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DEPARTMENTS

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Try out the Crossword Puzzle by Kevin Lumpkin, Esq. on page 27!

FEATURES

VERMONT BAR JOURNAL

Vol. 51, No. 2 Summer 2025

The Vermont Bar Association
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Published four times a year by the Vermont Bar Association.
Subscription rates: 1 year $35. 2 years $65.
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Interview by Kim Velk, Esq.

PURSUITS OF HAPPINESS

Michael Kiey Keeps Dancing

KSV: Hi Michael. 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 outside of the practice of law that help keep them balanced or provide fulfillment. You've been a lawyer for decades, and we're going to talk about the work, but you've also had a decades long avocation as a dancer – with a particular interest and in Argentine Tango. We want to hear all about that, but let's start with your origins. Where did you grow up?

MK: New York City-Manhattan; into grade, high and college and part of law school, I lived in Flushing, NY (Long Island). I still have a lot of city sidewalk in the soles of my feet.

KSV: Where did you go to college?

MK: I'm a graduate of Manhattan College (Liberal Arts) in Riverdale, NY

KSV: What made you decide to pursue a career in the law?

MK: I got a message, intuition walking near my home in Flushing in high school that was my path. This was reinforced by majoring in Political Science and joining the law society at Manhattan College. My J.D. is from New York University Law School. That's the best I can say.

KSV: I know you started your legal career in New York City – and worked there for a long time. Can you tell me about your NYC work experience?

MK: I worked for a couple of years as a trial attorney for an insurance company defending auto negligence cases. Wasn't professionally exciting so I went from midtown Manhattan to the financial district in Wall St. For 25 plus years, I worked as a lawyer and business manager with large and small financial services organizations. The "Street" was fascinating; I sometimes miss the pulse of the market today-making decisions in the context of fluctuating securities markets.

KSV: You first got involved in social dancing down in NYC, right? What sparked that interest? And can you define "social dancing" for the non-dancers among us?

MK: Yes, that's when I started to poke around the dance floors. Social dancing is dancing for recreation rather than performing or competing. Social dancing generally is broken down into two categories-ballroom (*e.g.* waltz and foxtrot) and Latin (*e.g.* cha cha and rhumba). The term "ballroom" is often used to refer to both categories.

Michael Kiey and Allegra Carpenter, Esq., dancing on the Burlington waterfront.

KSV: You made a big transition up to Vermont, in 1994. What brought you up here?

MK: I experienced a major financial planning event - divorce; decided I needed to take a risk to refashion my personal life and career. I rolled the dice.

KSV: How did you make your way professionally in Vermont? Can you sketch your Vermont career for me?

MK: It was hard making a new start. For roughly the first decade, I was in the private sector including acting as contract pro bono attorney doing civil and criminal cases in Lamoille County. I was General Counsel for a Vermont-based mobile home loan broker that operated throughout the United States. Great work that challenged me to learn a new regulatory system and make relationships beyond Vermont. But that industry went in a downward spin. I helped the family owners wind down the business. I especially valued my being a VBA Member on the Commission on the Well-Being of the Legal Profession.

The next dozen years or so I advanced my career as an officer and manager with the Vermont Service Center (USCIS), first in St. Albans and then at the Essex location. This work was an exceptional experience. My personal circumstances allowed me to volunteer to do things in other USCIS locations that were challenging and satisfying. I'm thankful to have been selected for the year-long Executive Potential Program. It was a treat to teach the pilot program on Plain Language at the training facility in Brunswick, GA.

KSV: Even though you're retired, you're still active in law and in dance. Can you talk about the lawyering you're doing, and the dancing?

MK: Well, I've done pro bono work some legal and some not. In the legal domain: Vermont Legal Aid in the Low-Income Tax Program; legal work on behalf of women and children seeking asylum at the Dilley Detention Center (jail) in Dilley, Texas; VBA rent escrow clinic; and now Vermont Asylum Assistance Project. Non-legal volunteer work: various activities in support of Migrant Justice; mock citizenship interviews for clients of Vermont Refugee Resettlement; taught adults to swim at the then Williston Edge as part of the U.S. Masters Swim program and acted as a youth swim official.

I dance and promote Argentine tango in Burlington; and I dance ballroom (social dance) with my partner, Liz Merrill. We recently had a nice time dancing lake side on the Burlington wood path near the swings.

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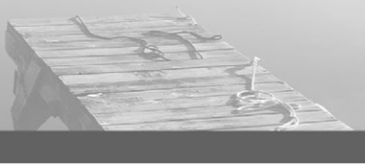

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Of such delightful small pleasures is my life now made.

KSV: Tell me how (and when) you first got hooked on Argentine tango?

MK: In July 1998 I planned to go to Omega Institute in Rhinebeck, NY featuring a week with Second City Improv Group Chicago. A friend diverted my attention to the week- long program on Argentine Tango, a dance i knew nothing about. I decided to take the risk. I had a marvelous time with 40 plus attendees from 24 states and countries including Quebec and Oslo, Norway. The teacher, Nora Dinzelbacher, I later learned was a world-respected teacher. I had the arrogance of asking her to dance after the first day of class week; in words I don't paraphrase she said: "No, you are not good enough." By the end of the week, we shared a dance.

KSV: How is it different from other kinds of tango?

MK: The other kind of tango is American tango. Argentine tango has building blocks, but you learn to improvise prompted what you hear in the music. It's like playing with pop-it-beads, removing and inserting different sets in different places. Once you dance Argentine tango for a while you instinctively try to introduce new elements in other social dances respecting the music. There is some talk that in Argentine tango dancing there is no smiling; this is wrong. If a dance doesn't make me smile it's not worth it. Go elsewhere. And more talk that Argentine tango is complex. It can be if you want but it can be as simple or complex as you desire. And still more talk that in Argentine tango you must dance close together- not at all, dancers' choice. It's a beautiful, partnering experience expressing the music.

KSV: Where did it go from there? I know you became a tango teacher and got involved in promoting dancing and various events.

MK: Yes, to all, up to about 2005, then took a long break to take advantage of career opportunities, then returned after Covid. I continued my piano jazz work during this time. The first Argentine tango event occurred on November 22, 1998, at Jazzercise in Williston under the sponsorship of the then US Amateur Ballroom Dance Association (USABDA); I promoted the event for USABDA. Tango is danced in Burlington today.

At this first event, I met my friend and teaching partner, Janet Dufresne, who had a tap dance, jazz, and stage background and worked as a sign language interpreter. We decided to try a new venture as teaching partners. We studied with Daniel Trenner, then of the Boston area. Daniel is

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the Johnny Appleseed of Argentine tango and has a fascinating history if you want to check it out at danieltrenner.com. I recently continued my Tango education with Daniel in Northampton, MA.

Janet and I taught and promoted tango at various venues in Burlington, the most prominent was at the now North Star Community Hall (formerly the Champlain Club). We and the community that formed went out from the dance halls in the community to do various events for those who loved music and dance but were not able to be mobile. For example: in July of 2000, members of the tango community gathered at the Allenwood Community Center in South Burlington with residents of the Center to view the documentary *Tango, The Obsession*, share thoughts, and socialize.

KSV: You mentioned to me that you once had the late Judge Katz as a tango student, do I have that right?

MK: Yes, in February 2003. The Flynn Center invited Janet and I to do workshops on the Flynn stage the day after a performance by a professional tango touring group. Judge Katz and Mrs. Katz attended our workshops and had a good time even though he was not in charge. From time to time, I saw Judge Katz and we recalled his venture on the stage. Judge Katz, though substantially disabled before his death last year, was a member of The Aphasia Choir of Vermont. I was reminded of this when I recently did the CLE, *Musical Wellness for Attorneys*. What fun - I learned I could sing a little and hum well!

KSV: I know you've had a dance partner for many years. Do you want to tell a little about how that evolved and where you are with that now?

MK: Well, I described how we met and our partnering afterward. She lives quietly now with her daughter and enjoys her grandson. We are still having heart connections as friends and share pictures of our dance history.

KSV: I know you've been involved in the "tango scene" in Vermont for decades and that it has meant a lot to you. You've been a teacher and promoter. What would you like people to know about tango in Vermont?

MK: Tango is danced all around Vermont. In Burlington it's a small community-alive and well but in need of beginning students. Check out Queen City Tango (QueenCityTango.org). Sergio Segura of NYC was a recent teacher. A good source for Tango in Vermont and in other cities in the U.S. is Tango Mango (tangomango.org.)

KSV: How does teaching or dancing tango connect you to others?

MK: Both are partnership activities based on good communication and learning about any facts that bear on the other person having a good dance experience. Dance is a form of support group that's important to me.

KSV: What keeps you coming at it after all these years?

MK: I'm in a good place physically and spiritually so I keep doing what got me here!

KSV: What role has dance played in supporting you through personal challenges? Can you talk about some of those?

MK: As I said earlier, dance is a support group for me. I'm benefiting from other more traditional support groups as well. Stress is a killer; dance helps me relieve stress and get physical exercise. This is especially important for me as I navigate my diagnosis in June 2024 of cancer that I've shared with many in the dance community. I'm doing very well.

KSV: What are your hopes for the Burlington tango community in the future?

MK: To continue to grow and look for connections with the larger dance commu-

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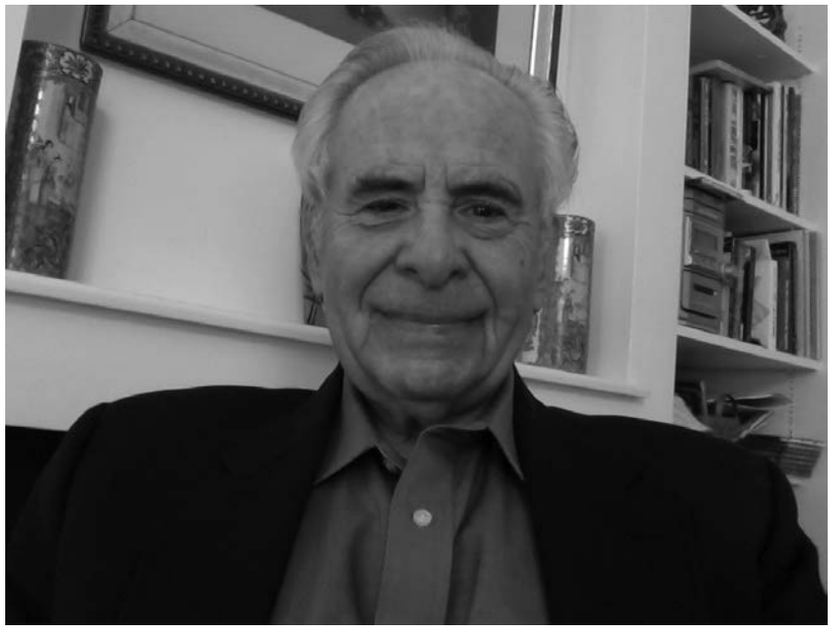
nity. As I see it, this means each day making a concerted effort to identify community groups and offer them a new dance experience.

KSV: I know you have lots of other interests as well. Can you talk a little but about the other things that are particularly meaningful for you these days?

MK: I'm very involved with my six grands (and their parents) in Vermont or elsewhere; the youngest just finishing first year in high school. Joy beyond belief to share with them as they grow into young adults. My swimming is key to my physical and mental health-lots of time in the Edge pools following the black line on the pool bottom. Liz, my partner, and I enjoy golf; no balls lost is a good outing! Liz is a citizen of Vermont since 1967; we both have family here.

KSV: If someone reading this wants to know how they could get involved in tango or other kinds of social dancing in Vermont what advice would you share with them?

MK: For Tango, check Tango Mango- in Chittenden County, posts for Queen City Tango queencitytango.org and Tango El Camino (David Lansky, Scott Phillips, and Elizabeth Seyler); in Washington County



-Eva Zimek; Southern Vermont, Brattleboro Tango; Caledonia: Phil Ciotti; Lamoille: Stowe Tango Festival 2025 (Alicia Cruzado, teacher).

For social dance, USA Dance Vermont, Kevin Laddison, and David Larson on Facebook; also Bill Pedrick (Berlin)-williampedrick@gmail.com. And contact me at michael.kiey2@gmail.com especially for Tango questions and new paths.

KSV: Is there anything that I didn't ask you about that you wanted to be able to share here?

MK: No. *Do Tango! Chill out! Keep Smiling!*

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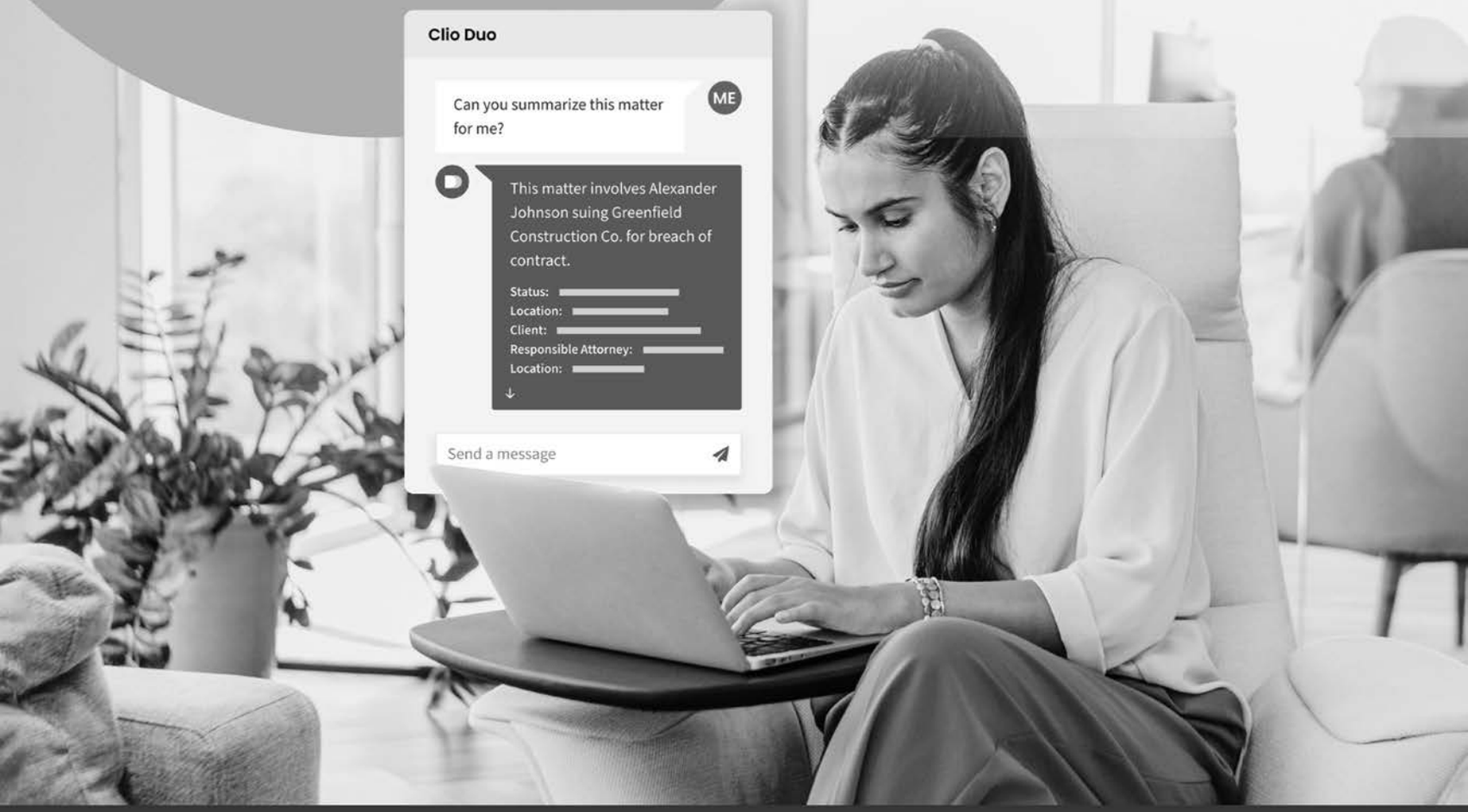

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by Anna F. Connolly, Esq.

WRITE ON

Get Out of The Shallows – Break Up Legal Research and Writing

Legal research and writing are often treated as one discipline. Many law schools combine them into one course. The faculty who teach these courses are categorized as Legal Research & Writing Faculty.[1] The American Bar Association Standard 302 groups together "legal research" with "written and oral communication."[2]

It's easy to see why legal research and legal writing are often lumped together: Research is usually used to inform or bolster written documents. Learning to write is important, but lawyers must have legal research to support their points. But the tasks of legal research and legal writing are vastly different. They require different tools, skills, and processes.

Legal Research and Legal Writing – Different Tasks Requiring Different Skills

Legal Research is a technical exercise. Most legal research today is done online, often through platforms such as Westlaw and LexisNexis.[3] The breadth of materials and tools on these platforms is staggering – annotated primary sources, sophisticated cataloguing, detailed summaries, and AI-powered search functions. Many legal research curricula these days read much like a course in Artificial Intelligence (AI) and software navigation. In fact, many law schools are now offering courses in AI, and some new legal research books focus solely on AI.[4]

Legal writing, on the other hand, is an art. Some may deem it dry or technical, beholden to a particular organization and structure. But effective legal writing is far from technical or formalistic. Most legal writing – at least in litigation – involves strategic choices about style, storytelling, theme, organization, word choice, and sentence structure. In 1957, Karl Llewellyn offered advice to select law students on legal writing, evincing how complex the subject really is.[5] In three pages, Llewellyn provided guidance on tone, argumentation, facts, issue statements, atmosphere, organization, concessions, and priorities.[6] He also provided direction on "Manner, style, words" – discussing everything from the importance of verbs, to "emotional consistency," to the need for restraint.[7] Llewellyn's guidance underscores how much of legal writing is creative and strategic.

Thus, legal research and writing don't require the same skills, and they don't involve the same processes. One is a technology-driven, hunt and gather exercise; the other is an art form that requires strategic thinking and subtle and deliberate drafting choices.[8] Both are important, but if we do not adequately distinguish them, we risk two dangers: first, we might shortchange each one. Second, we encourage lawyers to undergo "cognitive context shifts"[9] as they switch back and forth between two radically different tasks. As discussed be-

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low, these context shifts lock us into a zone of "shallow work"[10] and hamper both the quality of our work and our productivity.

The Rarity of Deep Work

"Deep Work," a term coined by computer scientist and author Cal Newport, refers to "professional activities performed in a state of distraction-free concentration that push your cognitive capabilities to their limit. These efforts create new value, improve your skill, and are hard to replicate."[11] Deep work "requires long periods of uninterrupted thinking"[12] and "is necessary to wring every last drop of value out of your current intellectual capacity."[13]

Yet deep work is becoming a rarity among "knowledge workers"[14] – including lawyers. The reason? The internet, and all of the associated connectivity tools: email, texts, slack and chat, endless social media apps, and much more.[15] The constant barrage of messages, notifications, ads, headlines, photos, and videos clamoring – literally – for our attention "fragment[s] . . . [our] attention into slivers."[16] A 2012 study found that the average knowledge worker spends around half the work week just reading and answering email and searching for information.[17] (And that was thirteen years ago.) The ubiquity of smartphones, smart watches, and tablets further exacerbates the quantity of time we spend on devices that "seize[] our attention only to scatter it."[18]

The result? We end up in an "environment that promotes cursory reading, hurried and distracted thinking, and superficial learning."[19] In his book *The Shallows*, Nicholas Carr explores the way in which our brains actually change as a result of spending so much time in a medium where "rapid-fire delivery of competing messages and stimuli" is the norm.[20] No more deep, sustained, uninterrupted focus. We get stuck in a never-ending cycle of performing "shallow work": "Noncognitively demanding, logistical-style tasks, often performed while distracted."[21]

We can blame the internet, YouTube, TikTok, and Instagram for our devotion to shallow work. But they are not the only culprits. Any "cognitive context shifts," in which our brains are switching from one task to another, have the same effect.[22] We end up context-shifting the most when we "work[] on too many tasks at the same time."[23] We are better off focusing on one task at a time.

How to Clear Space for Deep Work

Focused, deep work – particularly writing – happens when we eliminate distractions and shifts between tasks. This is not a new insight, nor is it specific to the internet age. Many successful writers and thinkers going back centuries have discovered that true focus and productivity require eliminating distractions: Mark Twain wrote portions of *The Adventures of Tom Sawyer* in an isolated shed on a farm in New York;[24] Peter Higgs, a theoretical physicist, "performs his work in such disconnected isolation that journalists couldn't find him after it was announced he had won the Nobel Prize";[25] Bill Gates conducted routine "Think Weeks" in an isolated cottage where he would only read, think, and write;[26] psychiatrist Carl Jung, Proust, Samuel Beckett, Nathaniel Hawthorne – all spent significant time in isolation as they produced some of their best work.[27] Acclaimed author Jonathan Franzen stripped his old Dell laptop of all frills, including the wireless card, to avoid distractions. But he was still too tempted by the internet via the ethernet port. "What you have to do," said Franzen, "is you plug in an Ethernet cable with superglue, and then you saw off the little head of it."[28] That way you can never use it again.

Must everyone mangle their computer or move to a small hillside retreat to write in longhand? No. But the bottom line: "If you want to do prolonged creative work, you're going to need to figure out a way

to avoid the demands of society, at least some of the time."[29]

Mostly that means shutting off the internet and all its distractions and focusing on one task. For lawyers, that task might be research or writing, but not both.

The Deep Work of Legal Research and Legal Writing

To achieve true focus, we must eliminate distractions: don't check email, text, or any other app. Shut down the browser, shut off the notifications, and just work.

We must also limit context shifts. When we turn our attention from writing a brief, to Westlaw, then our inbox, and back again,[30] we never actually get into the deep work zone.

In the legal context, we can start by parsing the tasks of legal research and writing. Legal research requires toggling between tabs, cases, and AI-driven tools to hunt for relevant research. Legal writing, on the other hand, requires a blank page, and wrestling with Karl Llewellyn's exacting writing strategies. Of course we need research to inform what we write. But that doesn't mean we should perform the tasks simultaneously.

In fact, once we gather our research, we are not ready to write. We must *read* and *analyze* the research. We spend a lot of time teaching new lawyers about high-tech AI research tools. But we sometimes forget that the harder part – particularly with our fragmented attention spans – is actually *reading* and *analyzing* the research in its full-length, long-form glory. Many educators have remarked that students these days can't even "complete a 14-line poem without succumbing to distraction" because of smartphones; reading books or completing a task that requires sustained focus simply "can't compete with TikTok, Instagram, YouTube."[31] Reading and analyzing research are independent tasks that should be done with focus, and without context switching.

So perhaps we should be teaching lawyers not "Legal Research and Writing," but legal research, legal analysis, and legal writing, all to be performed at different times, and all in a distraction-free environment.

To be sure, there may be practical or logistical reasons why legal research and writing end up as part of the same course. That should not matter, so long as they are treated separately, as independent skills and tasks. Teaching lawyers to separate these processes – and avoid context shifts – will lead to more productive, effective, and deeper work.

Anna F. Connolly is an Associate Professor of Law at Vermont Law & Graduate School. Prior to that she was a litigator at Cleary Gottlieb Steen & Hamilton LLP in New York.

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[1] *See, e.g.*, Association of Legal Writing Directors & Legal Writing Institute, 2023-2024 Report of the Individual Survey at iv, https://www.lwionline.org/sites/default/files/2023-24%20Individual%20Survey%20report%20FINAL.pdf.

[2] ABA Standard 302(b) (2024-2025), https://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/standards/2024-2025/2024-2025-standards-and-rules-for-approval-of-law-schools.pdf.

[3] Even before most legal research came online, the process was fairly technical. Research involved learning one's way around a law library; sifting through reporters, copies of the United States Code, and treatises; and Shepardizing cases in hard copy. *See, e.g.*, Lourdes M. Fuentes, *Lessons from Legal Research's Past for the GenAI-Powered Legal Technology of Tomorrow*, ABA Law Technology Today (Sept. 18, 2024), https://www.americanbar.org/groups/law_practice/resources/law-technology-today/2024/lessons-from-legal-researchs-past-for-the-genai-powered-legal-technology-of-tomorrow/ (describing legal research as a "grueling," tedious, technical process where associates were forced to create a manual index and take meticulous notes in order to use research findings later).

[4] *See, e.g.*, Generative AI for the Legal Profession (UC Berkeley Law Executive Education), https://executive.law.berkeley.edu/programs/generative-ai-for-the-legal-profession/; AI for Lawyers and Other Advocates (University of Michigan, Michigan Online), https://online.umich.edu/series/ai-for-lawyers-and-other-advocates/; Embracing AI for Legal Professionals (Duke Continuing Studies Programs), https://learnmore.duke.edu/certificates/embracing-ai-for-legal-professionals. *See also* Amy E. Sloan, Using Generative AI for Legal Research (2024), https://aspenpublishing.com/products/sloan-usinggenerativeai?srsltid=AfmBOord6JlPDA7ZFEVYRwz8NT2FGKUomrPcQynZggW-Crp274l1xH4MR.

[5] Llewellyn's document was confidential – made available only to certain students at Columbia Law School and the University of Chicago Law School. It was published for the first time as Appendix A in Noah Messing, The Art of Advocacy (2013).

[6] Llewellyn, *supra* note 5, at 267.

[7] *Id.* at 267–69.

[8] Platforms like LexisNexis and Westlaw also include legal drafting tools intended to help draft legal documents. Whether those tools are actually helpful is up for debate. But in any event, those tools are not the focus of legal research and writing curricula in law schools and are not widespread enough to replace legal writing as a discipline.

[9] Cal Newport, *The Tao of Cal* (Dec. 3, 2024), https://calnewport.com/the-tao-of-cal/.

[10] Cal Newport, Deep Work: Rules for Focused Success in a Distracted World 6 (2016).

[11] *Id.* at 3.

[12] *Id.* at 6.

[13] *Id.* at 3.

[14] *Id.* at 5.

[15] *Id.*; *see generally* Alex Soojung-Kim Pang, The Distraction Addiction: Getting the Information You Need and the Communication You Want, Without Enraging Your Family, Annoying Your Colleagues, and Destroying Your Soul (2013); Nir Eyal, Indistractable: How to Control Your Attention and Choose Your Life (2019).

[16] Newport, *supra* note 10, at 6.

[17] *Id.*; *see* McKinsey & Co., The Social Economy: Unlocking Value and Productivity Through Social Technologies (July 1, 2012), *available at* https://www.mckinsey.com/industries/technology-media-and-telecommunications/our-insights/the-social-economy.

[18] Nicholas Carr, The Shallows: What the Internet is Doing to Our Brains 118 (2010).

[19] *Id.* at 116.

[20] *Id.* at 118.

[21] Newport, *supra* note 10, at 6.

[22] Newport, *supra* note 9.

[23] *Id.*

[24] Newport, *supra* note 10, at 4.

[25] *Id.*

[26] *Id.* at 5.

[27] *Id.* at 1–2; Mason Currey, *Hawthorne, Proust: Writers Who Thrive on Solitude*, Slate (May 1, 2013, 7:30 a.m.), https://slate.com/culture/2013/05/hawthorne-proust-writers-who-thrive-on-solitude.html.

[28] Lev Grossman, *Jonathan Franzen: Great American Novelist*, Time (Aug. 12, 2010, 12:00 a.m.) (quotations omitted), https://time.com/archive/6597465/jonathan-franzen-great-american-novelist/.

[29] Currey, *supra* note 27.

[30] Newport, *supra* note 9.

[31] Rose Horowitch, *The Elite College Students Who Can't Read Books*, The Atlantic (Oct. 1, 2024), https://www.theatlantic.com/magazine/archive/2024/11/the-elite-college-students-who-cant-read-books/679945/.

WHAT'S NEW
Legislature Honors Rich Cassidy

Richard T. "Rich" Cassidy, president elect of the Vermont Bar Association and storied Vermont attorney, died late on Monday, April 21, 2025, after a long illness. The celebration of his life was held, to a capacity crowd, at Burlington's landmark First Unitarian Church on May 2.

Rich's long and wide-ranging service to Vermont, his clients, his community, and the legal profession, was further recognized on May 20, 2025, when the Vermont Legislature adopted a resolution in Rich's Honor.

The Resolution was read on the House floor by the assistant clerk. Co-sponsor of the resolution, Rep. Martin Lalonde, Esq. of South Burlington and Chair of the House Judiciary Committee, then spoke in support of the resolution. Lalonde, who had a long personal and professional relationship with Rich, noted that he wouldn't be a representative now but for his relationship with Rich. Rich's wife of 50 years, Becky Cassidy, was on hand to hear the Resolution and to receive a round of applause from the lawmakers. A copy of the Resolution will be provided to Rich's family, to the VBA, the Vermont Bar Foundation, and the Uniform Law Commission.

H.C.R. 148

Offered by Representatives LaLonde of South Burlington, Arsenault of Williston, Burditt of West Rutland, Christie of Hartford, Dolan of Essex Junction, Goodnow of Brattleboro, Goslant of Northfield, Oliver of Sheldon, and Rachelson of Burlington

House concurrent resolution in memory of distinguished Vermont attorney Richard T. Cassidy of Burlington

Whereas, for 47 years (1978–2025), Richard Cassidy was a distinguished member of the Vermont Bar, and he epitomized the best attributes of an attorney, and his legacy is exemplified through a record of superb leadership at respected State and national professional legal organizations, and

Whereas, a native of Rutland, he graduated from Mount St. Joseph Academy, the University of Vermont, and Albany Law School before completing two successive Vermont Supreme Court clerkships, and he subsequently enjoyed a successful career as a private practitioner, and

Whereas, the Vermont Bar Association (VBA) and its justice access partner, the Vermont Bar Foundation (VBF), were each a beneficiary of his wise counsel, and

Whereas, as a VBA appointee to the VBF Board, Richard Cassidy was an ardent advocate for VBF's mission, and at VBA, he was serving as the outstanding president-elect, and

Whereas, at the American Bar Association (ABA), Richard Cassidy served on the Board of Governors, chaired its Standing Committee on the Delivery of Legal Services, and represented Vermont in the ABA House of Delegates, and

Whereas, in 1994, Governor Dean appointed Richard Cassidy to the Uniform Law Commission (ULC), a pivotal advisor to legislatures and state bar associations on a wide range of statutory topics, and he frequently testified before General Assembly committees on ULC-related legal matters and was honored to serve a term as ULC President, and

Whereas, Richard Cassidy, whose broad array of activities included acting as a special legislative advisor on an impeachment investigation, serving as counsel to the Burlington Police Officers' Association, working as a legal analyst for Channel 5 television news, and chairing the South Burlington School Board, died on April 21, 2025 at 71 years of age, and he is survived by Becky, his wife of 50 years, now therefore be it

Resolved by the Senate and House of Representatives:

That the General Assembly extends its condolences to the family and colleagues of Richard T. Cassidy, and be it further

Resolved: That the Secretary of State be directed to send a copy of this resolution to the family of Richard Cassidy, the Vermont Bar Association, the Vermont Bar Foundation, and the Uniform Law Commission.

WHAT'S NEW
Law Day 2025 in Review

VBA president Josh Diamond has made a special effort this year to increase engagement between Vermont's attorneys and our communities, especially schools. Many Vermont lawyers and county bars have a significant record of appearing at schools, clubs, and other organizations to promote civic education (We're always happy to hear about those efforts at the VBA. Please share news of such activities so we can share too. More on that below). However, one of the best and most easily accessible opportunities to get attorneys out into the community comes every spring with Law Day, which is May 1. (Although really, every day can be Law Day. More on that below as well).

Josh and VBA staff attended the annual conference of the Vermont Alliance of Social Studies Teachers at Lake Morey last December. We invited teachers to make requests for Law Day Speakers to come to their schools. The request was shared online as well through a partnership with the Agency of Education. By the time Law Day rolled around, we had requests from ten teachers and offers to volunteer from 21 attorneys.

Law Day History

The first Law Day was held in 1957 at the behest of American Bar Association President Charles S. Rhyne. A year later, President Dwight D. Eisenhower established Law Day as a day of national dedication to the principles of government under law. An act of Congress in 1961 fixed the date as May 1.

It is helpful, of course, to have a date set aside to focus attention of the public on how law and the legal process protect American liberty, strive to achieve justice, and contribute to the freedoms that all Americans share. The American Bar Association has continued to support Law Day. Each year, the ABA establishes a theme and provides education resources every year. In 2025 the Theme was: "The Constitution's Promise: Out of Many, One."

> *The Constitution enshrines our collective responsibility to one another, and the 2025 Law Day theme urges us to take pride in a Constitution that bridges our differences to bring us together as a united nation. Our civic lives tie us together as one "We," whether through legislative efforts that serve the common good, through military service, or by working together, every day, to fulfill the promise of E pluribus unum, or "Out of many, one."*

The ABA makes all kinds of materials available each year for presenters to use at every grade level. There is also a library of material available anytime for past Law Day themes.

Law Day Is Flexible

It isn't required, by any means, however, that presenters use the materials from the ABA. At Colchester High School, for instance, the AP Government teachers who asked for a Law Day presentation specifically requested that Kristen Connors and Evan Barquist of Montroll, Oettinger & Barquist in Burlington (their volunteers), talk about immigration law and about 4th/5th/6th Amendment issues. Connors presented a PowerPoint on immigration law. She noted the teachers were enthusiastic and well-prepared. While some students were understandably tired after recent exams, Connors hoped they came away with a better understanding of immigration law's complexity. She encouraged them to explore their own family's immigration history and compare it to the legal process today.

Like the talking points, the timing of Law Day is also flexible. VBA Board Member Alfonso Villegas got Law Day started on April 4 this year by organizing a presentation at Burlington High School. The lawyers addressed a group of about 60 juniors and seniors. Presenters, along with Alfonso, included the Hon. Helen Toor (Ret.) of Toor Mediation, Malachai Brennan of SRH Law in Burlington, Judith Dillon, past VBA president and Labor Relations Board, Executive Director, Celeste Laramie of Gravel & Shea PC in Burlington, and Attorney General Charity Clark.

The legal team and the students discussed what it means to be a judge in Vermont, how to become a judge, and what judges rely on to decide on cases. The team also had the students answer questions with interactive modules. The capstone was a mock oral argument – the famous Nix v. Hedden controversy - is a tomato is a fruit or a vegetable?

Rutland County Goes Big

The Rutland County Bar wins the prize for the most elaborate Law Day presentation (if there was such a prize). On May 9, the Rutland County Bar Association and the Rutland Unit of the Vermont Superior Court continued their long-standing tradition of presenting a "Law Day Mock Trial" to Rutland County area 5th grade classes at the Rutland County Courthouse. This year's theme was based on the movie "Wicked". The case was entitled "Elpheba Thropp v. Galinda Upland".

Judge Alexander Burke, presently sitting in the Rutland Civil Division, presided over the case featuring "Elpheba" played by Attorney Phillisa Jones Prescott, "Galinda" played by Rutland Deputy State's Attorney Daron Raleigh, "Fiyero" played by Attorney Nik Houghton, "Dr. Dillamond" played by Rutland County State's Attorney Ian Sullivan, "Professor McGonagall" played in the morning performance by Judge Mary Miles Teachout and in the afternoon performance by Attorney Francesca Bove, and "Boq" played by Attorney Elijah LaChance. Probate Judge Karl Anderson represented the plaintiff and Attorney Toni Dutil represented the defendant. Judge Anderson wrote the screenplay and State Court Administrator Teri Corsones organized behind the scenes and served as bailiff.

More than 100 students participated either in-person or remotely at the morning and afternoon performances. From the students present in-person, jurors were randomly selected to hear the case. While the jurors deliberated in the jury room the other students had the chance to ask question of the cast and crew in the courtroom.

Participating schools included Christ the King School, Killington Elementary School, Rutland Intermediate School, and Rutland Town School.

Think About Next Year

Rutland County is setting the bar high (pun intended) for others who might like to organize a Law Day event, but we hope their example will inspire others. And of course, you (or your county bar) don't need to plan anything as elaborate as a mock trial to aid in civic education. The VBA gets requests every year for volunteer attorneys and judges to participate in community events, to judge mock trials, school civics competitions, and all manner of events. If you're looking for an opportunity to volunteer let us know. And Law Day comes every year! As attorney Herbert Ogden, who presented a Law Day program for sixth graders at Clarendon Elementary School this year said, "If you haven't done this before, give it a try. It made my day."

Thanks to Teri Corsones for the pictures of the Rutland event and her contributions to this report.

Thanks also to Alfonso Villegas for the picture of the Burlington event.

by Ott Lindstrom, Esq.

WHAT'S NEW

One Year Later: An Update from the Vermont Judiciary Committee on Artificial Intelligence and the Courts

Much has changed in the realm of artificial intelligence (AI) since my initial dispatch from the Vermont Judiciary Committee on Artificial Intelligence and the Courts (VJCAIC) graced these pages a year ago. If anyone hoped AI would go away or at least let up on the gas a bit, alas, that hope was for naught. The pedal has been pushed well past the metal and is now all the way through the floor, dragging along the highway. AI tools have not so much infiltrated every corner of society as boisterously crashed into them, a la the Kool Aid Man. As adoption has grown, so have technical capabilities—less than three years after ChatGPT debuted, consumer grade AI models are writing PhD-level mathematics proofs, while anyone with a few hundred bucks can use Google Veo 3 to produce disturbingly lifelike videos, complete with sound, using only a text prompt. But even as AI tools have grown more ubiquitous and powerful, their reliability has come under increasing scrutiny—as reported by the New York Times in May, even as AI models have leveled up their reasoning and robustness, their rates of hallucination (a polite euphemism for "making stuff up") have also crept upward.

As the tech advances and concerns have grown, governments near and far have begun taking measures to reign things in a wee bit. First on the scene was the European Union, which passed its comprehensive AI Act last August. Stateside, all but six U.S. states have either adopted or proposed AI laws and regulations in some form.[1] In a stark split-screen, as of mid-June 2025, Congress is debating whether

to take all that effort and throw it out the window, with a proposed provision in the 2025 budget bill seeking to nullify and preempt state-level AI regulation for the next decade.[2]

The legal system is also busy grappling with this brave new world. Practically every week another story pops up about a hapless lawyer getting slapped with sanctions for submitting papers riddled with hallucinated caselaw. AI-focused lawsuits have also proliferated, most prominently an avalanche of IP claims. For a significant example from early June, Disney and Universal joined forces to file a blistering copyright lawsuit against the AI company Midjourney, in much the same way that Godzilla and King Kong sometimes put aside their differences to beat up Mechagodzilla.

Amidst all this AI fervor, the VJCAIC has been an ocean of calm level-headedness, diligently pursuing its mandate to evaluate AI's impact on the Vermont courts and provide recommendations. On March 1, 2025, after many months of good-natured discussions and spirited wonkery, the Committee delivered its First Annual Report. The Report includes detailed recommendations for the judiciary from four subcommittees—Court Rules, Disciplinary Rules, Court Operations, and Policy and Standards. Though their particulars differ, the recommendations sing a similar tune: AI presents many opportunities and challenges for lawyers, judges, and court staff alike, and demands ongoing education and monitoring, but does not (yet) require the Vermont courts to significantly change the way they do business.

The Court Rules subcommittee concluded that any amendments to the rules are unnecessary at this time. However, the subcommittee noted that this may change—the subcommittee flagged several rules which potentially implicate AI, most prominently in the rules of evidence, and noted that the Federal Advisory Committee on Evidence Rules is currently studying the issue. The subcommittee also recommended increased technology training for Vermont legal professionals, potentially in the form of a dedicated CLE credit.

The Disciplinary Rules subcommittee likewise concluded that no changes are necessary for the Rules of Professional Conduct or the Code of Judicial Conduct. The subcommittee emphasized that AI hasn't created the need for any new rules per se, but rather offers a lot of novel ways for attorneys and judges to run afoul of the old ones. The subcommittee laid out several AI-centric ethical considerations, such as how an attorney's duty of competence may require her to educate herself about AI's risks and benefits, or how a judge's responsibility to decide precludes him from delegating decision making to the chatbot du jour.

The Court Operations subcommittee advised implementing a set of clear guidelines for court staff and judicial officers on proper, acceptable AI usage. It also recommended creating an AI Advisory Board to act as the arbiter for proposed AI implementations in the judiciary. The subcommittee also explored a variety of hypothetical ways the judiciary could use AI to improve day-to-day operations, from public-facing chatbots to internal document review systems.

Finally, the Policy and Standard subcommittee formulated a broad framework for evaluating and implementing AI tools. The subcommittee proposed draft technical frameworks for evaluating AI reliability and deploying AI systems, with an emphasis on the unique considerations posed by AI tools compared to legacy IT systems. Ethics were also front of mind, with the subcommittee spelling out a variety of ethical considerations—ranging from environmental costs to inherent biases—which should be considered when decisionmakers weigh implementing AI tools. The need for education was also emphasized, not merely for lawyers and court staff but also the public, including self-represented litigants.

Of course, this summary is only a broad overview of the Report. If you're jonesing to read the full thing, the complete Report and accompanying appendices may be found on the judiciary's website, at https://www.vermontjudiciary.org/about-vermont-judiciary/boards-and-committees/artificial-intelligence.

With its first deliverable in the rearview, the VJCAIC is now switching gears from recommendations to implementation. Top of the to-do list is laying the groundwork for the AI Advisory Board, which the Vermont Supreme Court has already approved,[3] and developing concrete guidelines and policy documents. In the meantime, the AI industry continues its rapid sprint toward an uncertain future. Who knows…if the next year of AI is as groundbreaking and transformative as this past year, we all may be reading next year's summer issue of the Vermont Bar Journal on a tropical beach while super-genius AI lawyers and judges do all our work for us. Or maybe we'll be bowing at the giant metal feet of our Mechagodzilla AI overlord. Only time will tell!

Carl "Ott" Lindstrom serves as the Vermont Bar Association President's designee on the VJCAIC. Ott is a litigation associate at Paul Frank + Collins P.C. and a frequent public speaker on issues at the intersection of AI and the law.

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[1] At the time of this writing, the Vermont legislature has passed a bill targeting the use of AI generated content in political advertising, which is waiting for the governor's signature.

[2] At the time of this writing, the Senate has watered down the House proposal for a no-exceptions 10-year moratorium into a more modest proposal of conditioning federal broadband funding on states abandoning their attempts to regulate AI.

[3] A copy of the approved Charge and Designation may be found here. https://www.vermontjudiciary.org/sites/default/files/documents/AI%20Advisory%20Board%20%28Draft%20Charge%20and%20Designation%29%20%28final%29.pdf.

WHAT'S NEW

VBA Establishes In-House Counsel Section

The Board of Managers of the Vermont Bar Association approved the creation of a section for In-House Counsel at its meeting on May 23 in Montpelier. The new Section was proposed by Mary Bouchard, Esq. of Vermont Gas Systems Inc.. The search is on for the first chair or co-chairs of the Section. Those with interest can contact Bob Paolini: bpaolini@vtbar.org.

The Section will concern itself with all areas touching on the practice of law as in-house or general counsel. An In-House Counsel forum has been created on VBA Connect, which can be accessed from the VBA website. Anyone interested can reach out there to ask questions or make suggestions.

by Samara D. Anderson, Esq.

BE WELL

Being Active Outdoors is Good for Our Brains and Overall Wellbeing

Personal Experience with the Healing Qualities of Being Active Outdoors

As a child growing up on a farm in Minnesota, I gravitated towards the outdoors and nature to spend as much of my free time as possible. I loved learning about the trees, plants, and animals that lived in the forest and meadow behind our home as well as adjacent to the Marsh Creek, which flowed through the horse pasture. Many animals either lived in close proximity to us or passed through on their migration paths. Looking back, I realize how lucky I was to spend so much time playing in the dirt, listening to the birds, and communing with nature. I still recall the morning I brought a baby badger into the house to show my mother, who was cooking in the kitchen: sometimes my interactions with nature weren't as welcome by my parents. But nature was my happy place and, as a very shy and introverted child, it was where I felt the most myself.

As I grew older and became involved in endeavors that took me away from nature, I started to feel the threads holding me to nature becoming frayed and thinner. I still recall a sense of reunion with nature after I graduated from college and went on a journey of self-discovery, as one does. Some of my happiest memories were made when I left Minnesota and moved to Colorado, where I led horseback rides into the Rocky Mountain National Park. I then moved to Texas to teach outdoor environmental education in the Pine Bush Preserve. Unknowingly, when I allowed my internal navigation system to be activated, I followed my curiosities and passions, and they always led me back to being active in nature.

But, in my life, the pendulum likes to swing between communing and immersing myself in nature and being in a completely sterile indoors or in an urban jungle. In my mid-twenties I felt pressure from many forces pushing me to get a "real job," find security, settle down, and adult. So, I went to law school in Vermont (whose natural beauty and immediate access to nature around every bend helped me survive that extremely stressful 3 ½ years as I earned both a Juris Doctor and a Masters in the Studies of Environmental Law) and kicked off my legal professional path in New York. At the time I didn't realize it, but looking back I can see a clear correlation between my increased levels of stress and anxiety and the increasing amount of time that I spent indoors and in downtown areas. I was not accessing nature or the outdoors on a regular basis. The more time I spent away from my natural roots, the less I felt connected to myself, others and nature, which meant the more stressed I felt. And the height of this really occurred when I practiced complex commercial litigation in Manhattan. The closest I could get to nature was running around Central Park in the early mornings before my long workdays began, which was never enough to help lower my outrageous stress levels. I would literally have to escape to my home in upstate New York on the weekends to unplug from the concrete jungle and reconnect to myself through nature. There is strong research that walking in an urban environment (without a lot of nature exposure) versus walking in nature shows that those "who walked in nature showed an improved mood state."[1]

In early 2024 I experienced a multitude of extreme life stressors that all culminated in experiencing burnout, where my body essentially started to shut down because I was stuck in a chronic stress/sympathetic nervous system reaction, never fully returned to the calmer homeostasis caused by the activation of the parasympathetic nervous system. Ultimately, to heal from being stuck in a chronic stress state, I had to take time away from work and an extremely full schedule of many amazing things and return to moving in nature. Hiking, which is longer walks in nature on trails or paths, became my medicine that allowed me to heal my body, mind, and nervous system and for me it took a doctor's prescription to stop doing so much indoors and do more of nothing outdoors. But, why did this work?

Science behind being active outdoors:

I would like to start with the *biophilia* effect, which states that people have an urge to affiliate with other forms of life and are drawn to experiences in nature[2] in order to increase their physical, mental, and emotional wellbeing. There are multiple benefits of just being in nature, which include:[3]

1. Reduced anxiety and stress through soothing sounds, smells, and sights of nature;
2. Improved mental health by reducing depression and anxiety, improving overall mood, and enhancing cognitive function;
3. Increased creativity, productivity, concentration, and problem-solving skills;
4. Faster healing and recovery.

I take inspiration from others who have found incredible focus and productivity through the disciplined practice of simply walking outdoors. Stephen King takes a long purposeful walk every single day because "it helps keep the engine running" and he is one of the most prolific and successful authors of our time, writing a book every 3 months and publishing two to three books a year for the last 10 years.[4] And he is not the only author to do so. Charles Dickens walked up to 20 miles a day and stated his best ideas came to him while he was moving.[5] Virginia Woolf used the

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rhythm of her footsteps to help her create and clarify plotlines.[6] Thus, let us start thinking about being active outdoors as preparation to do (or unlock) our most focused and creative professional endeavors.

Why is being active outdoors (specifically in nature) so amazing to our brains and overall wellbeing? When we engage in any cardio activity, such as hiking, it increases respiration and blood flow to all our major organs, including our brain, and our brains really enjoy receiving the extra blood flow loaded with more oxygen and nutrients. Brains operate at their optimum when the body is in a state of being both active and calm. The brain has very high metabolic demands. The brain accounts for at least 20% of the body's overall energy consumption.[7] Specifically, cardio activity increases blood flow to the brain, especially the prefrontal cortex – the part responsible for focus, decision-making, and memory. It's like giving your brain a software update every morning. But the real magic? Researchers at Stanford found that walking can boost creative thinking by up to 60%."[8] Walking can literally promote both the growth and survival of brain cells, through the simulation of brain-derived neurotrophic factor, to enhance many of our cognitive functions, such as: (1) Improved memory, attention, and problem-solving skills; (2) enhanced focus and concentration; and (3) better decision-making and reasoning abilities.[9] Outdoor movement can also help create new brain cells, especially in the hippocampus, which is vital for memory.[10] Additionally, regular movement outdoors helps to maintain your brain's overall volume and prevent the deterioration of brain tissue over time, potentially reducing the risk of cognitive decline and conditions like dementia.[11] Being active outdoors, including hiking, helps more than just our brains and cognition. Hiking is an amazing whole-body workout that strengthens our muscles, bones, balance, and our respiratory and cardiovascular systems.[12] It also has a few surprising benefits, such as counteracting the effects of weight-promoting genes, tames a sweet tooth, reduces the risk of developing breast cancer, eases joint pain, and boosts immune function.[13] Thus, if you want assist your brain in operating at its peak and improve your overall wellbeing, you need to get outside, into a natural setting, and move – simple and extremely effective!

Also, as I have been teaching in my chronic stress and burnout mindfulness trainings, movement has two extremely powerful healing qualities: (1) it completes the stress cycle, telling our minds that we are safe and can shift into our parasympathetic nervous systems; and (2) it releases many "feel-good" neurotransmitters like endorphins, serotonin, and dopamine, which have many benefits, including improving our overall mood, reducing the feelings of being stressed, and promote a sense of well-being.[14]

The critical key to receiving these healing benefits when being active in nature is that you are mindful, which means you are (1) choosing what you put your attention on; (2) you are placing your awareness on the present moment as it unfolds around you; and (3) you are curious about the small wonders unfolding all around you, instead of judging your experiences. In a new psychological study, this type of conscious moment in nature is called an "awe walk."[15] "Awe is partly about focusing on the world outside of your head…and rediscovering that it is filled with marvelous things that are not you."[16] Feeling a sense of awe improves feelings of happiness and can increase your overall mood, as well as lessen negative emotions and decrease the overall amount of stress hormones in the body, which lead to body-wide inflammation.[17] Being active outdoors can also help increase your Vitamin D levels, "which are important for your bones, blood cells, and immune system."[18] Additionally, when we listen to birds singing in nature it stimulates our relaxation response because birds do not sing when there is a predator nearby. And our survival brains know this, so when we hear a bird singing it enables us to feel safe, which is very calming to our nervous systems and lowers our levels of stress hormones. There is a reason why so many people feel a pull to being active in nature: we feel more positive and happier during and after these experiences. And only five minutes can be enough to increase your executive functioning, processing speed and working memory.[19]

Another tremendous way to increase the benefits of hiking is if you do it with another being, either human or animal (dogs or horses count). Adding another being into the equation has many advantages that magnify the previously mentioned wellness benefits, including:

- Enhanced feelings of safety, which will allow your nervous system to feel calmer and more safe;
- Another person or animal will increase your awareness of your surroundings, as you have additional eyes and years to spot both potential hazards, but also moments of awe;
- Improved relational health as you enhance your social connections and build bonds through shared experiences and memories; and
- You magnify the mindfulness benefits of shifting into the parasympathetic, rest/digest/heal state through the generation of oxytocin, which has many benefits, including: (1) reduces anxiety and stress; (2)is anti-inflammatory and antioxidant effects as it reduces the

levels of stress hormones, including cortisol; (3) fosters social bonding; (4) increases feelings of happiness, contentment and connection; and (5) promotes overall feelings of wellbeing.

Essentially, if you go into nature and are present, you will start to not only see the magic of the natural world all around you, this awareness will increase your overall state of wellbeing.

Access to Nature

If you live in Vermont, most of us are only a stone's throw away from hiking up a mountain at any given location. We are the Green Mountain State, with the Long Trail running through the spine of these mountains. As a testament to Vermont's passion for hiking, it created the Long Trail, which is the oldest long-distance hiking trail in the United States and was conceived and built by the Green Mountain Club (GMC) from 1910 until 1930. Yes, it predates the Appalachian Trail, which was inspired by the Long Trail and the Appalachian Trail actually uses a portion of the Long Trail from Massachusetts until it heads West into New Hampshire after crossing over Killington mountain. The total distance of this "footpath in the wilderness" is 272 miles from the border of Massachusetts to the Canadian border and truly explores Vermont's natural ecological beauty. But you don't need to do anything as intense as backpacking this long-distance footpath. Just find a natural setting close to you, it can even be a country road, and walk there. And as long as you are not on a paved surface, your walk on a path is considered hiking. Your body, mind, and nervous system will thank you.

Here are some additional simple ways to incorporate the healing effects of nature into your life:[20]

1. Make an effort to spend regular time in natural settings. This includes walking in parks, hiking, planting a garden or sitting under a tree;
2. Bring nature indoors through plants, flowers, and natural materials in your home and workspace.
3. Seek natural views in your workspace or living area, even slight glimpses of nature through your windows;
4. Practice nature-inspired activities, such as gardening, birdwatching, or nature photography; or
5. Support conservation efforts that protect and preserve natural environments.

I leave you with a list of the hikes I am leading through the Green Mountain Club in July and August with more to be posted into fall. The fall is my absolutely favorite time to be active in nature when there are less bugs, rain, heat, and humidity. Please contact me (anderson_samara@yahoo.com) to be included in any of these hikes, which are free and open to the public or GMC members.

1. Saturday, July 26 – Hike Jerusalem Trail to the Long Trail South up to Mt. Ellen. This is a strenuous hike with 2,881 feet of elevational gain over 8 miles. Dog-friendly and limited to six hikers.
2. Friday, August 15 – Hike up Cooley-Glen Trail to the Long Trail to grab some Presidential Peaks (heading both North and South) and return on Emily Proctor Trail. This is another strenuous hike with over 4,000 feet of elevational gain over 14 miles. Dog-friendly and limited to six hikers.

Samara Anderson is an attorney and the co-chair of the VBA's Attorney Well-Being Section.

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[4] I Tried Stephen King's Writing Routine – Here's What Happened, by Caroline Mitchell, published in Medium (June 5, 2025).
[5] *Id.*
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[7] A Cellular Perspective on Brain Energy Metabolism and Functional Imaging, Pierre J. Magistretti, Igor Allaman, in Neuron Volume 86, Issue 4 (May 20, 2015).
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[9] BDNF mediates improvement in cognitive performance after computerized cognitive training in healthy older adults, by Nicastri CM, McFeeley BM, Simon SS, Ledreux A, Håkansson K, Granholm AC, Mohammed AH, Daffner KR. Alzheimers Dement (N Y) (Aug. 31, 2022)
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[13] 5 Surprising Benefits of Walking, Harvard Health Publishing, Harvard Medical School (Dec.7, 2023).
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[16] *Id.*
[17] *Id.*
[18] 3 Ways Getting Outside Into Nature Helps Improve Your Health, UCDavis Health (May 3, 2023).
[19] Walking For Just 5 Minutes Does This Cool Thing to Your Brain, Per New Science, Korin Miller, in Women's Health Magazine (June 3, 2025).
[20] The Biophilia Effect: How Nature Nurtures and Heals, Evan Sylliaasen (May 15, 2023).

by Meg York, Esq.

Family Security for LGBTQ+ Vermonters: The New Confirmatory Adoption Law

This legislative session, Vermont sent a clear message to its LGBTQ+ families: we've got your back. Beginning July 1, 2025, Vermont families formed through assisted reproduction, as many LGBTQ+ families are, can access a new, streamlined path legal security – confirmatory adoption.[1] As practitioners, we must understand this change in the law, why it is important, and how it can benefit Vermonters.

All children in Vermont need and deserve legal family security. Legal recognition of parent-child relationships is essential to ensuring protections, rights, and responsibilities related to education, health, social security benefits, custody, permanency, and more. Children born of assisted reproduction may not share a genetic connection with one or both of their parents, which makes securing a legal relationship even more critical.[2]

Currently, when a child is born of assisted reproduction, the intended parents who consent to assisted reproduction are legal parents under Vermont law.[3] Even still, many of these families choose to pursue a court order, such as an adoption, to provide greater legal security. The U.S. Supreme Court has been clear that the Full Faith and Credit Clause[4] applies unequivocally to judgments in sister states, but it applies with less force to their statutory laws.[5] Adoption orders are embodied in a judgment, which is entitled to the most exacting form of full faith and credit and must be respected in other states.[6]

Recognizing the power of court judgments and the need to protect diverse families, Vermont was among the first states in the nation to pass comprehensive parentage reform in 2018.[7] The Vermont Parentage Act ensures that all Vermont children have access to legal parent-child relationships, regardless of the circumstances of their birth, or the marital status, gender identity, or sexual orientation of their parents.[8] The Act created a new Title 15C to be inclusive of all families, including expanding Voluntary Acknowledgment of Parentage (VAP) options for same-sex couples,[9] providing equality for families with de facto parents,[10] and recognizing that some children have more than two parents.[11] It protects children born though assisted reproduction[12] and surrogacy.[13] Under the Vermont Parentage Act, a person may establish a legal parent-child relationship by giving birth, adopting, acknowledging parentage through a VAP, adjudication, presumption, de facto parentage, genetic parentage, assisted reproduction, and by gestational carrier agreement.[14]

Although the Vermont Parentage Act provided critical updates to legal parent-child relationship recognition, it left Vermont adoption law untouched. Stepparent, second parent, and co-parent/partner adoption have been long-standing methods for securing parentage and have been available to LGBTQ+ parents in Vermont since at least 1993.[15] However, because the stepparent/partner adoption process relies on establishing rather than confirming legal parentage,[16] its requirements make little sense when a person is adopting their own child. For example, a family formed through assisted reproduction would still need to provide an evaluation (home study) by a court-appointed qualified evaluator who may charge a fee,[17] a criminal record check of the petitioner, including an FBI national criminal history record check accompanied by a set of the petitioner's fingerprints and a fee,[18] and more. As a result, vulnerable families that desperately need this protection are either delayed in obtaining it or deterred from pursuing it altogether. Not only so, but this complicated and expensive process commits valuable court resources unnecessarily.

The new legislation, which is codified in Title 15A,[19] streamlines adoption for non-genetic parents by removing costly, burdensome barriers to confirming existing parent-child relationships. Under Vermont's new confirmatory adoption law, if a parent by assisted reproduction seeks to confirm their parent-child relationship through adoption, they do not have to complete an invasive home study or file a motion requesting a waiver of this requirement.[20] They do not have to endure record checks, attend a hearing, or demonstrate a minimum residency period.[21] However, for good cause, a court can still require any of these for the purposes of evaluating and granting a petition for confirmatory adoption, maintaining a judge's discretion to ensure adoption is in the child's best interests.[22]

While confirmatory adoption is an important option for all families created through assisted reproduction, it is especially important for LGBTQ+ families who are facing an increasingly hostile legal and cultural environment throughout the United States. Recently, courts in Oklahoma and Idaho stripped children of their non-birth LGBTQ+ parent, even though the parents had been married when the child was born.[23] For the wellbeing of all children and families, it is critical that LGBTQ+ parents have accessible paths to legal security to ensure their families are recognized and protected no matter where they travel.

Vermont's new confirmatory adoption law means that families formed through assisted reproduction, including LGBTQ+ families, can access vital legal protections. Families are treated with dignity and respect as they are confirming what they know to be true and what Vermont recognizes by law – they are parents. By obtaining an adoption decree, families will receive a judgment easily recognizable and respected in all jurisdictions.

Love makes a family, but the law provides security. Confirmatory adoption is an important step toward ensuring that LGBTQ+ families in Vermont can obtain legal security and protection through a validating and efficient process.

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[1] H. 98 (Act 31), 2025-2026 Leg. Sess. (Vt. 2025).

[2] See *Relationships at Risk: Why We Need to Update State Parentage Laws to Protect Children and Families*, Movement Advancement Project 1 (June 2023) https://www.mapresearch.org/2023-parentage-report.

[3] 15C V.S.A. § 703.

[4] U.S. Const., Art. IV, § 1.

[5] See *Baker v. General Motors Corp.*, 522 U.S. 222, 232 (1998) (noting "the credit owed to laws (legislative measures and common law) and to judgments" differs, with the obligation being "exacting" as to judgments).

[6] See, e.g., *V.L. v. E.L.*, 577 U.S. 464 (2016) (requiring Alabama courts to give full faith and credit to second parent adoption granted to lesbian couple in Georgia); *Finstuen v. Crutcher*, 496 F.3d 1139, 1151 (10th Cir. 2007) (invalidating state constitutional amendment that barred recognition of final adoption orders from other states by same-sex couples because it violates the Full Faith and Credit Clause); *Russel v. Bridgens*, 647 N.W.3d 56, 58-60 (Neb. 2002) (not-

ing that courts must give full faith and credit to a Pennsylvania same-sex co-parent adoption unless the challenging party can prove the court lacked subject matter jurisdiction).

[7] Enacted in May of 2018 (H. 562), Vermont was the second state in the nation to enact comprehensive parentage updates, second only to Washington state (S.B. 6037), which enacted its updates in March of 2018.

[8] See 15C V.S.A. § 101 et seq.

[9] 15C V.S.A. §§ 301-312.

[10] 15C V.S.A. §§ 501-502.

[11] 15C V.S.A. § 206(b).

[12] 15C V.S.A. §§ 701-709.

[13] 15C V.S.A. §§ 801-809.

[14] 15C V.S.A. § 201.

[15] *In re B.L.V.B.*, 160 Vt. 368, 628 A.2d 1271 (Vt. 1993).

[16] *Compare* 15A V.S.A. § 1-101(23) (defining "stepparent" to mean "a person… who is not a parent of the child") *with* 15C V.S.A. § 703 ("A person who consents… to assisted reproduction by another person with the intent to be a parent of a child conceived by the assisted reproduction is a parent of the child").

[17] 15A V.S.A. §§ 3-305(6)m 2-201(c) (a petitioner may request a waiver of this requirement. In some counties, judges have accepted letters in lieu of the home study).

[18] 15A V.S.A. § 1-113.

[19] 15A V.S.A. § 1-114.

[20] 15A V.S.A. § 1-114(f).

[21] *Id.*

[22] *Id.*

[23] *Wilson v. Williams*, FD-2021-3681 (Okla. 7th Dist. Feb 13, 2023), *Gatsby v. Gatsby*, 495 P.3d 996 (Idaho 2021).

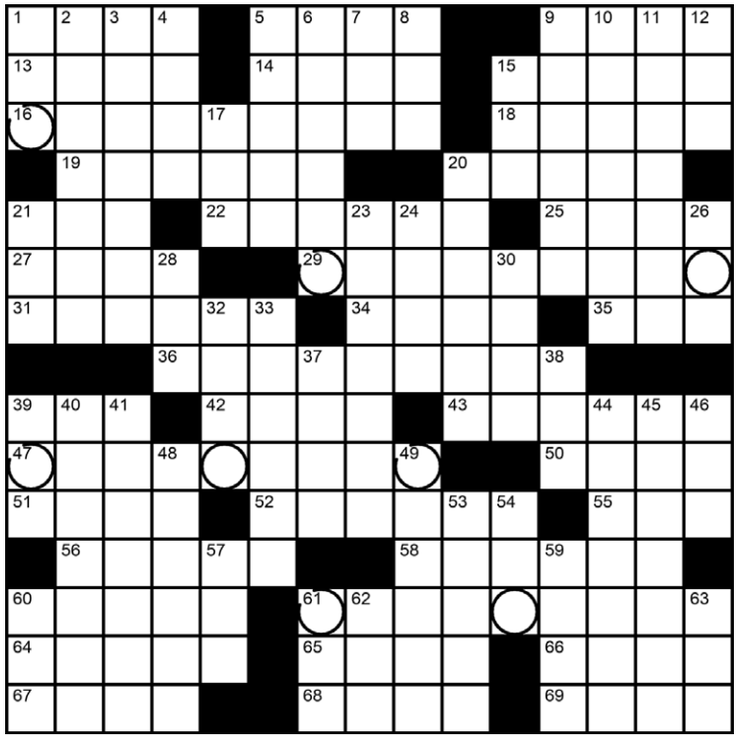
CROSSWORD PUZZLE

by Kevin Lumpkin, Esq.

Kevin is back with a new crossword puzzle for summer! For those familiar with the *New York Times* crossword puzzles, this is about the Wednesday level of difficulty. Thanks to Laura Welcome for test solving.

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

Here's the solution to the "Connections" puzzle that appeared in the previous issue of the VBJ:
Purple Category: Richardson, Kennedy, Novotny, Fletcher (past VBA Presidents)
Blue Category: Atwood, Cohen, Cooper, Roberts (Last names of characters on The O.C.)
Green Category: Ginsburg, O'Connor, Scalia, Souter (former SCOTUS justices)
Yellow Category: Chandler, Rachel, Joey, Ross (Friends Characters)



Across

1. Quick drink
5. Inquires
9. Exhausts
13. Very
14. Something to do on Church Street
15. Get back to an outline after a question at oral argument, say
16. Recurring musical theme
18. Furniture assembly instructions, say
19. C2H6
20. Talking Heads frontman David or Gravel & Shea litigator Matthew
21. Like
22. "C'mon"
25. Apt name for the child of a tech lawyer?
27. His & ____
29. Need for a classic martini
31. They may be found on luggage
34. Group that inspired the A*Teens
35. Dylan or Marley
36. Traditional path to becoming an attorney visually represented in this puzzle
39. American equivalent to kgs
42. Late night Jay
43. "Daaayum"
47. Its scientific name is Athene noctua
50. Drab or dry
51. Red Sox manager Alex
52. Pretenders
55. Ghosts airer
56. University of New Mexico team
58. Tell on
60. Hello _____
61. Its largest product is the 9RX 830 tractor
64. Leers at
65. Phys. partner
66. "Darn!"
67. Dermatologist's concern
68. Salves
69. A British idiot

Down

1. A day on Mars
2. Transported, say
3. Question one might ask at MOMA
4. Dark aesthetic
5. How a choir might sing
6. Small Jewish town
7. ___ pond
8. Abbreviation on a sunscreen bottle
9. A staff sgt. might give one
10. Thoroughfare in Alphabet City
11. Name for 14 holy men as of May 8, 2025
12. Ave. crossers
15. "Gangnam Style" rapper
17. Spanish for bad
20. Owie
21. ___ tuna
23. Nickname for manatees
24. German equivalent of 39-Down
26. Airport code for NY's capital
28. ___ y pimienta
30. Chemical formula for lye
32. Audacity
33. Nielsen rating period
37. Bassinet brand that costs $1,695
38. Subject of CIA experiments
39. American equivalent of 24-Down
40. Life lessons?
41. Ambles
44. Word that George W. Bush famously mispronounced
45. Saskatchewan neighbor
46. Ty counterpart
48. Fire or Galaxy
49. Causing death
53. Tirades
54. Norm: Abbr.
57. Yiddish laments
59. U. of Md. player
60. What's up, ___?
61. ___ Corps
62. Signature song from A Chorus Line
63. Ballpark fig.

by J. Michael McGuinness, Esq.

The New National Law Enforcement Use of Force Standard

Law enforcement use of force continues to be one of the most controversial public interest topics throughout America. A serious injury or death from police force usually stirs immediate litigation. Many police force incidents invoke a complex body of overlapping liability and defense principles. Police force disputes are typically decided based upon layers of federal and state constitutional standards, qualified immunity, state statutory provisions, common law standards and a vast array of defenses.

In *Barnes v. Felix*, 145 S.Ct. 1353 (May 15, 2025), the Supreme Court materially modified and clarified the applicable Fourth Amendment standard for analyzing law enforcement use of force disputes. In a rare unanimous opinion authored by Justice Kagan, the Court affirmed key holdings from its use of force jurisprudence and overruled use of the "moment of threat" principle which limited the review of the force to the precise moment when the officer perceived the apparent threat. The Court reaffirmed and clarified its totality of circumstances test for use of force adjudication. The Court framed the issue and stated the conclusion as follows:

> The question here is whether that framework [moment of threat principle] permits courts, in evaluating a police shooting (or other use of force), to apply the so-called moment-of-threat rule used in the courts below. Under that rule, a court looks only to the circumstances existing at the precise time an officer perceived the threat inducing him to shoot. Today, we reject that approach as improperly narrowing the requisite Fourth Amendment analysis. To assess whether an officer acted reasonably in using force, a court must consider all the relevant circumstances, including facts and events leading up to the climactic moment.

The centerpiece of the Court's decision provides that courts must analyze police use of force based on the "totality of the circumstances" as opposed to narrowly limiting the analysis to the precise moment of the threat. This article reviews the prevailing federal constitutional standards under *Barnes* and its antecedents, summarizes some basic use of force principles and outlines statutory principles of Vermont use of force law.

The Lower Courts Applied the Moment of Threat Principle

The plaintiff filed a constitutional tort action in a Texas state court alleging that Constable Felix violated a motorist's Fourth Amendment rights by allegedly using excessive force against him during a traffic stop. Following removal, the District Court granted summary judgment in favor of defendants based on the moment of force principle. 532 F.Supp.3d 463; 2022 WL 5239297.

On appeal, the Fifth Circuit affirmed and explained that the moment of threat rule only requires an inquiry as to whether an officer was "in danger at the moment of the threat that resulted in [his] use of deadly force." Under the moment of force rule, the Court stated that the inquiry is confined to whether the officer was "in danger at the moment of the threat that resulted in [his] use of deadly force." 91 F.4th 393, 397 (5th Cir. 2024). Under the moment of threat principle, any prior events "leading up to the shooting," including actions the officer took, were simply "not relevant."

Several circuit courts including the Second, Fourth, Fifth and Eighth Circuits had been employing the much narrower moment of threat principle. Certiorari was granted to resolve the conflict. The Supreme Court vacated the judgment and remanded for further proceedings. The Court held that the moment of threat principle inappropriately "constricts the proper inquiry into the 'totality of the circumstances.'"

The Core Facts of Barnes

Felix was patrolling a highway near Houston and received radio communication concerning an automobile with outstanding toll violations. Felix spotted and stopped the car. Felix asked Barnes for his license and proof of insurance. Barnes replied that he did not have his license with him, and that the car was a rental in his girlfriend's name. Barnes began to rummage through papers in the car, causing Felix to tell him several times to stop "digging around." Felix also commented that he smelled marijuana and asked if there was anything in the car he should know about. Barnes responded that he might have some identification in the trunk. Felix told him to open the trunk from his seat. Barnes did so, while also turning off the ignition. All of this happened in less than two minutes, as demonstrated by the dashcam recording of the incident.

Felix instructed Barnes to get out of the car. Barnes opened the door but did not exit; instead, he turned the ignition back on. Felix twice shouted to Barnes: "Don't f…g move." Felix unholstered his gun and, as Barnes moved the car forward, Felix jumped onto the car's doorsill. The sudden movement of the car and its immediate proximity to Felix caused him to believe that he was in imminent danger. Consequently, Felix fired two quick shots in defense, fatally wounding Barnes.

The Barnes' Analysis

The Court recited many basic principles of use of force law. The "touchstone of the Fourth Amendment is reasonableness … as measured in objective terms." The Court reasoned as follows:

> That inquiry into the reasonableness of police force requires analyzing the "totality of the circumstances." There is no "easy-to-apply legal test" or "on/off switch" in this context. Rather, the Fourth Amendment requires, as we once put it, that a court "slosh [its] way through" a "factbound morass." Or said more prosaically, deciding whether a use of force was objectively reasonable demands "careful attention to the facts and circumstances" relating to the incident, as then known to the officer. For example, the "severity of the crime" prompting the stop can carry weight in the analysis. So too can actions the officer took during the stop, such as giving warnings or otherwise trying to control the encounter. And the stopped person's conduct is always relevant because it indicates the nature and level of the threat he poses, either to the officer or to others. [Omitting numerous citations]
>
> Most notable here, the "totality of the circumstances" inquiry into a use of force has no time limit. Of course, the situation at the precise time of the shooting will often be what matters most; it is, after all, the officer's choice in that moment that is under review. But earlier facts and circumstances may bear on how a reasonable officer would have understood and responded to later ones…. Prior events may show, for example, why a reasonable

officer would have perceived the otherwise ambiguous conduct of a suspect as threatening. Or instead, they may show why such an officer would have perceived the same conduct as innocuous. The history of the interaction, as well as other past circumstances known to the officer, thus may inform the reasonableness of the use of force. [Omitting numerous citations]

The Court declined to address another theory advanced regarding whether or how an officer's own "creation of a dangerous situation" factors into the reasonableness analysis. The question presented to the Court "was one of timing alone: whether to look only at the encounter's final two seconds, or also to consider earlier events serving to put those seconds in context."

Justice Kavanaugh authored a concurring opinion, joined by Justices Thomas, Alito, and Barrett. The concurrence was devoted exclusively to strongly emphasizing the multiple and often extensive dangers of vehicular traffic stops to police officers. The Court has long stressed this crucial point in evaluating disputes arising from traffic stops.

Other General Use of Force Principles

Many authorities have observed that there are "special rules" for analyzing law enforcement officer conduct, especially in use of force cases. The reasonableness of force decisions are predicated upon what the officer on the scene *reasonably perceived*. E.g., *Graham v. Connor,* 490 U.S. 386, 395 (1989), which explained "[t]he reasonableness' of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight."

In *Coll v. Johnson*, 161 Vt. 163, 636 A.2d 336 (1993), the Vermont Supreme Court addressed a use of force case and reversed a directed verdict for the defendants. The Court applied the *Graham v. Conn*or objective reasonable standard. 636 A.2d at 338-339. See *Sanborn v. Jennings,* 2013 WL 4040391 (D.Vt. 2013) (applying *Coll* use of force standard predicated on the *Graham* standard)

In *Saucier v. Katz,* 533 U.S. 194, 205 (2001), the Court reaffirmed the doctrine of *mistaken beliefs* as an insulating defense. As *Saucier* explained:

> [P]olice officers are often forced to make split-second judgments - - in circumstances that are tense, uncertain, and rapidly evolving - - about the amount of force that is necessary in a particular situation, the reasonableness of the officer's belief as to the appropriate level of force should be judged from that on-scene perspective. We set out a test that cautioned against the "20/20 vision of hindsight: in favor of deference to the judgment of reasonable officers on the scene.
>
> If an officer reasonably but mistakenly believed that a suspect was likely to fight back, for instance, the officer would be justified in using more force than in fact was needed."

The evaluation of use of force decisions involves an *objective* standard. *Scott v. Harris,* 550 U.S. 372, 381 (2007) ("The question we need to answer is whether Scott's actions were objectively reasonable.") In *Estate of Parker v. Mississippi Dept. Safety*, 2025 WL 1603809 (5th Cir.; June 6, 2025), the Fifth Circuit, following *Barnes,* explained:

> To assess whether the force used was reasonable, we apply the factors outlined by the Supreme Court in *Graham v. Connor*: (1) "the severity of the crime at issue," (2) "whether the suspect poses an immediate threat to the safety of the officers or others," and (3) "whether he is actively resisting arrest or attempting to evade arrest by flight." This analysis considers factors such as the time officers had to make decisions, whether the force used is "measured and ascending" in accordance with the suspect's aggression, whether the suspect signaled that he was armed, and whether he moved toward or away from law enforcement."

In *Benton v. Layton*, 2025 WL 1560371 (4th Cir.; June 3, 2025), the Fourth Circuit, applying *Barnes*, explained:

> The inquiry under the constitutional prong is "based on the totality of the circumstances." *Aleman*, 80 F.4th at 285 (citation omitted). "[A] court cannot ... 'narrow' the totality-of-the-circumstances inquiry, to focus on only a single moment. It must look too, in this and all excessive force cases, at any relevant events coming before." *Barnes v. Felix*, 145 S. Ct. 1353, 1360 (2025).

In *Teetz v. Stepien,* 2025 WL 172 (10th Cir.; June 23, 2025), the Tenth Circuit addressed a use of force case and applied the *Barnes* totality of circumstances test. The Court observed that the totality of circumstances analysis "has no time limits." *Id.,* citing *Barnes,* 145 S. Ct. at 1357-59.

A central issue in an alleged excessive force dispute is typically whether an objectively reasonable officer *could have reasonably believed* that the force employed was appropriate under the circumstances. In *Hunter v. Bryant,* 502 U.S. 224, 227 (1991), the Court adopted the "could have believed" standard, which absolves the officer of liability, if a reasonable officer could have believed [the conduct in issue] to be lawful . . . "

The principle of *apparent* danger is applicable in many use of force disputes. If there is *apparent danger and an implied threat* to the officer or to any citizens, a law enforcement officer is required to stop the threat to the officer or citizen. In *Davis v. Freels*, 583 F.2d 337, 341 (7th Cir. 1978), a leading police shooting case, the Seventh Circuit explained:

> It is not necessary that the danger which gave rise to the belief actually existed; it is sufficient that the person resorting to self-defense at the time involved reasonably believed in the existence of such a danger, and such reasonable belief is sufficient even where it is mistaken.

The Vermont Statutory Use of Force Law

In 2021, following the tragic death of George Floyd, Vermont enacted statutory use of force standards. These Vermont principles appear more restrictive of officers' rights than the prevailing federal constitutional standards. The Vermont force statute does not codify defenses. Subsection 2368(b)(1) below foreshadowed *Barnes'* totality of the circumstances test.

20 V.S.A. 2368(b) provides *in pertinent part*:

(1) Whether the decision by a law enforcement officer to use force was objectively reasonable shall be evaluated from the *perspective of a reasonable officer in the same situation, based on the totality of the circumstances.* A law enforcement officer's failure to use feasible and reasonable alternatives to force shall be a consideration for whether its use was objectively reasonable. (emphasis added)

(2) A law enforcement officer shall use only the force objectively reasonable, necessary, and proportional to effect an arrest, to prevent escape, or to overcome resistance of a person the officer has reasonable cause to believe has committed a crime or to achieve any other lawful law enforcement objective.

(5) When a law enforcement officer knows that a subject's conduct is the result of a medical condition, mental impairment, developmental disability, physical limitation, language barrier, drug or alcohol impairment, or other factor beyond the subject's control, the officer shall take that information into account in determining the amount of force appropriate to use on the subject, if any.

(7) A law enforcement officer has a duty to intervene when the officer observes another officer using a chokehold on a person.

20 V.S.A. 2368(c) provides additional standards for the use of *deadly force*:

(1) A law enforcement officer is justified in using deadly force upon another person only when, based on the totality of the circumstances, such force is objectively reasonable and necessary to:

(A) defend against an imminent threat of death or serious bodily injury to the officer or to another person; or

(B) apprehend a fleeing person for any felony that threatened or resulted in death or serious bodily injury if the officer reasonably believes that the person will cause death or serious bodily injury to another unless immediately apprehended.

(2) The use of deadly force is necessary when, given the totality of the circumstances, an objectively reasonable law enforcement officer in the same situation would conclude that there was no reasonable alternative to the use of deadly force that would prevent death or serious bodily injury to the officer or to another person.

(3) A law enforcement officer shall cease the use of deadly force as soon as the subject is under the officer's control or no longer poses an imminent threat of death or serious bodily injury to the officer or to another person.

(4) A law enforcement officer shall not use deadly force against a person based on the danger that person poses to himself or herself if an objectively reasonable officer would believe the person does not pose an imminent threat of death or serious bodily injury to the law enforcement officer or to another person.

(5) When feasible, a law enforcement officer shall, prior to the use of force, make reasonable efforts to identify himself or herself as a law enforcement officer and to warn that deadly force may be used.

(6) A law enforcement officer shall not use a chokehold on a person unless deadly force is justified pursuant to subdivisions (1)--(4) of this subsection.

There is but a single published case citing 20 V.S.A. 2368, *In Re Grismore*, 329 A.3d 199, 2024 VT 70 (2024), which did not interpret the substantive use of force standard. There are a number of Vermont federal cases reviewing use of force claims. In *Barrett v. Village of Swanton*, 2025 WL 147764979 (D.Vt.; May 25, 2025), Chief Judge Reiss addressed an alleged excessive force case and granted and denied summary judgment in part. *Barrett* is an overall instructive opinion addressing many police related claims and issues including qualified immunity, Vermont state qualified immunity and some other state law claims. See *Macleod v. Town of Brattleboro*, 2012 WL 1928656 (D.Vt. 2012) (granting summary judgment on federal claims); *Meli v. City of Burlington*, 585 F. Supp. 3d 615 (D.Vt. 2022) (extensive use of force analysis; summary judgment denied); *Jok v. City of Burlington*, 2022 WL444361 (D.Vt. 2022) (summary judgment granted and denied in part).

Conclusion

The Supreme Court in *Barnes* has provided a clear opinion clarifying the ultimate use of force test. *Barnes* appears to be a return to fundamental use of force principles from *Graham* and its antecedents. *Barnes* reaffirmed the traditional interpretation of the totality of circumstances test including clarifying the full context and complete timeline of the use of force dispute and all of the events leading up to it. The instantaneous moment of threat test has been replaced by a much broader totality of circumstances rest.

Barnes eliminates the confusion from the moment of threat rule and the very narrow approach of that principle. The *Barnes* totality of the circumstances framework will result in the admission of more evidence to explore the full sequence of events leading up to the force employed.

Barnes is a balanced decision that does not tilt the use of force equation either way. By mandating consideration of all of the circumstances and the complete timeline of pre-force events, it allows more evidence for analysis. The Court has therefore provided Vermonters and its police community with enhanced methodology to adjudicate police force disputes by enabling consideration of the whole story that prompted the force used. *Barnes* promotes justice and the rule of law, at a time when more of both are needed.

For more than forty years, Mike McGuinness has practiced mostly law enforcement liability and civil rights litigation from his offices in Elizabethtown, North Carolina. He has widely published and taught civil rights and police liability law. He very much enjoys Vermont and visits whenever he can. jmichael@mcguinnesslaw.com.

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by Charlotte Dennett, Esq.

Vermont Meets the Moment: Personal Reflections on the Lawyers March

David Silver, a criminal defense attorney from Bennington, stood on the lawn of the Unitarian Church in Burlington under a canopy of speakers and addressed a crowd of 700 people, some 300 of them lawyers. Bespectacled, silver-haired and dressed in a suit and tie, he cut a respectable figure. He spoke with passion, but he wanted to assure the crowd that this was not a partisan event, neither Democrat nor Republican, conservative or progressive. Rather, this was "a coming together of Americans and lawyers and members of our community who care deeply about defending the constitution, due process of law, and the rule of law."

His listeners, many huddled under umbrellas, cheered loudly. Their signs got right to the point. Among them: "Hands off judges," "Free Speech is not a Deportable Offense," "Save our Systems," and "Fascism is Unconstitutional." My favorite: "Things have to be really bad if lawyers are marching." The event, The Lawyers March for the Rule of Law, had the full support of the Vermont Bar Association, featured Vermont Attorney General Charity Clark (who has sued the Trump administration 12 times for violating federal law) and included corporate, environmental, civil liberties, immigration, and government lawyers.

Silver was one of the main organizers of the Lawyers March, which took place on May 3rd and exceeded all expectations in size and content. Other hard-working organizers included Ron Fox, Craig Jarvis, Mark Kolter, P. Scott McGee, Tom Nuovo, Mary Beth Nuovo, Herb Ogden, Tony Roisman, Richard Rubin, Brian Sawyer, Mary Welford, Amelia Silver, Natalie Silver, and Leslie Black.

Silver described in his speech how the idea for the March came about. "Like many of you if not all of you, I'd wake up every morning to the news and there was a new outrage every day. "Then, in a moment of levity he added, "I started this speech five days ago and it's already dated!" More cheers and some nervous laughter. He turned serious. "I was filled with outrage, despair and fear," he continued. "And I didn't know what to do with it."

He summarized some of the outrages. *briefly*, on advice from his group. "Ever hear a lawyer say, "But *briefly*, your honor.," he quipped. Laughter.

But briefly: "Abrego Garcia was a legal resident, jailed and whisked off to some hell hole of a prison in El Salvador. He didn't have a chance to defend himself in a court of law. That's not the way the rule of law is supposed to work!" Boos. "And when the Court told the government to bring him back, they said, "We can't do it. A couple of days ago, Donald Trump said 'I can, but I won't. That's not how the rule of law works."

He went on to mention the high-profile cases (described below) of two students, Palestinian-born Mohsen Mehdawi and Turkish- born Rumeysa Ozturk, who were arrested by masked ICE agents in Vermont and Massachusetts respectively "for expressing opinions the government didn't like."

No less alarming was the government's attacks on law firms "that represent parties adverse to Donald Trump, threatening to terminate their federal contracts, strip their lawyers of security clearances and access to federal buildings."

This was just a partial list of the legal atrocities he faced every morning, and yet he began to realize that his intense feelings accomplished nothing. "I've been asking myself, what can I do about this other than just complaining to my friends?" He

began to contact lawyers on various legal listservs in Vermont, and the group agreed to make a plan for the March. You can visit their website for more information about the group, and actions people can take to preserve democracy.[1] The bottom line, as Silver told the crowd: the rule of law is the foundation of democracy, the glue that holds it together. And we realized that the foundation of our democracy was more fragile and vulnerable than we ever imagined. And that it needs our active support for it to endure."

That speech was delivered in May. Needless to say, the outrages have continued: the mass seizing of migrant workers in Los Angeles, President Trump's calling on the National Guard to put down widespread protests and his subsequent deployment of the marines in violation of posse comitatus, the murder of an elected representative and her husband in Minnesota and the wounding of two others, the shackling of a U.S. senator at a press conference when he started to question Homeland Security Secretary Kristi Noem, the seizure of two leaders of Vermont's Migrant Justice,[2] and as I write today, June 22nd, the US bunker-bombing of Iran's nuclear sites without getting Congressional approval. Pundits across the spectrum are conjuring up memories of what happened on the eve of the U.S. invasion of Iraq in 2003.

There can be no denying there is now a large grassroots movement in this country, and a very strong one in Vermont. Its members showed up at court hearings in two high profile cases, undoubtedly helping Vermont's federal judges take the courageous lead of being the first in the country to release from ICE custody, on Constitutional grounds, two wrongfully detained students, one Palestinian born, the other Turkish born. Their habeas and immigration cases are not over, but according to Hillary Rich, a senior staffer at the Vermont ACLU, the federal judges "recognized that swift action had to be taken to prevent the government's unjustified actions and allow them to return the students to their communities."

The Horrifying Saga of Rumeysa Ozturk

Who could forget the video images of masked men in black descending on an unsuspecting Tufts doctoral student, Rumeysa Ozturk, on March 25, 2025, outside her home in Somerville, Mass, tying her hands behind her back, and marching her off to an unmarked car? I couldn't help but think my late brother, philosophy professor Daniel Dennett, who founded Tuft's Center for Cognitive Studies, would have been appalled. He died, coincidentally, in April, 2024, just when Tufts was erupting in student demonstrations over Gaza and a month after Ms. Ozturk penned an op-ed (with three other students) demanding that "the University acknowledge the Palestinian genocide…and disclose its investments from companies with direct or indirect ties to Israel."[3]

Her lawyers filed a habeas corpus petition in Massachusetts, though they didn't know where ICE agents had taken her. It turned out she was flown to Vermont and held overnight in St. Albans, one of five locations in the country for U.S. Citizenship and Immigration Center (USCIS), before flying her off to Louisiana. Although the government revoked her student visa, a federal judge in Massachusetts prevented her removal from the U.S. and ruled that Vermont was an appropriate location for her habeas challenge since she was in Vermont when the petition was filed.

On May 9th, U.S. District Judge William Sessions III ordered her immediate release, ruling that Ozturk had been unlawfully detained in March for violation of due process and her First Amendment right to express an opinion in her school newspaper. The government's targeting of Ozturk, he added, could chill the speech of "millions and millions" of noncitizens, causing them to fear they could be "whisked away to a detention center from their home."

Mohsen Mahdawi Detained in Vermont While Applying for U.S. Citizenship

On April 14th, Mohsen Mahdawi, a Vermont resident and Palestinian student who led student protests at Columbia University, was seized and shackled by masked and armed ICE agents in Colchester, Vermont. He was at the U.S. Citizenship and Immigration Services facility and in the final stage of applying for U.S. citizenship, taking an oath to support the constitution-- in what ACLU's Rich ruefully calls a truly "dystopian twist." The ICE agents' plan was to whisk him off to Louisiana. But his lawyers interceded minutes before his plane took off, having filed a habeas corpus petition in federal court and requesting a temporary restraining order aimed at preventing federal authorities from transferring him out of Vermont. Judge Sessions ruled in favor of the request, ordering that Mahdawi remain in Vermont. Mahdawi would spend the next two weeks in the Northwest Correctional Facility, even though he was never accused of a crime.

On April 23rd, federal judge Geoffrey W. Crawford extended for 90 days Sessions' restraining order and on April 30th, ordered Mahdawi's release, stating that "the two

weeks of detention so far demonstrate great harm to a person who has been charged with no crime." (Secretary of State Marco Rubio justified Mahdawi's arrest by claiming in a memo that his activism "could undermine the Middle East peace process by reinforcing antisemitic sentiment."

On both days, Mahdawi emerged from the courthouse amidst cheers from throngs of supporters. More than 100 had submitted letters on his behalf; this and the strong community presence clearly moved Judge Crawford, according to Attorney Rich. Mahdawi, for his part. praised the judge, "who ruled to release me against all of the heinous accusations, horrible attacks, [and] First Amendment violations -- he had made a very brave decision to let me out," Mahdawi told ABC news."

He then added a message to President Trump that would go viral and turn Mahdawi into something of a folk hero: "To President Trump and his cabinet: I am not afraid of you."

The judge allowed him to return to his home in Vermont, and he later attended his graduation at Columbia. Mahdawi reappeared as a speaker at the No Kings rally in Burlington on June 14th, where some 8,000 Vermonters robustly cheered him. Mahdawi expressed his heartfelt thanks to the Vermont crowd, elaborating on what his life was like living in a refugee camp on the West Bank.

Kristina Petrova arrested for smuggling egg embryos

A third high profile unlawful detention hearing in Vermont had nothing to do with free speech or Palestine.

The latest indignity occurred when ICE detained 31-year-old Kristina Petrova, a Russian-born scientist working at Harvard Medical School, when she arrived at Boston's Logan Airport on February 16th after vacationing in France. They accused her of illegally smuggling frog embryos into the United States. Apparently, they were legal to import, but she filled out a customs declaration wrong. The government revoked her student visa, threatening to return her to Russia, where she feared for her life having demonstrated against President Putin. After her arrest, she was held in the women's prison in Burlington for a week before being transported to Louisiana. During her stay in Burlington, she brought a habeas petition, which again landed her in front of a federal judge Christina Reiss in Vermont. Petrova appeared remotely from prison in Louisiana.

I attended that hearing on May 28th, with a room full of supporters, and upon seeing Petrova alone, her pale face drawn in apprehension and fear, I was later heartened to see her face light up with smiles when her boss at Harvard Medical School took the witness stand and spoke in favor of her groundbreaking work as a scientist.

According to her attorney, the penalty for failing to declare non dangerous items was a $500 fine or forfeiture. Judge Reiss ordered her release from ICE custody, stating that neither she nor the embryos were a threat to public safety. Rather, "she has furthered the country's interest in finding a cure for cancer."

Petrova currently awaits the outcome of her criminal smuggling case and ongoing immigration proceedings.

Final reflections

To march with hundreds of fellow lawyers in Burlington was thrilling, and to renew my attorney's oath to the constitution at the end of the rally, pledging with colleagues to uphold the rule of law in defiance of the government's ruthless crackdowns, was an intensely moving experience. At the No Kings Rally, I marveled over the protesters' signs listing their grievances – so many, as one sign read, that they couldn't all fit on a sign! – but their spirit of love and defiance was enough to fill one with a joyful sense of belonging… and pride in our brave little state of Vermont. Yes, Vermont was the first state to abolish slavery, the first state to legalize civil unions, the first to pass a Climate Superfund law requiring fossil fuel polluters to pay their fair share in damages for cleanup after extreme storms. *Vermont Digger* captured it in one memorable photo of a protester carrying a sign that read "Citizens Becoming United" and sitting at her feet, another holding the sign "This Brave Little State."

ACLU lawyer Harrison Stark put it this way at the Lawyers March: "When we hold the line, Vermont will hold the line; The ACLU has your back; Attorney General Charity Clark has your back; our wonderful courts and judges have your back. And the people of Vermont have our back. Let's make the Vermont way a model for the nation."

Or to quote those memorable words uttered by President Calvin Coolidge after touring flood-ravaged Vermont in 1928: "If the spirit of liberty should vanish in other parts of the Union, and support of our institutions should languish, it could all be replenished from the generous store held by the people of this brave little state of Vermont."

Charlotte Dennett is a Vermont lawyer, author and investigative journalist. She practices personal injury and family law in Burlington, VT. Her latest book is Follow the Pipelines: Uncovering the Mystery of a Lost Spy and the Deadly Politics of the Great Game for Oil.

Thanks to Alfonso Villegas for the photos.

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[1] https://vermontlawyersmarch.com/

[2] Austin Gaffney, *Vermonters Rally to Demand the Release of 2 Migrant Leaders*, VtDigger (June 17, 2025, 1:48 pm), https://vtdigger.org/2025/06/17/vermonters-rally-to-demand-the-release-of-two-migrant-leaders/

[3] The full text of the op ed can be read here: https://www.tuftsdaily.com/article/2024/03/4ftk27sm6jkj.

Vermont Bar Association

THE VBA ANNUAL MEETING WILL BE SEPT. 26 AT THE HOTEL CHAMPLAIN BURLINGTON.

See some people! Learn some things!

Save the date!

by the Hon. Dean Pineles

Mumia Abu-Jamal and the Necessity Defense

This an unlikely story of how a convicted murderer captured the attention of Burlington, Vermont, and the rest of the country at large, in the summer of 1995, exactly thirty years ago. But first the backstory.

At 3:55 am on December 9, 1981, Mumia Abu-Jamal (née Wesley Cook), age 27 and a well-known Black activist, journalist, radio reporter and former member of the Black Panther Party in Philadelphia, was driving a taxi cab when he came upon his brother, Willian Cook, who was involved in a traffic stop by Philadelphia police officer Daniel Faulkner. Abu-Jamal observed Faulkner and Cook engaged in a physical struggle on the street, and he jumped from his cab.[1]

Shots were fired, and when other officers arrived minutes later, they found officer Faulkner dead from two bullet wounds, one to his head and the other to his back. Abu-Jamal was sitting nearby with a bullet wound to his chest from Faulkner's gun. Abu-Jamal's gun, for which he had a license, was located near where he sat.[2]

Based on forensic evidence and eye witness testimony, Abu-Jamal, who recovered from his wound and persistently professed his innocence, was charged, tried and convicted by a jury of first-degree murder in 1982. Following the sentencing hearing, the jury imposed the death penalty.[3]

There followed a series of state court appeals in the ensuing years, all of which were unsuccessful.[4] All the while, Abu-Jamal remained incarcerated on death row.

Despite the unfavorable court decisions, Abu-Jamal's supporters insisted repeatedly (and still do) that the trial was unfair. As reported in *Liberation,*

> The prosecutor and state judge violated dozens of Abu-Jamal's constitutional rights during the trial: witnesses were intimidated; the prosecutor deliberately kept Blacks off the jury; and the evidence was fabricated, among other things. The judge, Albert Sabo, was also an unrepentant racist. Known as a "hanging judge," Sabo was overheard saying, "I'm gonna help 'em fry the n---er."[5]

And during the lengthy period following his conviction, Abu-Jamal's supporters had gained in strength and numbers. Quoting *Liberation* again,

> In the mid-1990s, a progressive mass movement emerged demanding freedom for Abu-Jamal. Tens of thousands protested around the nation to support Abu-Jamal and denounce racism in the U.S. courts. Even liberal human rights groups like Amnesty International supported the call for a new trial. Abu-Jamal became known throughout the world.[6]

But the mass movement failed to resonate with Pennsylvania Governor Tom Ridge, who on June 1, 1995, signed a death warrant for Abu-Jamal, with the date of execution by lethal injection scheduled for August 17, 1995.[7]

Following the signing of the death warrant, support for Abu-Jamal exploded throughout the country as the date of execution drew closer. Rallies were held in Los Angeles, San Francisco, Atlanta, St. Louis, Houston and Chicago, as well as Paris, London, Dublin, Sydney and Pretoria, South Africa. Indeed, Nelson Mandela sent a personal letter to Gov. Ridge urging him to commute the sentence.[8]

As it turned out, the annual meeting of the National Governors' Association was scheduled to be held from July 29 to August 1, 1995 in Burlington, Vermont, hosted by Governor Howard Dean.[9] The many governors who would be attending included Governor Ridge.

But Governor Dean's understandable hopes for a calm, convivial, well-organized and educational conference, including a speech by President Bill Clinton, were dashed by events that unfolded on the streets. And this summer of 2025 marks the 30th anniversary of this tumultuous and memorable event in Vermont's history.

On July 31, 1995, the *Burlington Free Press* ran a story titled: "Death-row protest ends in 15 arrests. Police in riot gear subdue activists."

> Two days of protests in support of a Pennsylvania death row inmate culminated Sunday in the arrest of 15 people outside the South Burlington hotel [the Sheraton] where the National Governors' Association was meeting.
>
> The activists were arrested after they suddenly bolted from the sidewalk where they had assembled and broke through a police line. Along with about 65 others, they were protesting the scheduled execution of Philadelphia journalist and convicted killer Mumia Abu-Jamal.[10]

The protesters were shouting, "Stop the plot, stop the plan, stop the murder of an innocent man." Earlier that day, protesters had painted obscene graffiti on the Ethan Allen Homestead where the governors were planning to have lunch.[11] But they never made contact with Gov. Ridge.

Protests continued the following day. The *Burlington Free Press* reported that "Protests, gun incident worry security forces. Police arrest 8 outside hotel:"

> Determined to keep the name of Pennsylvania death row inmate Mumia Abu-Jamal alive throughout the National Governors' Associating meeting, eight protesters were arrested Monday after a sit-in on Williston Road.
>
> South Burlington police arrested seven of them on charges of disorderly conduct for obstructing traffic near the entrance of the Sheraton-Burlington Hotel and Conference Center. An eighth was arrested on a charge of unlawful trespass.[12]

All but six of those arrested resolved their cases with no contest pleas before Judge Amy Davenport on August 1, and were fined $75. The six remaining defendants entered pleas of not guilty to charges of unlawful trespass,[13] and were released on $75 bond and ordered not to go within 500 feet of the Sheraton Hotel.[14]

Then on August 7, a momentous decision emanated from the Pennsylvania court: Judge Sabo granted a stay of execution.[15] This resulted in a massive demonstration on August 17 in Philadelphia.

> [M]ore than 3,500 people marched to celebrate the stay of execution for Black activist Mumia Abu-Jamal and to demand a new trial. Thousands of young people from around the country chanted 'Free Mumia Now' as they left city hall and marched to Constitution Mall.[16]

Months later, back in Vermont, the Mumia 6 case (my term) was slowly working its way through the court system. On April 2, 1996, the state filed a motion in limine to prevent the defendants from introducing evidence to establish the necessity defense. Through the random selection process, the case was assigned to me.[17]

The defendants, through their attorneys Stacey Joroff and Michael Cassidy, then submitted an extremely well-researched and well-written, 30-page offer of proof and legal analysis in support of their motion. They argued that the defendants were justified in entering the Sheraton property, and should be permitted to raise the necessity defense at trial.

They also stated that they would call several prominent witnesses to convince the jury their actions were justified, including attorney Leonard Weinglass, a noted defender of radical causes.[18] Weinglass had represented Abu-Jamal, and had written a book titled, "Race for Justice: Mumia Abu-

Jamal's Fight against the Death Penalty," published in January 1995.[19]

Following a hearing, I took the matter under advisement. This was not the first necessity defense case I had decided. In 1988, I denied a motion to raise the necessity defense at trial for nineteen defendants who were charged with unlawful trespass at the Waterman Building on the UVM campus.

They were protesting the alleged atrocities being committed by the Contra rebels in Nicaragua (the Iran Contra affair) and the CIA's recruitment on campus. I ruled that the "the court cannot consider the defendants' actions to be anything other than a typical protest," not meeting the requirements of the necessity defense.[20]

I issued my Order in the Mumia 6 case on June 12, 1996. I outlined the four criteria that must be met to permit the necessity defense:

1. There must be a situation of emergency arising without fault on the part of the actor concerned;
2. This emergency must be so imminent and compelling as to raise a reasonable expectation of harm, either directly to the actor or upon those he is protecting;
3. This emergency must present no reasonable opportunity to avoid the injury without doing the criminal act; and
4. The injury impending from the emergency must be of sufficient seriousness to out measure the criminal wrong.[21]

I then addressed each of these criteria in turn, noting that the duty of the court is to permit the use of the necessity defense unless, taking the facts in the defendants' offer of proof as true, no reasonable juror could find the requirements of the defense were met.[22] (The discussion below is a truncated version of my Order which discussed each of the criteria in more detail.)

As to the first requirement-- whether an emergency existed without fault of the defendants-- I stated that, "The impending state execution of a man whom defendants believed to be wrongfully convicted constitutes an emergency. The emergency existed through no fault of the defendants."[23]

Regarding the second factor-- reasonable expectation of harm-- I determined that, "A scheduled state execution is certainly sufficiently compelling to raise a reasonable expectation of harm to Mr. Abu-Jamal."[24]

Concerning the third-- no reasonable opportunity to avoid the injury-- I noted that the defendants' offer of proof claimed many attempts to speak to Gov. Ridge before the trespass:

> They shouted for him, tried to telephone him at the Sheraton, and faxed his office in Philadelphia to encourage him to come outside to hear their concerns. It was only after those efforts failed, so they claim, that they resorted to trespass in order to gain his attention and to attract a national media spotlight. Taking the facts in the offer as true, the court concludes defendants could reasonably believe that they had no other opportunity in which to influence Governor Ridge to intervene.[25]

Last, regarding the fourth—measuring the seriousness-- I wrote that, "The court concludes that the planned execution is sufficiently serious to outweigh a nonviolent criminal trespass onto the Sheraton property."[26]

I then concluded that: "The state's motion in limine barring introduction of the necessity defense is DENIED. Defendants will be permitted to present this defense to the jury, consistent with this opinion. It will, of course, be for the jury to decide whether defendants' actions were justified."[27]

The state then appealed to the Vermont Supreme Court. As reported in the Rutland Herald on August 8, 1996, "Protesters Want [Governor] Dean's Apology:" [28]

> Pineles ruled in mid-June that the six protesters could use the necessity defense, and last week the Vermont Supreme Court refused to consider Pineles' ruling, which meant it was allowed to stand. After the Supreme Court ruling, Chittenden County State's Attorney Scot Kline decided to dismiss the charges rather than spend the time and money that would have been required to fight the necessity defense.

Gov. Howard Dean was not pleased: "Dean complained that charges against the six protesters should not have been dropped, and he criticized a ruling by District Judge Dean C. (sic) Pineles that led the county prosecutor to dismiss the cases." He also referred to the defendants as "hoods" who had vandalized the Ethan Allen Homestead.[29]

Gov. Dean's remarks caused the defendants' lawyers, Joroff and Cassidy, to send a letter to him on August 6, 1996 demanding an apology for claiming that the defendants were vandals, adding that "We must address your entirely unjustified attack upon Judge Pineles for permitting our clients to use the necessity defense."[30]

Peter Freyne, the sharp-tonged author of the weekly "Inside Track" column for *Seven Days* weighed in:

> Time to Apologize? In an August 6 letter, the lawyers who represented the Free Mumia demonstrators say Gov. Howard Dean owes an apology for comments two weeks ago in which he called the six protesters "hoods," blaming them for vandalism they were never charged with committing, and blasted Judge Dean Pineles for permitting use of the necessity defense. Michael Cassidy and Stacey Joroff called Ho-Ho's remarks "childish" and "slanderous." Yeah, so what? Ho-Ho's the big cheese and he'll say whatever he wants, facts be damned. Don't expect an apology, folks.[31]

As Freyne predicted, Gov. Dean never issued an apology, nor did I expect one or want one.

Mumia Abu-Jamal had another unlikely connection with Vermont in 1996, that same year. He received a degree from Goddard College through the mail while serving his sentence in Pennsylvania.[32]

Abu-Jamal faced a second death warrant signed by Gov. Ridge on October 13, 1999, following the U.S. Supreme Court's denial of certiorari in his ongoing litigation for a new trial. But following over a decade of further litigation, his death sentence was finally commuted to life without the possibility of parole in 2011.[33]

But there's even a more unlikely event concerning Vermont. In 2014, Abu-Jamal

was selected to deliver a video-taped commencement address at Goddard College. This created a furor within the law enforcement community.

> The Vermont Police Chiefs Association say members are 'shocked and appalled" by the decision of Goddard College to have a man convicted of killing a policeman serve as graduation speaker Sunday.
>
> "It is beyond belief that an educational institution would even consider such an act of disrespect to the family of slain Philadelphia police officer Daniel Faulkner and the law enforcement community of Vermont," said Vergennes Police Chief George Merkel, president of the state chiefs' association.[34]

Goddard's President Bob Kenny defended the College's decision, saying

> "Choosing Mumia as their commencement speaker, to me, shows how the newest group of Goddard graduates expresses their freedom to engage and think radically and critically in a world that often sets up barriers to do just that," he said.[35]

As far as I know, the commencement address took place as planned.

Mumia Abu-Jamal, now 71 and serving his life sentence, has become a prolific author of many books and articles, a radio commentator, and an artist, among other achievements, as well as an outspoken critic of the prison system and the death penalty. In 2023, Brown University (my alma mater) curated an exhibition titled "Mumia Abu-Jamal: A Portrait of Mass Incarceration."[36]

In the press release announcing the exibition, the following excerpt from the *Providence Journal* on September 8, 2023 is quoted:

> An upcoming exhibition at Brown University will share valuable insights into the incarcerated life of Mumia Abu-Jamal, a political activist the New York Times once described as "the most visible of the 3,000 people awaiting execution on America's death rows." The exhibit of a rare special collection of written papers and other materials will give scholars and members of the public a sense of the sweeping impact the American carceral system has had on millions of lives, including family and friends of those who have spent time in prisons and jails.[37]

Among the materials mentioned in this excerpt is my necessity defense decision which was accepted by the curator of the exhibit.

Judge Pineles retired from the Vermont trial bench in 2005 after 21 years, following which he was actively involved in international rule of law work including 28 months in Kosovo as a criminal judge with the European Union Rule of Law Mission. His memoir, "A Judge's Odyssey: From Vermont to Russia, Kazakhstan and Georgia, Then on to War Crimes and Organ Trafficking in Kosovo" (Rootstock Publishing, Montpelier 2022) is available in bookstores and on Amazon. He is a graduate of Brown University, Boston University Law School and Harvard Kennedy School, and is a frequent lecturer and commentator on events in Kosovo and the Balkans, having published numerous articles on Balkan Insight and other publications. He lives in Stowe with his wife Kristina Stahlbrand, his fellow traveler and indispensable critic and editor.

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2 *Id.*

3 *Id.*, at 1.

4 *Id.*, at 31. In 1998, the Pennsylvania Supreme Court denied Abu-Jamal's last appeal in state court.

5 Eugene Puryear, "Mumia supporters take action," *Liberation, the Newspaper for the Party of Socialism and Liberation,* August 1, 2005.

6 *Id.*

7 "Death Warrant is Signed for a Prison Celebrity," *New York Times,* June 2, 1995, at 9.

8 Maurice Williams, "3,500 Demonstrate for New Trial for Abu-Jamal, Protest Deals a Blow to Use of the Death Penalty," *The Militant*, August 28, 1995.

9 National Governors Association, 87th Annual Meeting, July 30, 1995—
August 1, 1995, Burlington, Vermont, Sheraton Burlington Hotel and Conference Center, 870 Williston Road.

10 Sally Pollack, "Death-row protest ends in 15 arrests," *Burlington Free Press,* July 31, 1995, at 2A.

11 *Id.*

12 Molly Walsh, "Protesters, gun incident worry security forces. Police arrest 8 outside hotel," *Burlington Free Press,* August 1, 1995, at 4A.

13 13 V.S.A. § 3705 (a) (1).

14 *Id.*

15 Don Terry, "Black Journalist Granted Stay of Execution by the Judge Who Sentenced Him," *New York Times*, August 8, 1995, at 10.

16 Maurice Willaims, "3,500 Demonstrate."

17 State of Vermont v. Roseanne Avakian, et al, "Order," Vermont District Court, Unit 2, Chittenden Circuit, at 1 (Pineles, J).

18 Vermont v. Avakian, "Defendants' Opposition to State's Motion to Exclude the Necessity Defense," April 1996.

19 Leonard Weinglass, "Race for Justice: Mumia Abu-Jamal's Fight Against the Death Penalty," Common Courage Press, first edition, January 1 1995.

20 State of Vermont v. Anne Marie Ratkovitz, et al, "Opinion and Order," District Court of Vermont, Unit 2, Chittenden Circuit, February 11, 1988 (Pineles, J).

21 Vermont v. Avakian, "Order," at 2.

22 *Id.*

23 *Id.*, at 3.

24 *Id.*

25 *Id.*, at 5.

26 *Id.*

27 *Id.*, at 6.

28 Jack Hoffman, "Protesters Want Dean's Apology," *Rutland Herald*, August 8, 1996, at 6. A search of the Vermont Supreme Court's website disclosed no reference to this action by the Court.

29 *Id.*

30 *Id.*

31 Peter Freyne, "Time to Apologize?" Inside Track, *Seven Days*, August 14, 1996.

32 Mike Donoghue, "Goddard chooses convicted cop killer for grad speaker," *Burlington Free Press* as published in US TODAY, October 2, 2014, at 2.

33 Timothy Williams, "Execution Case Dropped Against Abu-Jamal, *New York Times*, December 7, 2011.

34 Mike Donoghue, id.

35 *Id.*

36 News from Brown, "Library exhibition on Mumia Abu-Jamal to shed light on the experience and impact of incarceration," September 8, 2023.

37 *Id.*

by Caryn Connolly, Esq.

A Personal Perspective: A Woman in the Law

Some people know from the time they are children what they want to "be" when they grow up, or what they want to "do" with their lives. Perhaps that is one of the reasons so many women choose not to be attorneys after going through the rigorous education to obtain their juris doctor degrees. The realities of being an attorney are often a mismatch with the vision modern women create for their lives. Or perhaps those visions stem from a bygone era which no longer exists.

My path to becoming an attorney was a circuitous one due to my eclectic interests. An initial pursuit of writing after high school led to the conclusion that I would need a day job to support myself; but I did not have a model of a working mother to emulate. My mother never returned to work after taking maternity leave when my sister was born. I had a traditional upbringing with my father as the sole wage earner bringing his money home to my stay-at-home mom. They remained married until my mother died. Neither of my parents attended college. This type of upbringing might seem archaic to more recent generations, but it was the reality for many women from prior generations.

It might seem long ago and far away, however, there was a time in the not-so-distant past when women lawyers did not exist. The first woman to take the bar exam and be admitted to a state bar in the United States was Arabella Mansfield on June 15, 1869.[1] Interestingly enough, she did not attend law school, but instead embarked upon a legal study program at her brother's law office, similar to the practice that currently exists in Vermont, known as "reading the law."[2]

Even in 2025, there are still firsts for women in the law and other aspects of society. It is sad for me as a woman to know that we have made such comparatively little progress over the almost 250 years the United States of America has been in existence. The first African American woman lawyer, Charlotte E. Ray, practiced in 1872,[3] not long after the end of the Civil War, and Vermont's first female lawyer, Jessie Lafountain Bigwood, was admitted in 1902.[4] Between 1900-1920, the list of names of women admitted to the Bar of the Supreme Court only contained 97 names.[5] To date, only five women have been appointed as justices to serve on the U.S. Supreme Court.[6] According to the American Bar Association, women made up 41.24% of lawyers in 2024.[7] While women earn more juris doctor degrees, they still fall behind men in becoming licensed attorneys.[8]

I came to the law via engineering, which is still not a conventional career choice for women. What I find a little disheartening is that the share of female lawyers is still much higher than female engineers, where the percentage is an abysmal 13.7%.[9] Though my father's side of the family included a few male engineers, I did not have any examples of women in science technology engineering and mathematics ("STEM") fields to model a career after either.

Does discrimination exist? Undoubtedly. Does disparate treatment exist? Certainly. Do we always know it is happening to us? Not necessarily. I did not *feel* as if I was being discriminated against. I felt respected. I networked in college and got my first job through a contact at my school. However, with hindsight, I noted only three female engineers in a firm of over 100 employees. I did not have a group of female engineers to belong to, network with, and be mentored by. While Society of Women Engineers did exist, I did not feel like I was part of the group because I was also a non-traditional student who did not attend college until I was almost 30 years old.

Hurdles come from being a woman as well as other disadvantages, including financial. While I did have supportive supervisors and felt respected, I did not have a support system in place that made me want to continue in the field. I did not have women to speak with and share experiences with as my supervisors and coworkers were all male. I did enjoy the brainstorming sessions to come up with ideas for private clients, but I was the only woman in those rooms and often the one taking the meeting minutes. . . . I still wonder to this day if I would have felt differently about remaining an engineer if I had supportive female role models and mentors.

Law school wasn't much different. I was about 13 years older than most of my peers and had a different undergraduate degree than most. It felt like no one recognized the value of that engineering degree except me. More inclusivity in all respects, including undergraduate educational background, is needed to grow the ranks of women lawyers in the United States. It is no secret that women were once viewed as second-class citizens, and it has not been easy, even under the best of conditions.

In 2017, the American Bar Association hosted a summit on the problem of women leaving the legal profession. According to Sharon Rowen, documentary filmmaker and attorney, the three main reasons

women choose to leave the profession are: "work/life balance, unconscious bias, and pay gap."[10] Subsequent researchers identified additional reasons.

I wonder if that is a reason why women choose not to become lawyers after graduating from law school. As the current Chair of the Women's Division of the Vermont Bar Association, I know the importance of showcasing the achievements of women in law and acknowledging the challenges.

I don't feel that being a woman has hindered my career as a lawyer. I was lucky to have women lawyers as mentors and coworkers from the beginning—although the mentorship was unofficial. Foreclosure law is very team oriented. When my firm decided to form a working group for women, I was there for it and immediately jumped on board.

The only advice I would give to other women lawyers is to go where you are supported and wanted. It might not be the type of work you originally set out to do when you attended law school but keep an open mind.

Though women's rights in the realm of equal employment opportunity were protected by Title VII of the Civil Rights Act of 1964,[11] there is not an all-encompassing law that protects women's rights in all respects. As a woman born post-1970, I did not feel overtly discriminated against. I felt as if I had opportunity. I was able to obtain an education—albeit with onerous student debt. I was able to obtain credit cards in my own name. I was able to get an advanced degree. I was able to buy a car on credit. I was able to purchase property and obtain a mortgage in my own name. I did not have to be married or have a male family mem-

ber co-sign. Because of the women who came before me, I had the choice to not partake in traditional gender roles like my mother and to become a woman lawyer.

Caryn L. Connolly, Esq. is an Associate Attorney at Brock & Scott, PLLC, specializing in foreclosure law with a strong background in probate and mediation. She is a graduate of Vermont Law & Graduate School and current Chair of the Women's Division of the Vermont Bar Association.

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by Hannah King

Expanding Justice: Vermont Bar Foundation Grants in Action

Over the past several months, the Vermont Bar Foundation (VBF) has been hard at work fulfilling its mission: funding access to justice for all Vermonters, regardless of income or circumstance. At a time when the legal needs of our most vulnerable neighbors continue to rise across Vermont, VBF's investments in civil legal aid have never been more essential. In our most recent grant cycle, we awarded over $1 million to organizations delivering critical civil legal services - funding that directly supports survivors of domestic violence, immigrants facing detention, rural communities without access to attorneys, and many others navigating Vermont's legal system.

Each grant we award strengthens the broader legal ecosystem in Vermont. Whether it's expanding pro bono representation, offering legal education clinics, or supporting systemic advocacy, our grantees ensure that no Vermonter is left to face a legal issue alone.

One such program is the Legal Program and Free Legal Clinic at the Community Restorative Justice Center in St. Johnsbury, which has been a VBF grantee for more than a decade. The program connects low-income residents in Caledonia and Essex Counties with volunteer attorneys offering free legal advice. "The VBF has supported the Legal Program and Free Legal Clinic at St. Johnsbury's Community Restorative Justice Center for more than a decade," said Neil Favreau, Executive Director of the Community Restorative Justice Center. "This generosity has allowed hundreds of low-income residents of Caledonia and Essex Counties to receive much-needed legal advice… The program has become a locally well-known and highly depended-on service… It is the only program in the area offering this kind of free service. VBF's ongoing financial support makes this vital program possible."

Another cornerstone of our recent funding is immigration legal defense. The Vermont Asylum Assistance Project (VAAP), a statewide organization providing free legal services to immigrants and asylum seekers, received a VBF grant to grow their pro bono network and expand capacity. "We're thrilled and deeply grateful for the Vermont Bar Foundation's support," said Jill Martin Diaz, VAAP's Executive Director. "This funding ensures we can grow our pro bono network and invest in community-rooted legal service models… Just this morning, we secured a reasonable bond for one of the Pleasant Valley detainees—and thanks to this grant, my staff and I will be able to stay focused on the legal work that makes that possible for other detained community members."

VBF is also proud to continue its long-standing partnership with Vermont Law and Graduate School, supporting the Center for Justice Reform Clinic, where law students work on behalf of real clients under faculty supervision. As Professor Brett Stokes, Clinic Director, shared: "As freedoms and protections are called into question, it is crucial that we invest in pro bono legal services… Together, VBF and Vermont Law and Graduate School are unyielding in our commitment to improving access to justice. For all of the aspiring public interest lawyers whose careers are shaped by their experience in the Clinic, and for all of our clients whose lives are positively impacted by our representation, thank you, VBF, for your generosity."

Survivors of domestic and sexual violence are another core focus of our grantmaking. We are proud to support organizations like Steps to End Domestic Violence and NewStory Center, whose legal clinics empower survivors to know their rights, seek protection, and navigate the court system safely. "Clinics serve as a critical resource for survivors as they increase their knowledge of their rights and options," said Nicole Kubon, Executive Director of Steps. Avaloy Lanning, Executive Director of NewStory Center, added: "This support from the Vermont Bar Foundation allows us to connect survivors with trusted legal partners who help them navigate complex systems and reclaim their safety and independence."

Looking ahead, the Vermont Bar Foundation remains committed to stewarding donors and IOLTA dollars toward the greatest needs. Our grants are more than financial support - they are lifelines that deliver legal help when and where it's needed most. In partnership with organizations across the state, we're advancing justice from the ground up.

A key example of this mission in action is the Poverty Law Fellowship. Deanna Hartog, our current fellow, has been providing direct representation to clients experiencing homelessness, with a particular focus on the emergency housing program. Her advocacy ensures that Vermonters who might otherwise face overwhelming barriers are met with expert legal support and compassion.

We invite you to be part of this work. Your support – whether through a donation to sustain our grantmaking and Poverty Law Fellowship, or by sharing your time and expertise - directly expands access to justice. Together, we can build a more equitable future for all Vermonters.

Hannah King is the Executive Director of the Vermont Bar Foundation: hannah@vtbarfoundation.org.

by Mark Bassingthwaighte, Esq. | mbass@alpsinsurance.com

Public Wi-Fi — Should Lawyers Just Say No?

In today's world, people frequently work outside of their offices. They may be working while visiting a coffee shop, sitting at an airport, staying at a hotel, or enjoying a city park. Public Wi-Fi networks are seemingly everywhere, but there's a problem. While accessing public Wi-Fi can be convenient when all you want to do is buy something on Amazon, check your e-mail, or rebook a flight, there are associated risks that should never be minimized, or heaven forbid, dismissed out-of-hand. Unfortunately for lawyers, the risks are even more concerning given the sensitive nature of the information they handle.

Public Wi-Fi networks are inherently insecure. Unlike private, encrypted networks, public Wi-Fi often lacks robust security protocols, making it a prime target for cybercriminals. To give you an idea of the seriousness of the risk. Here are a few specific threats everyone faces when connecting to unsecured networks:

- **Man-in-the-Middle Attacks:**
  This is one of the most common threats on public Wi-Fi networks. In this type of attack, a cybercriminal intercepts the communication between your device and the Wi-Fi network, allowing him to access sensitive information such as login credentials, emails, and the stored data on your drive.

- **Malicious Hotspots:**
  Cybercriminals can set up rogue Wi-Fi networks that mimic legitimate ones but are actually designed to enable a cybercriminal to capture your data. If you fall prey to this type of attack by unwittingly connecting to a rogue network, your data stream will be going directly into a cybercriminal's hands.

- **Rogue Access Points:**
  A rogue access point is something well-meaning employees of various businesses sometimes set up. In short, wireless routers are added to a Wi-Fi network in order to give more customers access to the Internet. Often these routers are not configured properly, which makes them easy to hack into, even though the network itself might be secure. If you unknowingly happen to use a rogue access point to connect to the Internet, you are now vulnerable to a wide variety of cyberattacks.

- **Computer Worms and Other Malware Injections:**
  Computer worms self-propagate and can be programmed to do all kinds of things to include stealing documents, capturing passwords, and spreading ransomware. If you happen to be on a public Wi-Fi network and fail to have robust security in place, a worm could readily jump from another infected user currently on the network to you. And it's not just worms you need to worry about. Public Wi-Fi can serve as a conduit for a variety of malware attacks. If a cybercriminal gains access to a shared network, she may distribute malicious software that can infect your devices potentially resulting in a data breach, ransomware attack, or unauthorized remote access.

- **Packet Sniffing:**
  Packet sniffing is a technique used by cybercriminals to capture and analyze data packets traveling over a network. On an unprotected public Wi-Fi network, packet sniffing tools can be used to monitor and capture sensitive information, such as passwords and financial data.

Starting to get the picture? I hope so. Again, public Wi-Fi networks are inherently insecure. That's just the way it is. Does this mean lawyers and those who work for them should never access public Wi-Fi? In a perfect world, I might try to argue that one; but I can also acknowledge this wouldn't be realistic. There are going to be times when it's necessary; and truth be told, I occasionally use public Wi-Fi myself, but only for certain tasks. The better question is if you have a need to use public Wi-Fi, how can you responsibly address the associated risks? Start with the following:

- **Approach All Public Wi-Fi Networks with a Healthy Level of Distrust:**
  Never connect to an unknown network, particularly if the connection is offered for free or states that no password is necessary. Also, be on the lookout for network names that are similar to the name of the local venue offering a Wi-Fi connection. Just because a network connection that happens to be named Free Hilton Wi-Fi doesn't mean it's actually the legitimate Hilton network. If you're not 100% certain, always ask what the proper name of the local network you are wanting to connect to is and connect to that.

- **Use a Virtual Private Network (VPN):**
  A VPN encrypts internet traffic, making it unreadable to cybercriminals on public Wi-Fi. You should always connect to a trusted VPN before accessing sensitive information. If your firm provides a corporate VPN solution, use it! If not, use a personal VPN service like NordVPN, ExpressVPN, or ProtonVPN.

- **Enable Two-Factor Authentication (2FA) on All Accounts:**
  2FA adds an extra layer of security by requiring a secondary verification method (such as a text message code or authentication app) to access accounts. Even if cybercriminals obtain login credentials, they won't be able to access protected accounts without the second authentication factor.

- **Avoid Accessing Sensitive Data on Public Wi-Fi:**
  Whenever possible, avoid logging into case management systems, email accounts, or other sensitive applications while on public Wi-Fi. If urgent access is needed, a VPN should be used to secure the connection.

- **Better Yet, Use Mobile Hotspots Instead of Public Wi-Fi:**
  A safer alternative to public Wi-Fi is using a mobile hotspot from a smartphone or a dedicated cellular hotspot

device. These connections are generally encrypted and far more secure than public networks.

- **Disable Auto Connect to Wi-Fi Networks:**
  When auto connect is enabled, your device can automatically connect to a malicious network. To prevent this unintentional result from ever occurring keep this setting disabled at all times.

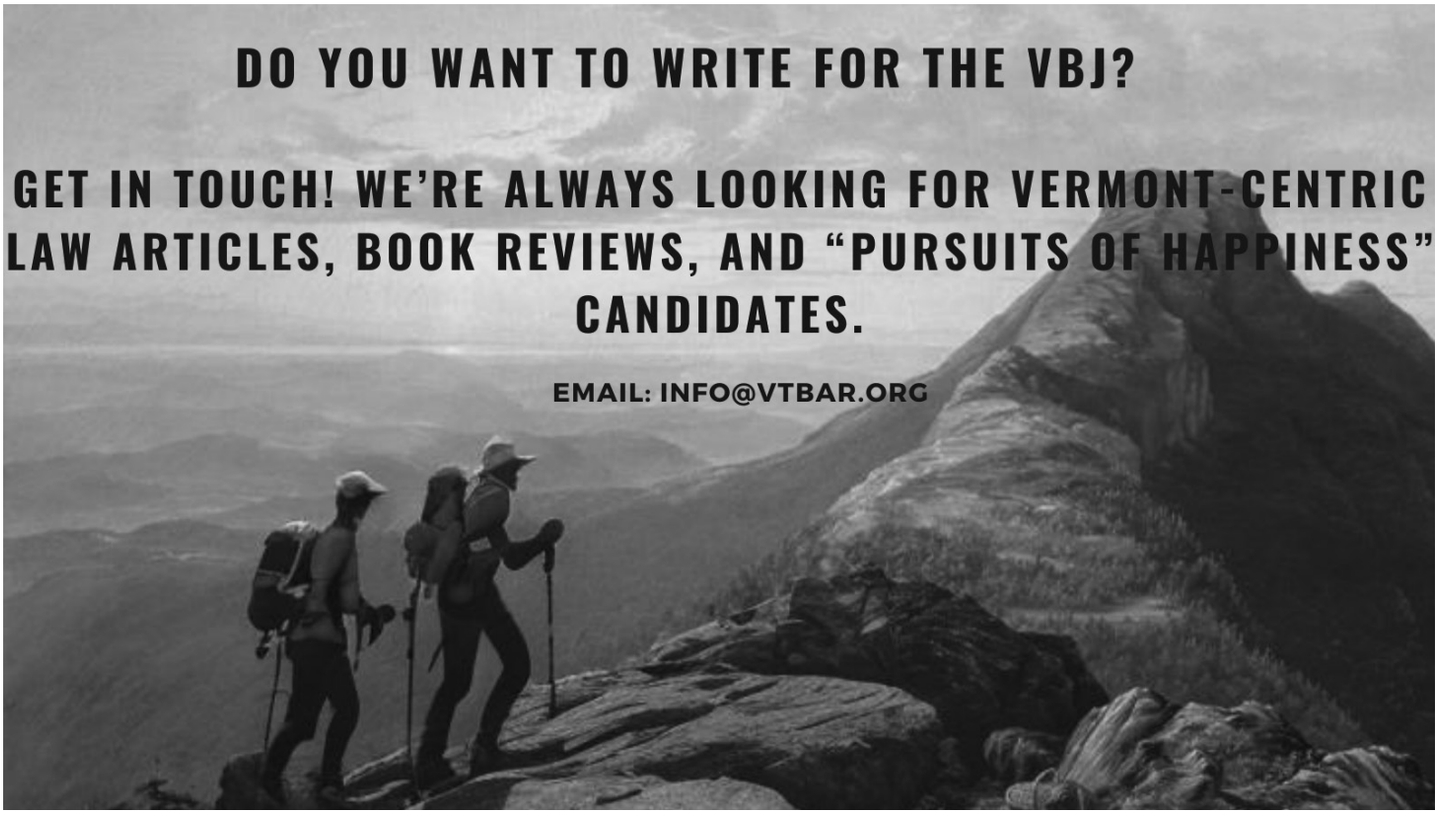
- **Keep Software and Security Patches Updated:**
  Cybercriminals often exploit vulnerabilities in outdated software. Regularly update your operating systems, web browsers, and security applications to ensure you have the latest security patches. Enabling any automatic update features will help make this process as painless as possible.

I wish I could stop here but I can't, because almost every law firm I know of is comprised of more than one person. Anyone at a firm can naively or unwittingly fall prey to a cybercriminal when logging onto a public Wi-Fi network and this could result in very serious and unintended consequences not only for your firm, but firm clients as well. Best practices now mandate that everyone who uses a mobile device for work be subject to a written policy regarding the appropriate use of public Wi-Fi. If your firm has no such policy, now's the time. Of course, any policy is going to be meaningless if there is no training on the risks and/or no enforcement of the provisions so keep that in mind.

Now to my initial question. Should lawyers just say no to the use of public Wi-Fi or try to prohibit anyone in their employ from using it? I don't necessarily go that far as long as all users have been made aware of the risks and given the appropriate tools that will help them minimize the risks.

That said, let me share one final thought because I do get push back on this topic and can anticipate you will too. Some will disagree and say something along these lines, "the Starbucks signal is free, I've used it many times before and never had a problem so why all the unnecessary fuss?" My response is always the same. How do you know you were never a victim? No one is going to send you a thank you card for allowing them to steal your credit card number or place a keylogger on your laptop. We all need to understand that hacking tools are widely available to the masses. Always remember that you are never alone while using public Wi-Fi and you simply have no way of knowing what everyone else's intentions are.

Mark Bassingthwaighte, Esq. is the resident Risk Manager at ALPS Insurance. To learn more about how ALPS can support your solo or small firm visit: alpsinsurance.com.



IN MEMORIAM

Robert L. Picher

Robert L. Picher of Winooski died peacefully on May 10, 2024, in Venice, FL, at the age of 99.

He was born in Winooski on July 30, 1924, the son of John and Agnes (Tougas) Picher. He was educated at St. Louis Convent in Winooski and Cathedral High School in Burlington. He was a graduate of Assumption College, Worcester, MA, and of Georgetown Law School, Washington, D.C., in 1954.

Bob practiced law in Winooski for 33 years, retiring in 1988. Locally he served as City Grand Juror, a member of the Zoning Board and as a Justice of the Peace.

Mr. Picher worked in public service in Vermont for nearly 40 years, initially as Executive Clerk to Gov. Joseph B. Johnson then as Secretary of Civil and Military Affairs to Gov. Robert T. Stafford. For the ensuing 30 years, he served as Clerk and Parliamentarian of the Vermont House of Representatives, retiring in 1993. In that capacity he was elected President of the American Society of Legislative Clerks and Secretaries in the 1980s.

Mr. Picher proudly served his country nearly his entire adult life. During World War II, he was a 20-yr-old 2nd Lieutenant in the U.S. Army, leading a platoon of 36 soldiers in combat in Germany in Co. K, 346th Regiment, with the 87th Infantry Division. He returned to active duty during the Korean Conflict in the 350th Regiment with the U.S. Forces in Austria. Upon his return stateside, Bob served in the Vermont Army National Guard for 15 years, retiring in 1971 with the rank of Lt. Colonel, and later for 19 years in the Vermont State Guard, retiring as its Commander with the rank of Major General. He was a member of the VFW and the American Legion, both in Winooski. In his 80s and 90s, he was a weekly volunteer at the Vermont Veterans Militia Museum and Library and also served on its Board of Directors.

Bob was a member of Conseil St-Laurent of L'Union St-Jean-Baptiste, the largest Franco-American fraternal benefit society in the U.S., and for seven years served on its General Board. In his retirement he was active in the Vermont French-Canadian Genealogical Society and the Winooski Historical Society.

Mr. Picher was a devoted Catholic and member of St. Francis Xavier Parish in Winooski for some 90 years, performing countless tasks on its behalf and that of its congregants. For decades Bob was a member of the St. Francis church choir and for a time served as its director. He also was a member of the South Burlington Community Chorus for 31 years, participating in its annual spring and summer concerts.

On September 6, 1954, Bob married Jeannine S. Michaud, then of Washington, D.C. They resided in Winooski for the next 67 years, raising their family in the process. He was an exceptionally devoted husband, a loving father to his four children whom he cherished deeply, a doting Pépère to his five grandchildren and three great-grandchildren, and a wonderful friend to all who knew him.

Despite his many accomplishments, Bob likely will be most fondly remembered for his unmatched humanity and generosity of spirit by the thousands of people he touched in his century of life.

Mr. Picher is survived by his son Robert, Jr., and his wife Mary of Venice, FL, his son Thomas and his wife Julie of Wellesley, MA, and his daughter-in-law Suzanne Picher of Wellesley. He is also survived by his granddaughter Nicole Cummings (William) of New Rochelle, NY, grandchildren Christopher Picher of New York City, Madeleine Picher of Providence, RI, and Luke Picher of Wellesley, and grandson Thomas Picher, Jr., of Wellesley, as well as great-grandchildren Catherine, Alexandra and William Cummings of New Rochelle. Also surviving is his sister Therese Muldoon of Naples, FL. He was predeceased by his beloved wife Jeannine in 2021, daughter Louise Davis in 1988 and son David Picher in 2023. Also predeceasing him were his brother Paul Picher and sisters Madeleine Carpenter, Sr. Jeanne Picher and Sr. Claire Picher, as well as numerous brothers- and sisters-in-law.

Phyllis Loisel Armstrong

Phyllis Loisel Armstrong, lifelong resident of Middlebury, Vt., passed away in South Burlington, Vt., on Aug. 12, 2024, at the age of 91.

Phyllis was raised on a small family farm in Middlebury, where she loved tending to her garden. After graduating from Middlebury High School and Middlebury College, she got her law degree from Boston University. She was a member of B.U. Law's first graduating class to include women. Phyllis opened her own private practice in Middlebury, practicing real estate and family law.

Phyllis is preceded in death by her father, Marshall J. Armstrong; mother, Julia Christobel Wisell; and brother, Marshall J. Armstrong Jr.

Phyllis is survived by her niece, Susan (Mueller) Armstrong and nephews Steven Armstrong and David Armstrong.

Amy C. Gregory

Amy Coley Gregory went to find her next adventure on April 24, 2025, after a long battle with brain cancer. Amy was born on Oct. 2, 1958, in Brookfield, Conn., where she grew up in a historic old house with her two wonderful parents and her funny and fabulous brother, Judd. She earned a bachelor's degree in business management from Duke University, where she met dear friends she would cherish forever. Amy later went on to earn a law degree from Vermont Law School and practiced real estate law until she opened a real estate brokerage firm, which she ran for 20 years.

Burlington Country Club is where she formed a bounty of meaningful friendships and made many fun and silly memories. She will be remembered for both her sense of humor and fierce competitiveness on the golf course, for which she earned many honors. She is survived by her loving husband, Mike; his daughter, Ashley, her husband, Kyle, and their son, Wesley; her brother, Judd, and sister-in-law, Peg; and of course Stanley the dog.

John H. Carnahan

John Hillis Carnahan, 96, longtime Brattleboro attorney, passed away peacefully May 7, 2025, at Menig Nursing Home, Randolph Center, Vermont. Prior to moving to Randolph, John and his wife Mary lived on Tyler Street in Brattleboro for 56 years.

John was born in Manhattan, KS, on January 22, 1929, the middle son of Paul Adelbert and Gladys Kelly Paul Carnahan. He graduated from Texarkana (Texas) High School in 1946 and attended Harvard University (Class of 1950) and Harvard Law School (Class of 1954) while serving in the Navy.

Carnahan married Mary Elizabeth Faigle in August 1955. They moved to Brattleboro where John began working for the law firm Fitts & Olson. Less than two years later he became the Administrative Assistant to U.S. Congressman William H. Meyer, the first Democrat ever elected to the U.S. Congress from Vermont. Carnahan moved to Rutland, Vermont, and served as the Assistant U.S. Attorney for Vermont from 1961-1965. In 1965 he returned to Brattle-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boro as an associate with the law firm of Kristensen, Cummings and Price. Two years later he was appointed Windham County District Judge by Gov. Philip H. Hoff. In 1973 he rejoined Fitts & Olson as a partner; the firm was renamed Fitts, Olson, Carnahan, Anderson & Bump and later was known as Fitts, Olson, Carnahan & Giddings. He worked there until 1995, when he became a sole practitioner, retiring in 2004.

Carnahan was especially active in the Democratic party. He was Democratic National Committeeman for Vermont, 1979-1988; Democratic State Chairperson, 1977; and the party's unsuccessful candidate for Lieutenant Governor in 1984. He was involved in many campaigns over the years and hosted countless Democratic candidates who visited Brattleboro, introducing them to everyone he knew.

A longtime and active member of St. Michael's Episcopal Church, Carnahan was known for his quiet kindness. He generously gave his time to many organizations. He served on more than a dozen social service agency boards during his lifetime, including trustee of the Brattleboro Retreat from 1970-1994.

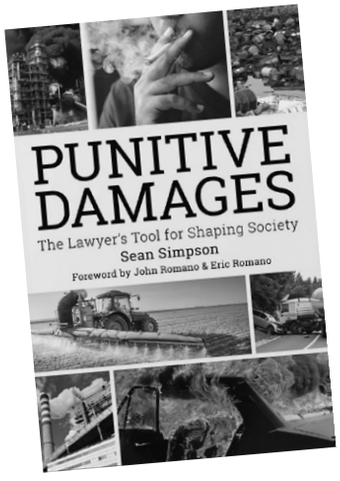
Carnahan was also active in historical and cultural organizations. He was a trustee of the Brattleboro Museum and Art Center in the 1980s. He began serving as a trustee of the Vermont Historical Society in 1982 and served as its president (1993-1995). He was a founding member of both the Brattleboro Historical Society (1982) and the Estey Organ Museum (2002). He served on the Advisory Council for the Vermont Division for Historic Preservation and was a trustee of the Preservation Trust of Vermont. He helped establish the Friends of the Vermont State House. Carnahan was interested in the architecture and history of U.S. state capitol buildings and donated his extensive collection of state capitol postcards to the Curator of State Buildings in 2021.

John was an avid newspaper reader. In their later years John and Mary could be seen walking daily to get multiple newspapers at Baker's or Putney Road Market. They also enjoyed partaking of the musical offerings of various organizations that are in the Brattleboro area including the Brattleboro Music Center and the Friends of Music at Guilford.

John had a lifelong desire to improve Brattleboro's physical appearance. His children remember him walking home from work carrying trash he had picked up along the way! He was instrumental in the restoration and redesign of the Brattleboro Common bandstand in 1976 to open the front so that performers and speakers could be closer to their audiences. In the 1980s, he led the charge to move Brattleboro's historic Wells Fountain 25 feet away from traffic and into a welcoming park where a gas station once stood in the heart of Brattleboro.

John took great joy in his family, especially at multi-generational celebrations at the house on Tyler Street. He was predeceased by his brothers and his beloved daughter Sarah Kelly Carnahan in 2014. He is survived by Mary, his wife of 70 years, his son Paul (Eve) of Montpelier, his daughter Susan (William) Vodrey of Cleveland, Ohio, his son-in-law Alfredo Quintero of New York City, eight grandchildren, as well as nieces and nephews.

BOOK REVIEW



Punitive Damages: The Lawyer's Tool for Shaping Society
By Sean Simpson
Publisher: by Trial Guides, LLC (2024), 298 pages
Reviewed by Peter F. Langrock, Esq.

This book is an interesting and intense call for the encouragement of the pursuit of punitive damages. It combines some of the case law dealing with punitive damages at both trial and appellate levels. It also goes on to discuss possible approaches to moving towards punitive damages and some of the pitfalls in getting there.

It is a book worth reading if you have a case where you think punitive damages might come into play. It will not give you any specific formula but as you go through the book you will read of cases that have succeeded and also failed as to a large variety of punitive damages situations. The book also compares the law of several states and gives thoughts on how each person should look to their own jurisdiction for both the law and the factual patterns that will get you to a jury.

If you are looking for specific instructions for your case or specific instructions on how you should proceed from investigation to closing argument you may be disappointed. However, if you are looking to have a broad overview coupled with good stories and samples of cross-examination and samples of expert testimony that will lead to a possible large verdict, it is a worthwhile read.

The writing is easy, non-technical, relaxing and for lawyers who try cases where punitive damages are sought it is fun and stimulating.

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Peter F. Langrock, Esq., a founder of the firm Langrock Sperry & Wool, LLP, has been involved with trials in the Vermont courts since 1958 (as a law clerk) and since 1960 as a member of the Vermont bar.

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

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