The bad ending is we will run out of time. The TALIBAN are regressing (if that is possible). All women are banned from education, work, and public life. Erasing an entire gender is the goal. This stage of dehumanization is a prelude to genocide. The psychological harm being inflicted on them is a form of destruction that many will not be able to come back from.

**KSV:** What's the best ending that you can see?

**PW:** I look to Ireland where all the judges are settled in housing, with decent benefits and are enrolled in master level programs which will enable them to work and support their families. The Irish bar and judiciary are incredibly supportive and have established mentor programs, did extensive fundraising to assist them, and have included them in bar and judicial events. This makes them feel seen. Much of this is due again to Judge Fisher who many of us in Vermont know well.

**KSV:** What do you think it will take to get to that? In the US?

**PW:** The National Association of Women judges has put out the call to judges and lawyers to come together to support Afghan judges as they arrive. New Hampshire is forming a support group and are hoping to have a judge resettle in their state. I am hoping to do the same when we know of judges coming here to Vermont. They will have many needs, but it is the effort of volunteers that makes the difference in a successful resettlement. Government programs are not enough.

*Illustration on opposite page by Hannah Wykoff.*



***"Most had only known conflict. They wanted peace and security, and they wanted their country to have a strong, educated, independent judiciary."***

Lach from his office have moved on to assist other members of our delegation and they will continue to help.

**KSV:** How much of your time is going into working on these issues right now?

**PW:** I work every day. In the morning and late at night, I am dealing with questions from the judges, mostly the ones who are still inside or the judges in the UAE that are still waiting for resettlement here. The day is filled with zoom calls with our partner organizations or pushing for visas. Yesterday I had a film crew here who are making a movie about Judge Rasooli. Every day is something new,

**KSV:** Where are the committee's efforts most directed right now?

**PW:** Right now, Justice Glazebrook [of the New Zealand Supreme Court] is working on applications to Germany for our judges still inside, Judge Tupman in Australia is trying to secure visas for a few judges with ties to Australia, Judge Potyas from

and some of our colleagues from our partner organization, the Jewish Humanitarian Response also hope to join us.

**KSV:** Can you say how much the "significant sum" is that is being awarded with the prize?

**PW:** \$30,000

**KSV:** How will that be used?

**PW:** Primarily, to support the Afghan women judges in Pakistan as they await US admission.

**KSV:** What would you like people to know about this situation?

**PW:** It is not over and the situation inside is deteriorating. Just a few days ago, a woman in Kabul, who was a former member of parliament, was killed by the Taliban inside her home along with her bodyguard. We had come to believe that as long as women remained hidden, they could be safe. That was an illusion.



# Bolch Prize to be Awarded to International Association of Women Judges

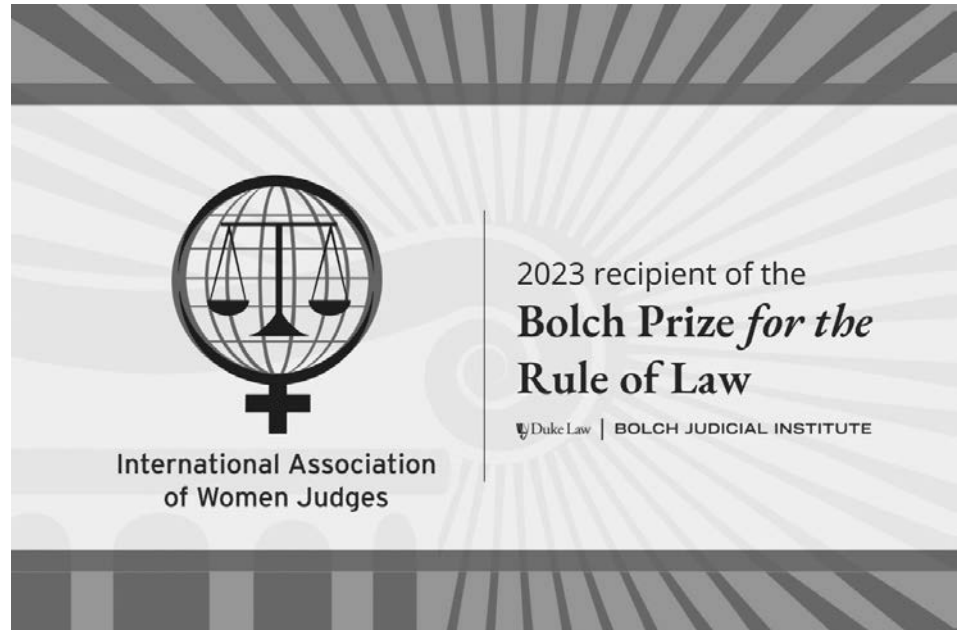
The Bolch Judicial Institute has named the International Association of Women Judges (IAWJ) as the 2023 recipient of the Bolch Prize for the Rule of Law in recognition of the organization's remarkable efforts to evacuate, support, and resettle Afghan women judges who, because of their gender and work as judges, have faced persecution and violence since the Taliban took control of the country in late 2021.

The IAWJ will be honored during a ceremony at Duke University on March 1, 2023.

Under the leadership of New Zealand Supreme Court Justice Susan Glazebrook, president of the IAWJ and the association's Afghan Support Committee, the IAWJ mobilized member judges from around the world to assist Afghan women judges in the days leading up to and the months following the collapse of Afghanistan's democracy in August 2021. Recognizing the particular dangers Afghanistan's women judges face under Taliban rule, IAWJ members have worked — and continue to work — tirelessly to secure safe passage out of the country for the judges and their families and assist them in obtaining visas and relocating to countries where they can rebuild their lives and careers.

"The IAWJ has led an extraordinary rescue operation, bringing more than 100 Afghan women judges and many of their families to safety and continuing efforts to assist those who remain," said David F. Levi, director of the Bolch Judicial Institute. "The Bolch Prize for the Rule of Law recognizes both the heroism of the IAWJ's efforts to assist Afghanistan's women judges and the organization's long history of supporting and advancing women judges and addressing gender inequities in judicial and justice systems around the world. And in honoring the IAWJ, we also honor the incredible courage of Afghanistan's women judges, who broke barriers and risked personal safety to try to build a better future for their country and now call on the international community for help as they work to rebuild their lives."

"The IAWJ has worked for decades to surmount the numerous obstacles women judges face around the world," said Kerry Abrams, dean of Duke Law School. "From gender-based discrimination and legal structures that subjugate women to professional hierarchies that force women into limited roles, women in judicial positions face many barriers, in all corners of the world.



**The IAWJ has led an extraordinary rescue operation, bringing more than 100 Afghan women judges and many of their families to safety and continuing efforts to assist those who remain.**

Through mentoring, partnerships, educational opportunities, and global outreach, the IAWJ created a network of members around the world who have worked together to address common challenges, to support one another in overcoming barriers, and to strengthen the rule of law. That network also put the IAWJ in an unparalleled position to provide on-the-ground help to Afghan women judges when they suddenly needed to flee their collapsing country."

The Susan and Carl Bolch Jr. Prize for the Rule of Law is awarded annually by the Bolch Judicial Institute of Duke Law School to an individual or organization who has demonstrated extraordinary dedication to the rule of law and advancing rule of law principles around the world. By recognizing those who do this work, the Bolch Prize draws attention to the ideals of justice and judicial independence and to the constitutional structures and safeguards that undergird a free society.

"I can think of no more deserving and timely recipient of the Bolch Prize than the International Association of Women Judges," said Senator Patrick Leahy (D-Vermont, and Senate President Pro Tempore), who has been instrumental in assisting the IAWJ

with evacuation and relocation efforts. "IAWJ's passionate and relentless advocacy for Afghan women judges and lawyers since the day of the Taliban's return to power has inspired me and others in Congress to continue to advocate for their resettlement in places of safety. IAWJ has made us proud by standing up for Afghans who rose to the top of a profession that has been historically closed to them and who risked their lives to establish the rule of law, in a country where doing so could mean death with impunity. They are remarkable role models for women and girls everywhere."

## **Spanning Decades: The IAWJ's Work in Afghanistan**

In the early 2000s, after the Taliban's ouster in 2001 by international forces, women in Afghanistan leapt at the opportunity to pursue an education and work outside the home. More than 250 women became judges at all levels of the judiciary as Afghanistan rebuilt its justice system. They endured discrimination and violence, including assassinations, as they pushed the boundaries of their country's traditional expectations for women's roles. For 20 years,



they fought for and achieved positions that were once off limits to them, forging new paths for themselves and their country.

In 2003, the IAWJ launched a coordinated effort to assist Afghan women in developing leadership skills and deepening their legal and judicial training. Judge Patricia Whalen, a former Vermont family court judge and a judge of the War Crimes Tribunal for Bosnia and Herzegovina, worked in partnership with Afghan judges and IAWJ executive staff to create an education program that brought Afghan women to Vermont and Washington, D.C., to observe court proceedings, discuss legal issues with American judges, and meet women leaders in business, politics, and law. These exchanges expanded into conferences, educational programs, and friendships.

"The members of IAWJ have a long-standing relationship with their sister judges in Afghanistan, and even before the Taliban's takeover of the country, IAWJ predicted and prepared for the disaster that has ensued. The courage displayed by the women judges in Afghanistan is mirrored by that of IAWJ, and by its commitment to saving every single one of these judges," said Virginia Sloan, a member of the IAWJ Board of Managerial Trustees and founder of The Constitution Project. "Many organizations and individuals have worked tenaciously to rescue and resettle Afghan women judges, but none with more dedication and devotion than the International Association of Women Judges, which has led this multi-faceted effort."

### **An Emergency Mobilization and Rescue Effort**

When the Taliban began to reclaim power over the summer of 2021, the IAWJ was well aware of the risks to its members in Afghanistan. The fact that these women were educated, held jobs, and had sat in judgment of men would make them especially vulnerable to retribution from the Taliban, which in many areas of the country has reimposed restrictions on women in public life, shut down girls' schools and universities, forbidden women from leaving their homes without a male chaperone, and forced women to wear full body and face coverings in public.

"On the 15th of August of 2021, after 20 years of democracy-building initiatives, the Taliban reclaimed Afghanistan's capital city, Kabul, placing the 250 Afghan women judges and their families in mortal danger not only of retribution from the Taliban but also of private revenge attacks from the criminals and terrorists the Taliban had released from prison," said Justice Glazebrook. "A small group from the International Association of Women Judges decided that we would not be true to our values and

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the values of the IAWJ if we did not try to help these courageous women judges who had already sacrificed so much to uphold the rule of law and gender equality. Over half are now safe in final destinations and starting to rebuild their lives, but we will not be satisfied until we can fulfill the promise we made to our Afghan colleagues and friends not to forget anyone."

As the Taliban moved into Kabul in August, Afghan members of the IAWJ began to connect with their counterparts around the world. The IAWJ opened a Zoom meeting, monitored 24 hours a day by IAWJ judges from around the world, to coordinate evacuations; other secure communications mechanisms were deployed for quick communication among Afghan judges, IAWJ committee members, and those who were organizing evacuations on the ground.

"When governments fail in their responsibility to protect against mass violence, it falls on its citizens to do what they can," Judge Whalen said. "Our sister judges in Afghanistan worked tirelessly to establish and sustain the rule of law. We share the same commitment and job description. We, however, operate in an environment of respect and safety, they do not. The Taliban has pledged to eliminate them from public view, dismantle their courts and has called for executions. We simply could not abandon them."

Intense rescue efforts played out in real time, as the IAWJ tried to guide judges and their families from bus stops to the Kabul airport and to planes on the tarmac that were prepared to take them on board — often amid gunfire and through the press of thousands of panicked people desperately trying to leave Afghanistan before international troops disappeared for good. [Read personal accounts of these evacuations in *Judicature*.]

"We sort of fell into the role out of necessity, and we were very much outside our comfort zone," said Justice Mona Lynch, a judge of the Nova Scotia Supreme Court and a member of the IAWJ's Afghan Judges

Support Committee. "We worked with different governments and NGOs to help evacuate the Afghan women judges. We quickly began providing passwords, and other signals — markings on hands or wearing certain colored clothing — that judges could use to get into the airport and on a plane. The Afghan women judges were desperate, and the IAWJ was a trusted organization which they turned to for help."

### **Work still to be done**

Though international troops have long since departed Kabul and global media attention has turned to other crises, the IAWJ continues to work with its valued partners to evacuate all who remain and wish to leave, as well as to assist the women judges who have safely evacuated but still seek permanent residency, new homes for their families, and new careers.

"It is unfortunate that we live in a time when so many forces are working to destroy democratic institutions and undermine the rule of law, when judges around the world face threats of violence and death simply for their efforts to do their jobs," said U.S. District Judge Paul Grimm of the District of Maryland and incoming director of the Bolch Judicial Institute. "The IAWJ has not only done the heroic work of rescuing those women judges whose lives are at immediate risk in Afghanistan, but it also has demonstrated the critical importance of a global community of colleagues who share the values of justice and the rule of law, who can educate the public about the important work that judges do, and who can sound the alarm when catastrophe strikes."

District of Columbia Court of Appeals Judge Vanessa Ruiz, immediate past president of the IAWJ, said that she hopes the Bolch Prize can remind the international legal community that the crisis in Afghanistan is not over.

"It is an honor for IAWJ to receive the Bolch Prize in recognition of our work to help Afghan women judges out of their perilous situation in Afghanistan," said

Judge Ruiz. "I hope this will bring attention to their continuing need for support, both to escape from Afghanistan and to make the difficult transition for a positive future in the U.S. and other countries. Their bravery, dignity, and commitment to the rule of law deserve the respect and admiration this recognition will highlight."

#### About the IAWJ

The IAWJ includes over 6,500 members from all levels of the judiciary in more than 100 countries and territories around the world. It works to realize gender equality, respect for human rights, and inclusive justice systems by supporting and empowering its global network of women judges and supporters. Core initiatives include efforts to educate judicial communities on sex trafficking, gender-based violence, and sexual exploitation in the workplace; to train judicial actors to fight corruption, defend judi-

cial independence, and identify and overcome systemic barriers to gender equality; and to develop and advance women's leadership in the law and judicial systems. By leveraging the engagement and leadership of women judges, the IAWJ aims to transform and apply a more gender-inclusive perspective to judicial systems around the world. Visit [iawj.org](http://iawj.org) to learn more about their mission, leadership, and needs.

#### About the Bolch Prize

The Bolch Prize for the Rule of Law is awarded in accordance with the Bolch Judicial Institute's founding documents, which specify that the Prize "shall be given by the Bolch Judicial Institute to recognize the lifetime achievement of an individual or a single or series of acts of an individual or an organization creating, promoting, or preserving the importance of the rule of law nationally or internationally."

The recipient is selected by the Bolch Judicial Institute's Advisory Board and honored during a ceremony at Duke University. The Prize includes a custom artwork and a significant monetary award. The first prize was awarded in April 2019, to Supreme Court Justice Anthony M. Kennedy (retired) at a ceremony held on Duke University's campus. The 2020 and 2021 prizes were awarded to Deputy Chief Justice Dikgang Moseneke of the South Africa Constitutional Court and retired Chief Justice Margaret Marshall of the Supreme Judicial Court of Massachusetts, respectively, during a virtual ceremony in June 2021, and Judge J. Clifford Wallace of the U.S. Court of Appeals for the Ninth Circuit at a ceremony in San Diego in March 2022.

*This article is reprinted with permission from the Bolch Judicial Institute.*



## VBA 2023 Mid-Year Meeting

Join us for our 2023 Mid-Year Meeting at the beautiful Equinox Resort & Spa in Manchester Center on March 31<sup>st</sup>. We have 6.5 CLE credits offered, including wellness and ethics, with topics covering secondary trauma in the legal profession, civility, mediation, employment, public records & open meetings, and civil practice tips from the bench.

And as usual, we'll have a week full of LIVE Zoom webinars following the Mid-Year Meeting, many of which are up and ready for you, with more to come. Credits during Zoom Week include wellness and diversity. **Register at the VBA website.**

# Why You Really Do Need to Create and Keep a Copy of All Your Files

I won't keep you waiting and wondering. In my mind, the reason is self-evident. If you ever find yourself having to deal with a malpractice claim and have minimal or no records to defend yourself with, well, suffice it to say, that's a problem.

## How common of a problem is this really?

I will admit that the inability of an insured to provide any file at all or something that even on a good day would have a hard time qualifying as a bare bones file isn't commonplace; but it does happen. When it does, we're often told something along the lines of "I didn't think maintaining a copy of that file particular was necessary." Of course, now that a claim has arisen, there is a recognition that it obviously was.

One excuse we sometimes hear is "That client was such a pain. I couldn't get rid of him fast enough." Here, one of two things likely happened, both of which are basically the misstep of making the goodbye, good riddance response. The attorney was either completely fed up and the file was given to the client in order to get him out the door as quickly as possible, or the attorney was trying to do everything thing she could do to avoid the discomfort of a confrontational exchange.

I do understand that when faced with a highly agitated client in the office who is demanding the immediate delivery of his file, it can be tempting to just quickly and quietly comply. That certainly is taking the easy way out, and yes, a copy of the file does need to be made available to the departing client, regardless of who made the decision to terminate the relationship. However, the fact that a client is making such a demand is not an acceptable excuse for turning over everything right then and there.

Note that the rules of professional conduct do not state that a file must be immediately turned over upon demand. You are allowed to and should take a reasonable amount of time to review and prepare the file for delivery and make a copy the file for you records. Just understand that the definition of reasonable amount of time is more along the lines of two or three days as opposed to two or three weeks. There should be no game playing here.

## Why take the time to do that?

Because even if the quality of your work up to the point of termination was outstanding, you potentially create a significant problem if you fail to maintain your own records. Remember, in these situations you're often dealing with a problem client, someone who has already expressed dissatisfaction. How do you expect to be able to defend yourself if and when this problem client alleges you were responsible for his eventual misstep when the documentation that the client was properly advised is no longer in your possession?

Yes, the file may eventually be obtained after much effort; but don't be surprised to learn that when the file is obtained the key documentation you knew would protect you isn't there. Now you're into a word against word dispute, and as the attorney responsible for creating the documentation, its absence is going to be problematic. In sum, by giving up control of a file you risk having to deal with unintended consequences later on. Taking the easy way out isn't necessarily the best way out.

Similar problems can arise when files, or more often limited notes, are turned over after an attorney has handled a small matter as a favor for someone. Even worse is when there is no attempt to create any record at all. A good example of this after sharing some limited legal advice during conversations with prospective clients or with anyone outside of the office setting. The misstep here is in thinking that because there was no billable time recorded and no formal attorney-client established, there's no need to keep a record of what occurred.

Think about it this way. There is no such thing as casual legal work or "legal light," if you will. Legal advice is legal advice, regardless of whether you collect a fee or where or how the advice or service was delivered. To demonstrate the point, attorney-client relationships have been found to have been created by casual conversations in cocktail party settings, conversations on the courthouse steps, and even as a result of speaking at educational events. While you are well advised to always document your advice and the decision-making process regardless of the person or place involved, all of that may be for naught if you fail to keep a copy of that documentation based upon a misguided assumption

regarding the nature of the work (it was a favor) or the nature of the relationship (the work was declined). Doing so is for your own protection.

Even more surprising are the times when attorneys complete the work, feel that a very satisfactory outcome was obtained, and instead of keeping a closed file they make the decision to destroy the file after a short period of time. I hear statements like "This is how we keep storage costs down." or "If there is no file, the client will have a hard time proving any allegation of malpractice."

This belief that what doesn't exist can't be used against you is woefully misguided. First, you have no idea what the client has been keeping and again, in a word against word dispute, you're going to be in a very tight spot. In short, if you can't produce any documentation, it didn't happen, or it wasn't said. Taking this further, consider how a jury might look at it. Might not the relatively quick destruction of a file suggest that it was destroyed for a reason? Perhaps there was something to hide? In this day and age where digital storage is downright cheap, keep your files records for a reasonable period of time, which for many will be in the seven-to-ten-year range.

Since 1998, Mark Bassingthwaighte, Esq. has been a Risk Manager with ALPS, an attorney's professional liability insurance carrier. In his tenure with the company, Mr. Bassingthwaighte 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. Bassingthwaighte is a member of the State Bar of Montana as well as the American Bar Association where he currently sits on the ABA Center for Professional Responsibility's Conference Planning Committee. He received his J.D. from Drake University Law School.





## Rounds, Relationships, and Referrals: The Benefits of the VBA's New Lawyer Incubator Project

I joined the sixth class of the VBA's New Lawyer Incubator Project (NLIP) in 2019, back when we still met clients in their homes, attended court in person for hearings, and gathered at offices for meetings. At that time, I had never used WebEx and didn't have a ZOOM account.

In my NLIP interview, I shared my story of falling in love with Vermont and then falling in love in Vermont after working at the Barnard General Store on the weekends during law school. (As my partner likes to say, you really can get everything at the general store in town!) In addition to meeting my partner there, I also met local residents – and now friends – who often shared the day-to-day legal issues they faced. From the flower farmer who wanted to understand tax deductions to the widow who needed to update her will, I quickly learned that these small transactions make a large difference in the lives of fellow rural Vermonters. And while settling down in this rural area wasn't my initial plan, it was my reality when I was admitted to the Vermont Bar in fall 2018. Six months later, I read about the NLIP on the VBA's website.

Before applying to the NLIP, I was working on the Vermont Law and Graduate School campus at both the Community Legal Information Center and the Center for



Kassie Tibbott at work.

Justice Reform. The rest of my time was split between pursuing creative projects and pro bono work, both of which took me all over the state. The only legal work that I was doing at the time was criminal record expungement and sealing; I applied to the NLIP so that I could expand my knowledge into a more general practice.

The NLIP mimics a small virtual law firm.

## Incubator Project Grows New Vermont Attorneys

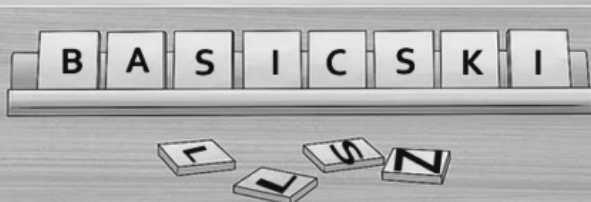
The New Lawyer Incubator Project is a workforce development partnership between the Vermont Bar Association and Vermont Law and Graduate School (VLGS) aimed at supporting newly admitted and new-to-Vermont solo practitioners.

Created in 2014, the project has graduated 16 lawyers and has assisted several others. Nearly all remain in active practice in Vermont and serve clients from the Northeast Kingdom to Manchester, from the Champlain Valley to the Connecticut River Valley. Their practice areas include business, family, real estate, public benefits, civil, estate planning, and general practice law.

Lawyers join the Incubator project for 18 months, using the time to set up their solo law practice, build a client base, work on business and marketing plans, try different areas of practice, gain experience, and become integral members of their communities. Project lawyers gather in virtual "rounds" every week with VBA and VLGS staff to discuss cases, recent developments in the law and court procedure, law office start-up issues, ethical challenges, marketing ideas, and client expectation conundrums.

The VBA provides Incubator lawyers with free membership for a year and allows gratis access CLE courses during their time in the program. VLGS gives Incubator lawyers access to their library and meeting spaces and invites project attorneys to audit, free of charge, one VLGS course each year.

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There are other new solo attorneys in the class; my class had three others, and we had five attorney mentors. While each of us were at our respective home offices or office share spaces around the state, our mentors were available every day by email and weekly for a telephone conference call. In addition to discussing cases during this weekly call, we discussed solo law firm logistics, business management, marketing techniques, and ethics. We shared strategies for networking and community connection; we challenged one another to take cases in areas of law we were unfamiliar with; we acknowledged each other's struggles and celebrated each other's successes.

The NLIP offered insight into a lifestyle that I otherwise would not have been able to experience and made sure that the lifestyle was sustainable and enjoyable. What this looked like for me was a rented co-working space so that I had an office culture, pro bono work at drop-in clinics for camaraderie, and learning more about Vermont communities and towns as I traveled to various courthouses to help individuals in probate court. Meeting clients where they are – physically, mentally, emotionally – is most important to me, and a require-

ment for this work. It is also important to me that Vermonters receive the assistance and advocacy that they need, whether or not they are able to pay for it. The NLIP team held a space for me to experiment with a low bono fee scale, a sliding fee scale, and then a 'Pay What You Want' fee scale. Thanks to the program, I successfully started a solo law practice with enough flexibility to make it work.

All of this changed and entered the realm of the unknown when the COVID-19 pandemic response started. My home turned into my office and my car turned into a home for mice and chipmunks. Legal clinics were canceled, court hearings moved to the telephone, and most clients fell through the cracks, their issues piling up overnight. I was isolated but still had the connection with the NLIP team, who helped strategize and troubleshoot. We truly were all in it together.

The pandemic drastically changed the trajectory of my legal career and while I don't have a full-time solo law practice as originally anticipated when I started the NLIP, I have the tools available to hang a shingle (again) when I am ready.



Incubator attorneys are assigned low bono cases from both VBA and VLGS referral projects. These cases provide some cash flow as lawyers assist clients who are low income, crime victims, or small business owners. The attorneys gain experience with various Vermont courts and agencies, have the chance to meet other attorneys, and to get hands-on client work.

With a generous grant from the CATIC Foundation, Incubator lawyers are eligible for a stipend of \$2,000 which they can use for such start-up costs as case management software, law office equipment, web design services, professional liability premiums, and other first year needs.

In January of 2023, a new group of three lawyers joined as Incubator Project Class number nine. They will overlap with "veteran" incubator attorneys to share experiences and ideas. In June of 2023, another group of two to four attorneys will be recruited as Incubator Class number 10. Interested? Watch the VBA website this spring for details on how to apply to join the VBA/VLGS New Lawyer Incubator Project.

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



## From the VBA Archives

If you come to the **Mid-Year Meeting at the Equinox Resort and Spa in Manchester Center on March 31**, your lunch options will be short ribs with whipped potato and veggies or roasted eggplant with quinoa and veggies (vegan, vegetarian, gluten free). Both options will be served with salad, dessert, coffee/tea, iced tea and lemonade. Sounds good, right? These are just some of the delights that await you at Mid-Year Meeting and you can (and should) register right now at [www.vtbar.org](http://www.vtbar.org).

That said, our administrative assistant (and recovering history major) Paul Velk, has been digging through the VBA archives. He has brought to our attention that on October 25<sup>th</sup>, 1904, the VBA held its annual meeting in the grand jury room of the Washington County Court House. Debates raged on multiple subjects, including whether Vermont should have an attorney general. When the debates ended, the 120 assembled VBA members looked forward to their annual banquet at Montpelier's Pavilion Hotel (now the Vermont History Museum). There, they were presented with the menu you see here.

Roman punch anyone? Blue points? Wine jelly? Perhaps a few layer raisins? If you come to Mid-Year Meeting in Manchester and can explain to VBA Staff at the registration table what this stuff was, we will congratulate you and give you a pin or some other VBA swag. See you in Manchester Center in March!

-KSV

Menu.	
Blue Points, with Lemon.	
Queen Olives,	Chow Chow.
Consomme Royal,	
Indian Relish.	Sweet Pickles.
Broiled Blue Fish, Sauce Tartare,	
Saratoga Potatoes.	
Roast Sirloin of Beef, au Jus,	
Yorkshire Pudding,	
Roast Vermont Turkey, Stuffed,	
Currant Jelly,	
Roast Saddle of Spring Lamb,	
Mint Sauce.	
Chicken Croquets, aux Petit Pois,	
Golden Ball Fritters, Silver Sauce.	

Roman Punch.	
Shrimp Salad, Mayonnaise Dressing.	
Baked Sweet Potatoes, Mashed Potatoes,	
Hubbard Squash, New String Beans.	
Steamed Fruit Pudding, Brandy Sauce.	
Assorted Nuts,	Layer Raisins.
Cheese,	Crackers,
Vanilla Ice Cream,	
Assorted Cake,	Wine Jelly,
Tea.	Cigars. Coffee.

# VBF Grantee Spotlight: The Association of Africans Living in Vermont

The Association of Africans Living in Vermont (AALV) is a nonprofit organization in Burlington that provides various free services to refugees and new Americans. The mission of the organization is to promote equal opportunity, dignity, and self-sufficiency for all refugee and immigrant individuals and families in Vermont.

The AALV provides behavioral health services to help refugees and helps new Americans navigate their surroundings. The AALV also provides workforce development, immigration legal services, and interpreter services. During 2022, AALV provided legal assistance to 694 individuals from 63 countries.

Through its pro bono legal services program, AALV represents refugees and new Americans to help them obtain legal status and protection in the United States. Some of the cases that AALV helps with are temporary protected status, citizenship, family petitions, family reunification, permanent residence, U visas, and asylum.

Most recently, AALV's attorney Nathan Virag and Michele Jenness, who is a fully accredited representative (an official status given to those who are not licensed

attorneys but through training have been given authority to represent clients for immigration purposes), have partnered with the Ethiopian Community Development Council (ECDC) to provide legal assistance to Afghans who have fled their war-torn country.


Because of the severity of the situation in Afghanistan, the United States developed an operation called "Our Allies Welcome." This operation included emergency evacuations for some people in Afghanistan who worked alongside the United States for twenty years. These Afghans were eventually paroled into the United States for two years. Because their parole status expires after two years, they must apply for further protection in the United States. One of those protections is applying for asylum.

Nathan has represented over twenty-five Afghans in their asylum cases. To obtain asylum in the United States, a person must show that they have been harmed in their home country or will be harmed on account of their race, religion, nationality, political opinion, and or membership in a particular social group. General fear of a terrorist group like the Taliban is not enough to be



successful in an asylum claim. Since asylum seekers must show harm or fear of future harm on account of one or more of the five categories, they must be able to document and talk about the horror and trauma they have experienced.

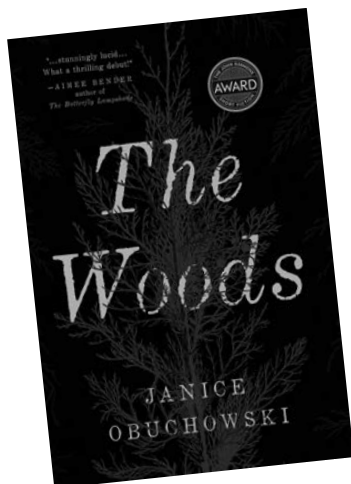
Therefore, Nathan alongside ECDC's legal coordinator has collected, documented, and researched everything from each asylum seeker's life in Afghanistan. After a case is submitted, each asylum seeker is called for an interview in front of an asylum officer. During the interview, an asylum seeker must answer questions and explain why they would be harmed if returned to their home country. Oftentimes, those interviews last more than three hours. Therefore, Nathan sits with each asylum seeker before their interview and prepares them by doing a mock interview.

AALV depends on grants and donations to continue providing free legal services to indigent refugees and new Americans. 

COMING SOON  
STAY TUNED  
2023 VBA DIRECTORY



# BOOK REVIEWS



## **"The Woods"**

by Janice Obuchowski  
University of Iowa Press  
Reviewed by Sarah Pinto, Esq.

There were times in *The Woods* where I engaged in fierce, frantic page-turning, giving momentary thought to possibly having ripped something, but just as quickly assuring myself, "I'll tape it later." There were also times when I found myself carefully, delicately turning pages in an effort to physically echo the quiet, contemplative beauty set forth in the hauntingly accurate descriptions of the Vermont landscape.

Without taking away from any other attributes of the writing, the rendering of Vermont roads, architecture, weather, people, and its titular subject is Ms. Obuchowski's strength in her award-winning collection of short stories. Cradled in a nest of a Vermont outdoors easily recognizable to those of us who live here - "a wall of rough spruce and pine, bare-limbed snatches of deciduous trees, ugly and overcrowded" or, "a stretch of beach with pine along its edges and a shore strewn with shale" or, after a walk in the winter woods, "[o]nce in the car, she blasted the heat" - are stories of the human condition just as recognizable as the short grey days we endure.

Ms. Obuchowski takes us by the hand and brings us to an old farmhouse in a quaint college town. We are comfortably


seated in an Adirondack chair with some tea (or a cocktail), and we meet an assortment of individuals, most with a common thread tying them to academia. They are tenured professors, adjunct professors, or spouses of college-folk. We are comfortable enough to have a second glass of wine before we grasp that something is amiss. There is the slow burn of remembering a lost husband in "Mountain Shade," the sudden drop of realized infidelity in "Potions," and the supernatural twist at the end of "Self-Preservation." Though we may be uneasy, maybe a little uncomfortable, perhaps even a little scared, we're not getting up from that chair. The characters, the dialogue, the progression ensure we see each story to the end.

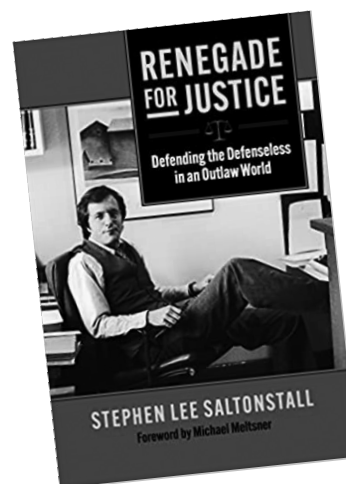
There are forays outside of the college campus, as well. *The Woods* takes us to East Coventry and recounts the real-estate nightmare that is The Forest Tavern (changed hands 13 times), wending and winding its way through the Civil War, Prohibition, World War II, and beyond. Whether fact or fiction, it is the quintessential story of the Vermont restaurant that attempts to reinvent itself with every new owner. In "Millstone Hill" we feel the twang of pain that comes with cutting down trees in the name of forest management and the protagonist's anger that propels her to attempted ecoterrorism. And this Gentle Reader's favorite, "Monsters," is as chilling and suspenseful as anything you will find in the real Vermont woods at night.

But don't be scared off. While the tales may be dark, the denizens of these stories are exceptionally relatable. From the stay-at-home dad of two small children: "We need a break from ourselves. Because we can't have that, we must settle for overlooking things." This, as he refrains from reminding his daughter to eat her lunch, because to remind her would invite an irrational discussion on the benefits of nutrition. There are COVID frustrations, there are 12-point bucks, there are dragon boat races. There is snow, there is ice, there is mud. Among it all are real people confronting real (and sometimes not so real) troubles. And like many of us, they reflect a struggle

to be content with what they've got, which may be a good moral takeaway from *The Woods*. With the idyll that is Vermont, can we not be content with where we've landed, demons and all?

Janice Obuchowski is the daughter of Joseph F. Obuchowski, Esq. and Carole Obuchowski, Esq. *The Woods* is the 2022 recipient of The John Simmons Short Fiction Award.

Sarah Pinto, Esq. is an attorney with Gale & McAllister PLLC (Colchester). 



## **"Renegade for Justice: Defending the Defenseless in an Outlaw World"**

by Stephen Lee Saltonstall  
University of Kansas Press 2022  
Reviewed by Gary Shattuck, Esq.

This book is a must-read for any member of the Vermont Bar who is interested in the recent history of Vermont courts and how they actually work, or anyone undertaking public interest or environmental litigation. The author, Stephen Lee Saltonstall, brings a different perspective with regard to his practice of law in both Vermont and Massachusetts.

Steve was born into a Boston Brahmin family and was sent at the age of 14 to Phillips Exeter Academy. He was in the line of a long family history of Saltonstalls who, among other positions served as a Gover-

## **Want to review a book for the Vermont Bar Journal?**

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nor and a U.S. senator from Massachusetts. All went to Exeter and then on to Harvard. However, his family predecessors had not experienced what was happening across the country in the 1960's and early 1970's. This was a time of great public unrest concerning the war in Vietnam and civil rights in general. Steve became involved in both areas. He was expelled from Phillips Exeter for his anti-war activities. He marched in Selma and came close to being assassinated. To those members of the bar old enough to remember the days of the Kent State shooting, the civil rights assassinations, the 1972 Chicago Democratic Convention and the like, their memories will be revived by this book.

This is the setting for a life of dedication to litigation for the downtrodden. The book contains the history of many significant pieces of litigation that Steve was either in charge of or directly involved with. Some he won and some he lost.

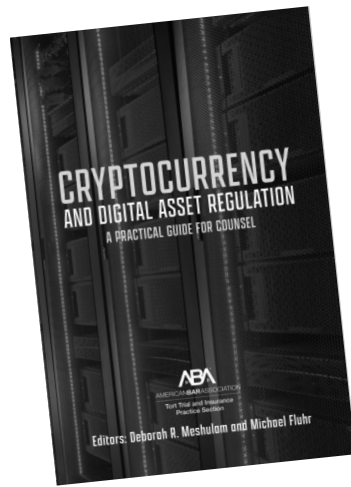
The magic of this book is that it so well written. Despite being kicked out of Exeter and eventually leaving Harvard, he did gain the ability to write and received a solid knowledge of American literature and history. He often uses this background to enrich the litigation stories.

What will be of great interest to the Vermont bar is his candid assessment of the judges and lawyers he ran into along the way. His candid assessment – quite often critical, sometimes complimentary, and with some individuals receiving a dose of both – will be welcome reading by members of the bar who have practiced in the court system over the last 30 years. His judgments appear to be right on, pointing out the hypocrisy of Governor Dean, as well as the incompetence of and prejudices of several judges. There is nothing wishy washy about his assessments.

The case stories are well written and are interesting in their own right. In one case, trying to stop a forest service road in a project known as Lamb Brook, he gets a bit carried away out of concern for the breeding habitat of black bears. His efforts, however, caused the Forest Service to abandon the project, resulting in protection for the bear breeding area, as well as deep wood song birds that nested there.

The book speaks to more than just members of the Vermont bar, and is a good read for any person interested in how the legal system is littered with failures, injustices, and incompetent participants, as well as triumphs. It is a good read.

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



**"Cryptocurrency and Digital Asset Regulation: A Practical Guide for Multinational Counsel and Transactional Lawyers"**

*Edited by Deborah Mushulam and Michael Fluhr*

*ABA Book Publishing 2022  
Reviewed by Devony Wilmot*

It's a digital asset. It's a security. It's cryptocurrency. But what exactly is it? What areas of law does it implicate? And how can it be regulated and litigated? These and other questions are addressed in Deborah Mushulam and Michael Fluhr's *Cryptocurrency and Digital Asset Regulation: A Practical Guide for Multinational Counsel and Transactional Lawyers*.

Mushulam and Fluhr are the editors of this volume, and each section is written by an expert in the topic covered. This adds value and credibility to the book because, instead of a telephone game in which one author distills information previously heard from another expert, we hear straight from the experts. Using the table of contents, which functions like bookmarks in YouTube videos, readers can locate subjects parti-

nent to them. Although it could be read from cover to cover, the book's primary purpose is to serve as a reference for lawyers navigating the complexities of digital asset regulation—or the absence thereof.

Digital assets bring up numerous important legal questions, many of which still lack conclusive answers. What legal limitations apply to the production, selling, and trading of digital assets? What measures must be taken to prevent misuse of the assets? What taxes apply to digital assets? What are some of the legal examples in which existing laws are applied to blockchain technology? We are still finding out and change seems to be the only certainty.

Still, this book promises to explain blockchain assets in plain English, and it delivers on that promise. The authors do an excellent job of connecting blockchain-based assets to conventional concepts most of us understand: money, securities, and commodities. The extensive footnotes are helpful for readers who may want to dig deeper.

If you are a transactional attorney, or just want to learn more about cryptocurrency, this volume would be a useful addition to your library. It provides a thorough discussion of block chain assets as well as the evolving legislation and regulation around them. An electronic edition of this book, which could be updated as the rules governing digital assets continue to grow, would be extremely useful in assisting legal practitioners in understanding their clients' difficulties and having an up-to-date starting point for more study and referral.

*Devony Wilmot is a Law Office Study Program participant at Marchica Law Office being supervised by John Marchica 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.*



# IN MEMORIAM

## Robert Sheil

Robert Sheil, 74, passed away in Hyanis, Mass., on November 28, 2022 after succumbing to a valiant struggle with multiple myeloma, heart disease and COVID.

Born at West Point Military Academy in West Point, N.Y., Bob was the son of Eleanor and Nicholas Sheil Jr. He graduated from Middletown High School, Middletown, N.Y., in 1965; Union College, Schenectady, N.Y., in 1969; where he was a member of the swim team and Sigma Chi Fraternity; and Vermont Law School in 1978.

After college, Bob came to Vermont's Mad River Valley to visit a friend for the weekend and stayed for life. He worked at a ski lodge, as a waiter and bartender, and enjoyed the busy social scene of the 1970s, making friends that lasted a lifetime. It was at the "White House" in Waitsfield, where he met many of those friends, including John Payne, Ilana Snyder and Scott and Connie Lisle.

Bob began his legal career as a Deputy State's Attorney in Washington County, Vermont, and then spent six years in private practice, specializing in juvenile and criminal law. For the following 28 years, he was employed as the supervising attorney in the Office of the Juvenile Defender, which is part of Vermont's public defender system. Bob served on the boards of several nonprofits, including the New England Juvenile Defender Center, Institute of Professional Practice, Policy Council for the local Head Start program, Washington County Youth Service Bureau, ASPIRE and Voices for Vermont's Children, a statewide advocacy organization for Vermont youth and their families. He also served on several state and national committees and councils and was a member of the Children and Families Council for Prevention Programs, a governor-appointed council. He was the northeast regional chair of the Coalition for Juvenile Justice, a national organization advocating on the federal level for juvenile justice issues. In December 1998, Bob published an article, "It's About Time," in the Vermont Bar Journal & Law Digest, and in 2016, Bob was honored by the Vermont Legislature for his exemplary public service.

Bob was well known for being a fabulous cook who welcomed guests into his home and delighted fellow staff and committee/board members with his delicious baked goods at their meetings. Bob was famous for making various kinds of cheesecake as a successful incentive to entice attendance

to the monthly Family Rules committee.

In the early 1990s, Bob joined John Payne and Ilana Snyder and others in helping to build a cabin on Butler Island, which he treasured for many years. Bob loved the water and took countless dips on a hot day. Again, his famous desserts crowned the nightly sunset feast, cooked on a campfire by the edge of the cliff overlooking the lake. As he did everywhere, Bob endeared himself to many island neighbors.

When climbing the steep stairs up to the Butler Island camp became increasingly challenging for Bob, he and John enjoyed exploring other lakeside spots, accessible by car. They found a perfect small camp on Lake Memphremagog, which Bob loved. Again, he made friends with many neighbors, not only by sharing his famous brownies.

In addition to his passionate work for juvenile justice, Bob loved traveling with his best friend, John, and others. Almost every year, they visited their favorite sites on Cape Cod and along the Maine coast. They also traveled further afield and discovered so many awe-inspiring places all over this country. But Bob was also game for "on-a-shoestring" international trips that led him to Jamaica, Grenada, Panama, Mexico, France, Ireland, Italy, Greece, Turkey and Corsica. Sadly, too many other destinations and dreams of adventures could not be checked off from his bucket list. He loved new sights, enjoyed learning about different cultures and savored new and exotic cuisines.

He was an inspiration to so many who knew him and genuinely one of the kindest people you ever met. He possessed a sharp mind, a wonderful sense of humor and an unfailing willingness to help and embrace those who had the honor to spend time with him.

Bob was predeceased by his mother and father; stepmother, Evelyn; Uncles James R. Sheil and Charles Blake; and Aunt Dolores Sheil Petersen. He is survived by John Payne; sister and brother-in-law, Eileen and Bruz Brown, of Williamsburg, Va.; two nephews, Edmund Brown and Thomas Brown; one grandniece, Ansley Sheil Brown; several cousins; as well as godchildren Chris and Lauren Lisle.

## William H. Quinn

It is with profound heartbreak that the family of Bill Quinn announce his passing from this life on December 3, 2022.

Hailing from humble Vermont beginnings, Bill lived a purposeful life full of professional achievements, great and enduring friendships and raw tragedy in the loss of his son, wife and daughter, one at a time, and all being too young.

Upon graduating from Bellows Falls High School in 1954, Bill attended Tufts University on a full scholarship, was appointed the student commander of the United States Air Force ROTC, and afterward enrolled at New York University for meteorology training. He was assigned to Castle Air Force Base in Merced, Calif. When discharged from the Air Force, Bill chose Boston University School of Law—again on full scholarship—where he was elected editor in chief of the Boston University Law Review. In 1966, he moved his young family to Burlington, Vt., and proudly served as the first clerk for United States District Judge Bernard Leddy. His legal career in Burlington lasted until his retirement in the early 2000s. He had practiced in both state and federal courts.

Besides cherishing his home state of Vermont and Lake Champlain vistas, Bill loved skiing at Stowe Mountain and in the west, tennis, time on the lake in his wooden Chris Craft and summers on Martha's Vineyard with friends and family. Ranking high on his special list—besides spending time with his grandsons—were his crazy Delta Upsilon brothers, with whom close relationships were maintained through legendary wild reunions in Woods Hole and Falmouth, Mass. These frat bros kept one another young.

Bill was a wonderful, funny, brave, honest and stalwart human.

He is predeceased by his first family, which included wife, Susan Hurd, son, Aaron Quinn, and his daughter, Micaela Quinn; and his two brothers, Charles and Bob. Surviving Bill are his wife, Jane Ropulewis-Shaw; stepson Josh Shaw and wife, Tiffany, of New Haven, Vt.; stepson Sepp Shaw and wife, Mandy, of Portland, Ore., and their two sons (Bill and Jane's treasured grandsons), Gavin and Jack Shaw; nephew, Shawn Quinn, and wife, Sam, of Essex Junction, Vt., and their two sons, Jonathan and Cameron; nieces, Caren of Essex Junction, Vt., Pam LaPierre of San Jose, Calif., Wendy Mattos of Worcester, Mass.; Hilary McGuire of West Chester, Penn., and Kirsten Nagiba of Colchester, Vt.



## Eugene Ward III

Eugene Ward III Eugene "Chip" Joseph Ward III, 70, passed away peacefully on Sunday, December 4, 2022, at his winter home in Greensboro, Ga. Chip also had his summer home in Vermont.

Chip was born on April 10, 1952, in Rockville Centre, N.Y., to Eugene "Gene" Joseph Ward Jr. and Elizabeth "Betty" (Gillerman) Ward.

He attended St. John's Academy (now Seton Catholic) in Plattsburgh, N.Y., and continued his education at SUNY Plattsburgh, graduating in 1974 with a bachelor of business degree. After completing his postgraduate studies at Vermont Law School, Chip began practicing law in 1982 and founded Ward & Associates Attorneys at Law, now called Ward & Towle, in 1986. He practiced real estate, estate planning and business law, and recently retired in July 2022.

Outside the office, Chip could be found pursuing his true passion: golf. Chip was a three-time Vermont Senior Amateur Champion, holder of six Vermont State Golf Association championship titles, and was ranked as high as 13th in the country by Golfweek. He loved traveling across America to play in tournaments and was always ready to provide tips to anyone on the course, especially beginners, whom he hoped would find love for the game like he did. Chip's passion for playing golf started at Bluff Point Golf Resort in Plattsburgh, N.Y., with his mom and lifelong friend, Mike O'Connor. He later joined Burlington Country Club in Burlington, Vt., and most recently, Reynolds Lake Oconee in Greensboro, Ga..

He is survived by his loving life partner, Susan Wainer, of Vermont; children, Laura Ward of Plattsburgh, NY; Shawn Ward of Burlington, Vt.; Eugene Joseph "EJ" Ward IV of Burlington, Vt.; and granddaughter, Charlotte Elizabeth (5), of Plattsburgh, N.Y. He also leaves behind Jonathan and Ashley Wainer of Hinesburg, Vt., and their children, Charlotte Marie (5) and Theodore (3); and several special friends.

He was predeceased by his parents, Gene and Betty, as well as several uncles and aunts.

## Beth A. Danon

On Friday, January 6, 2023, Beth Ann Danon, 68, died in the arms of her sister, Mary, and best friend, Kate Mulgrew, succumbing to a recurrence of endometrial cancer. Beth lived the last few months of her life first in the warm and welcoming home of her dear friends Susan Sussman and Scudder Parker, and then with her sis-

ter, Mary Kehoe, brother-in-law, Jeff Johnson, and niece Libby Dysart. In her last days, she was lovingly cared for by Kate, her best friend of 50 years.

Beth was born in Chicago on May 31, 1954, to William Kehoe and Joan Smith. As a young girl, Beth led her four siblings on endless exciting escapades throughout their North Side Chicago neighborhood, sneaking into hotel lobbies (Marlborough House), climbing on city statutes (Alexander Hamilton), swimming in the conservatory fountain (not allowed), and hunting for wounded turtles, birds and ducks in Lincoln Park (brought them all home). One of her favorite activities was forming clubs with the sole purpose of setting admission requirements she knew her little sister could not fulfill (like riding a bike down a long flight of stairs).

Beth began high school in Mamaroneck, N.Y., after her family moved there in 1967 so her mother could pursue her doctorate at New York University. In January 1969, while in high school, Beth led a group of activists to Washington, D.C., to participate in a nation-wide anti-war demonstration. Thus began Beth's lifelong pursuit of justice.

Beth finished high school in Hanover, N.H., and immediately returned to New

York. Beth started college at NYU in 1972 and finished at Hunter College in 1984. In the interim, she had a lot of fun, waiting tables in some of the classic folk and jazz clubs of Greenwich Village. Living in New York City enabled Beth to indulge her love of opera at the highest level. Beth went on to CUNY School of Law at Queens College, graduating in 1987. During law school, Beth provided legal services to victims of domestic violence. After graduation, she moved to Vermont to be close to her family, where she lovingly assumed the role of a third parent-figure to Mary's children, Peter and Libby.

Beth began her legal career as a law clerk to Vermont Supreme Court justice Frank G. Mahady. After completion of her clerkship, she began practicing law as a plaintiff's attorney. She was a partner at three law firms, most recently at Kohn Rath Law in Hinesburg, and at one time worked as interim director and staff attorney for Vermont Protection & Advocacy. She is a past President of the Vermont Association for Justice (formerly called the Vermont Trial Lawyers Association), a past President of the Vermont Bar Foundation, and a member of the Vermont Employment Lawyers Association. She was formerly an alternate on the Winoski Development Review Board.

## Here's the Fall Journal's Crossword Solution!

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In her 35 years of practice, Beth accepted cases simply because her client needed help. She was never interested in making money. She was only interested in helping people and was drawn to those most in need. Beth was a fierce advocate and highly successful attorney with the highest of ethical standards. One of her many victories included winning equal health care benefits for same-sex partners of University of Vermont faculty and staff, well before such rights became universal.

Practicing law was not enough to fulfill her ardent need to pursue justice. Beth was an early board member, and then president, of Vermont CARES. She served as president of the Vermont Bar Foundation and the Vermont Association for Justice. She was a long-standing member of the American Civil Liberties Union of Vermont. Her work with these organizations is evidence of Beth's devotion to maintaining a fair and just Vermont community.

Beth was the least judgmental person anyone could hope to know. She always had time to listen to her friends' and family's problems and woes for as long as necessary, often providing profound and helpful insight. She was reliable and willing to help at the drop of a hat. She found great joy in her Birdland community in North Hero, making connections that were deep and dear. Hers was a life well lived.

Though Beth had no children of her own, she was a devoted aunt to her 10 nieces and nephews. But no remembrance would be complete without mention of her adorable dog, Lilly. Her constant and dear companion for over 19 years, Lilly passed away in April 2022, leaving Beth bereft for some time.

Beth is survived by her sister, Mary Kehoe, and her husband, Jeff Johnson, of Shelburne, Vt.; her brother Bill Kehoe and his wife, Kerstin Cmok, of Belmont, Mass.; her brother John Kehoe and his wife, Marina Kehoe, of Statesville, N.C.; and her brother Michael Smith Welch and his wife, Ami Yamasaki, of Tokyo, Japan. She is also survived by her stepfather, U.S. Sen. Peter Welch, and his wife, Margaret Cheney.

Her surviving nieces and nephews are Peter (wife Raechel) and Libby Dysart; Lucas and Liam Cmok Kehoe; Leo and Eji Conger; Max Kehoe; Whitney Johnson (wife Anubha Bhadauria); Kasey Murray (husband Osa Imadojemu); and Blake (wife Emily) and Steven Murray. She is also survived by her great-nephew, Cassius Dysart, and great-nieces, Sosey Dysart and Theodora Imadojemu.

## James L. Morse

The Honorable James L. Morse, 82, died on January 13, 2023, at his home of 52 years in the little red house by the covered bridge on Lewis Creek. He was embraced by his wife, Gretchen, and his two daughters, Rebecca and Rachel. Jim's home was his sanctuary and where he nurtured his loving family, was a steward of the land, protected all living things and welcomed friends and neighbors with an open door. His home gave him inspiration and solace to write poetry, record his thoughts in "Doodles & Jots" and capture the beauty and irony of life through his photography and drawings.

Jim was born in New York City to Isabel and Robert Morse on September 11, 1940. He moved to Middlebury, Vt., when he was a teenager. He graduated from Deerfield Academy in 1958 and Dartmouth College in 1962. After serving as a line officer in the Navy on destroyers, he attended Boston University Law School, where he was editor-in-chief of the law review and graduated in 1969 with the highest honor for service and scholastic achievement. He then clerked for Vermont Judge Sterry R. Waterman on the Second Circuit Court of Appeals in New York.

Jim was passionately committed to the constitutional promise of "justice for all" and to making life better for everyone in our "brave little state," and beyond. After private practice, he served as Vermont Assistant Attorney General and later as Vermont Defender General. Jim was appointed to the Vermont Superior Court in 1981

by governor Richard A. Snelling and later was appointed Associate Justice of the Vermont Supreme Court in 1988 by governor Madeleine M. Kunin.

As a member of the judiciary for 22 years, Jim authored hundreds of opinions and earned a reputation as one of Vermont's most compassionate and conscientious jurists. He especially enjoyed mentoring law clerks and creating opportunities for judicial education.

In addition to public service in Vermont, Jim participated in rule-of-law initiatives in Russia and Ukraine and was a consultant to the war crimes tribunal at Sarajevo in Bosnia.

After retiring from the bench in 2003, Jim served for nearly three years as a commissioner for the Agency of Human Services, re-organizing economic services, child protection, early childcare and education, and juvenile justice into the Department for Children and Families. He fully retired in October 2005.

Jim was a trustee of the New England Association of Schools and Colleges after serving as a commissioner on NEASC's Commission on Institutions of Higher Education. Jim served as a trustee and president of the board of Hunger Free Vermont. He also served as a board member and president of the Board of the Vermont Chapter of the American Civil Liberties Union.

Jim leaves his wife of 57 years, Gretchen; his daughter Rebecca Morse and her husband, Jerry Swope, and three grandchildren, Emma and William Downey and Henry Swope; his daughter Rachel Scarborough and her husband, Mitch, and two grandsons, Samuel and Nathaniel. He is also survived by his sister-in-law and brother-in-law, Nancy and David Barry; and his nieces, Samantha Baker, Elizabeth Bain and Katherine Speede, and their husbands and children.



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go out of business within a year.**

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