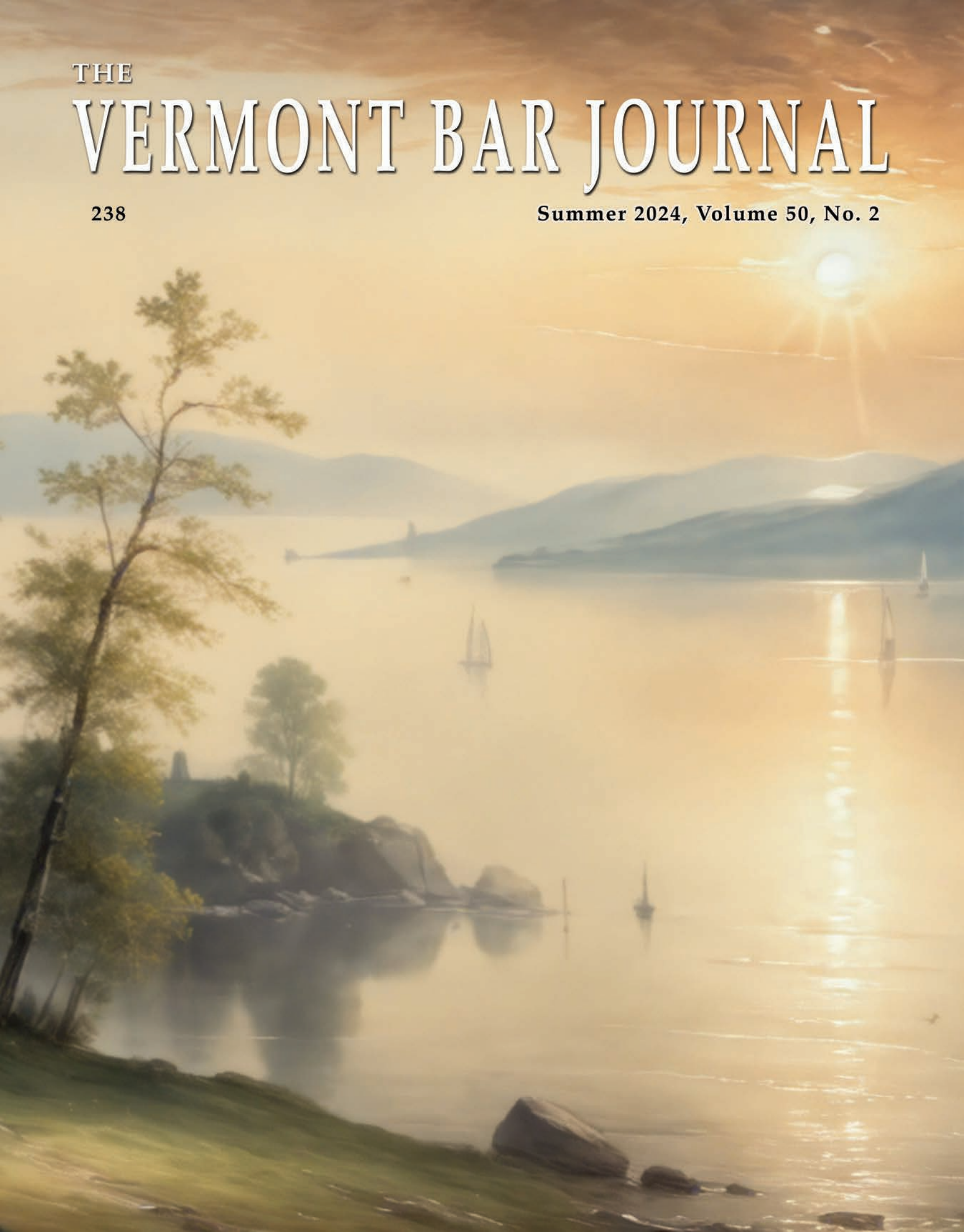


THE VERMONT BAR JOURNAL

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Summer 2024, Volume 50, No. 2





Complex Legal Challenges require legal teamwork

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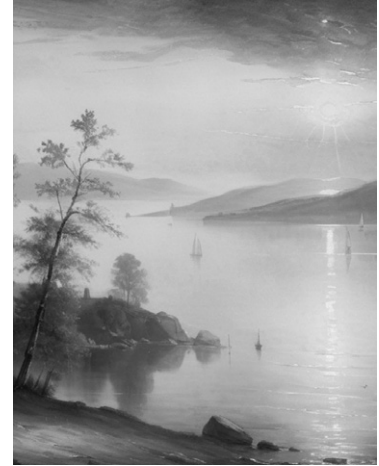
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Try out the
Connections Puzzle
by Kevin Lumpkin, Esq.
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PRESIDENT'S COLUMN

Happy Summer

Thank you again to the many volunteers who participated in Law Day events. We have had great feedback from the teachers and students participating in the programs. Exposing young people to the legal system, rule of law, and careers in the law helps serve our VBA goals of workforce development and promoting understanding and respect for the rule of law. I encourage County Bar Associations to continue this outreach and explore opportunities for working with local schools and community organizations in the next academic year. I, along with the Workforce Development Committee, will continue to reach out and coordinate with county bars and attorneys interested in this programming. We hope to expand the number of schools reached in the coming year. The commitment to engage with our communities and each other is the focus of my column.

In addition to Law Day and programs directly serving school-aged children, I encourage you to explore other volunteer opportunities in your communities that help promote access to justice and respect and understanding for the rule of law. The upcoming 2024 election will be another test in our nation's experiment with democracy and towns across the state will be at the front lines of the voting process. Towns rely on community volunteers, many of whom have served for decades, and are nearing or well past retirement. Lawyers can volunteer to be poll watchers and poll workers throughout the day and night. The meticulous and detailed work of counting ballots is important and well suited to attorneys. Please contact your Town Clerk or the Secretary of State to learn about serving as a poll worker or poll watcher.

Other opportunities for community involvement include serving on local school boards and library boards. These boards can ensure a robust and broad based education that provides the foundations for citizenship and active civil engagement which is essential for ensuring the next generation is prepared to participate in and maintain our democracy. Community organizations like the King Street Center, Boys and Girls Clubs, Alliance for Community Transformations in Bennington, and many other youth serving groups throughout the state need the support and mentorship of caring and responsible adults. In addition to young people, community organizations serving seniors also need our support.

Serving our communities also includes serving its newest members, immigrant and asylum seeking organizations. Bar members can follow the lead of 2024 Pro Bono Award winner Seth Lipschutz who works with the Vermont Asylum Assistance Project. You can join Seth in assisting asylum seekers gain work authorizations, social security numbers, banking and financial services, professional licensure, health care, public assistance--all those elements necessary to become successful, productive members of their new communities. Other asylum and immigrant organizations throughout the state can benefit from the work of volunteer lawyers, including the Vermont Afghan Alliance in Burlington, Community Asylum Seekers Project in Brattleboro, Central Vermont Refugee Action Network, Northeast Kingdom Asylum Assistance Network, and Bridge to Rutland, are among the organizations assisting new Vermonters that could benefit from the volunteer services of our members.

In addition to serving our greater communities, I encourage you to directly serve and mentor our new colleagues and membership. I was disheartened and surprised by the results of the retirement succession planning survey that indicated 61.88 % of respondents answered "no" to the question, "Would you be interested in learning about opportunities to connect with or mentor new or young attorneys?" Also troubling were the answers to the question, "Would you be interested in mentoring a new or young attorney in your area about developing or supporting a legal practice in your area?" Only 29.83% answered "yes," while 34.81% responded



Judith L. Dillon, Esq.

"no," and 35.36% indicated that they were unsure.

Despite these statistics, I know that many of you have provided informal mentoring to younger attorneys throughout their careers. To encourage and support new attorneys, we need to make a greater effort to reach out and mentor them. We need them to establish career and community roots that will plant them firmly in the Vermont legal community. Please contact me, your county bars, or Vermont Bar Association Mentor Advice Program, Vermont Bar Association Mentor Advice Program - Vermont Bar Association (vtbar.org), for mentoring ideas, support, and opportunities.

Enjoy your summer! I look forward to seeing you at the VBA Annual Meeting at Lake Morey on Sept. 27. ☺

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Andrew Manitsky on the Keyboards

KSV: Hi Andrew! As you know, for this feature, we interview people with interests and passions outside of the practice of law which have helped keep them balanced. You're a busy lawyer, and have been very active in the VBA – as anyone knows who's been paying attention you were the VBA President last year and you're the longtime head of our Intellectual Property Section. Through it all, however, you've also been a serious musician. I'd like to learn about the place that music has had in your life and how it has fit with your professional life. But let's start at the beginning. Can you share a bit about your origins? Where'd you grow up?

AM: I grew up in New York City.

KSV: Were you musical as a kid?

AM: Yes! I started playing piano when I was five years old.

KSV: Do you remember how you first got interested in music? Was it your parents' idea or yours?

AM: It was actually my kindergarten teacher's idea. One day she brought in a huge xylophone for the kids to play with, and I had a blast smacking it and creating sound. My teacher reached out to my mom and suggested I take piano lessons.

KSV: Are you from a musical family?

AM: Nope.

KSV: Is there a kind of music that you like best? What is it, and why?

AM: I love Top 40 pop music, especially if it's dance/R&B. But I grew up loving The Beatles and Billy Joel, so that's always in the mix for me, as it were. I guess I like the



immediacy of pop music, the accessibility of it, the "now-ness" of it.

KSV: Has pop music been your musical focus all through the years? It seems to me that not many five-year-olds from nonmusical families would get a push in that direction to start.

AM: I have always loved pop music. Honestly, I have the musical taste of a 13-year-old girl. But when I first started playing piano, they had me playing the typical, beginner classical pieces. I didn't love it, and I resisted it. Slowly, I was able to move the mu-

sic toward ragtime, and then to Billy Joel. My piano teacher allowed it because there was enough going on musically, especially from a music theory perspective.

KSV: Where did it go from there?

AM: From there, I just played more and more — and began writing/recording music and performing live. I had bands in high school and college and law school. Actually, after college, I recorded a demo and was offered a publishing deal, and for some unknown reason I didn't take it and went to law school instead. Some might say that I have made some questionable decisions.

KSV: Whoa. Hold the phone. Tell me more about this. Was it original music from your band in college? Or an Andrew Manitsky solo/single?

AM: It was my original music, as a "solo artist." But I did work with other musicians on the recording. One song was called "The Met" about a visit to the Metropolitan Opera House. An opera-singer friend of mine sang over a dance groove and it had rap verses. At gigs in college, we sometimes had to do the song twice in a row, because people went nuts over it. Don't make me send you some MP3s!

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KSV: Oh great. I'll take the MP3s anytime! Did you have a stage name in mind?

AM: I used my middle name, so it was "Andrew Darren." Can't believe you thought to ask that! That's mildly embarrassing.

KSV: Well, for better or worse, I can't think of any famous "Manitsky" pop stars - and I'm speaking as one with a last name that is not particularly poetic. And I think "Andrew Darren" has a really nice ring to it! Anyway, you didn't go down that music road after college - it was law school for you. What sent you down that track?

AM: I was a philosophy major at Oberlin College, focusing on ethics and moral theory. I wrote my honors thesis on abortion. I have always liked tackling tough issues - and abortion is obviously tough for a number of reasons. In fact, I was specifically told that, as a male, I shouldn't be writing about it. That didn't sit so well with me, and made me want to work on the issue all the more. Anyway, law school just seemed like a natural next step for me. I even thought about doing a double degree in philosophy and law.

KSV: That's very interesting. Can you talk a little about your legal career? I know intellectual property has been a focus of your

practice. How did that evolve?

AM: Out of law school, I was a litigator in New York City. A lot of the firm's clients were internet startups and other businesses with intellectual property, so I got the opportunity to work on a number of trademark and trade secrets and non-compete matters. I loved it.

KSV: Can you tell me a little about how you wound up in Vermont and your work here?

AM: I wanted a different life experience. My son was two years old at the time, and raising him in Manhattan (on the upper west side) became less and less fun. Also, the idea of working in a smaller firm - in Vermont, no less - seemed so appealing to me. I didn't have many contacts here, but I knew I wanted to be in Vermont and was somehow able to make it happen.

KSV: That's great. We're glad you came. But let's get back to the music. Tell me about how it fits into your work life these days.

AM: Well, I play keys and sing in a band called B-Town (the "B" representing "Burlington"). Another lawyer, Scott McAllister, plays with the band, too; he's a guitarist. We are a cover band, and we play Motown stuff, like Stevie Wonder, and blues and

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dance and random pop songs. It's a lot of fun. We play at Snow Farm Winery and The Old Post and Red Square and other local spots. We also play private parties.

KSV: What kind of time commitment are we talking about?

AM: Good question. When we are ramping up for the season, we will have a bunch of band practices, and of course folks need to practice on their own to learn their parts. The gigs themselves are not too demanding time-wise. We play largely in the summer and fall, and try to limit it to two or three gigs a month. The gigs average three hours.

KSV: Do you have other musical endeavors as well?

AM: About two years ago I co-produced a smooth jazz album with Dan Alan Levine, who is a very talented, Tony-nominated composer. Since we were still in COVID, we did everything remotely. He had other musicians play on it, including Kim Scott, a wonderful flute player.

KSV: OK. I think that may make you the coolest attorney in Vermont. Can you tell me about how music fits into your lawyer life? Does it help you manage work stress? Is it something you're happy to get to when you close your computer or get out of a meeting?

AM: I'm not even doing as much music lately as I'd like to. I love writing and recording, but my work as VBA President last year and private practice – especially my new firm, MANITSKY LAW, PLLC – have put a crunch on my time. But one thing I always do at band practice and at gigs: I leave my phone in my car. I think it's important to disconnect in a meaningful way, and to be present in the moment. If I have my phone with me, I'll be, you know, doing emails on set breaks. That's not good.

KSV: Leave that phone at home! Can you tell us where we might be able to see B-Town later this summer and or early fall?

AM: Sure! Our public gigs later this season include Red Square [in Burlington] on August 2, Colchester Bayside on August 8, Spanked Puppy [in Colchester] on August 16, and The Old Post [in South Burlington] on September 27.

KSV: I don't get out a lot, but I'll try to catch you guys! I'll be the one with the lighter in the "Andrew Darren" t-shirt. Can you tell me more about your new firm? What kind of law are you doing?

AM: If you actually show up with that t-shirt, I'll pay your bar tab! No joke. So, my new firm is purely a continuation of what I've been doing for the past 30 years. I represent clients in state and federal court in a wide variety of civil disputes, including complex commercial litigation. I handle a lot of intellectual property matters, including trademark registrations. I represent lawyers in disciplinary proceedings. I do some personal injury and product liability cases. As you know, I'm just a simple country lawyer.

KSV: Well congratulations on that! I'm not sure if it's bad luck to wish lawyers good luck so I'll just say "break a leg" whether you're singing or lawyering and thanks for sharing your "pursuits of happiness" with the VBJ. And be on the lookout for me and my AD T-shirt. (You can leave your phone at home while you're gigging but don't forget your wallet.)

AM: Thanks, Kim. Always a pleasure speaking with you.

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WRITE ON

Match Mindsets for Better Communication

Lawyers communicate all the time. We write, negotiate, argue, persuade. Briefs, contracts, letters, agreements, meetings: we are always communicating. Lawyers should be great at communicating. But are we?

Actually, “effective communication with clients isn’t something that most lawyers give much thought. And this trend starts in law school, where the focus tends to be on substantive law and legal theory.”¹ Moreover, because of the structure of our “adversarial” legal system, from the earliest days of law school, we learn to be just that—an adversary who must “zealously” defend a client within that system.² But an adversarial mindset does not necessarily foster effective communication; if anything, it does the opposite. A myopic focus on winning, beating the other side, or being right will not necessarily move you closer to your goals.³

Much has been written on legal communication, particularly in the realm of legal writing and oral advocacy. But a recent book written for non-lawyers offers some promising tips for the legal profession. In his book *Supercommunicators: How to Unlock the Secret Language of Connection*, Charles Duhigg explains that “[h]ow we communicate—the unconscious decisions we make as we speak and listen, the questions we ask and the vulnerabilities we expose, even our tone of voice—can influence who we trust and] are persuaded by”⁴

Building trust with a reader and persuading that reader are goals of many legal writers. So how do we do it? Duhigg asserts that we reach this deeper level of trust and connection through “neurological synchronization, an alignment of our brains and bodies.”⁵ We don’t always notice synchronization, but this alignment “influences how we talk, hear, and think.”⁶ Some individuals consistently struggle to synchronize with people (even friends and family).⁷ Others—the supercommunicators—“seem to synchronize effortlessly with just about anyone.”⁸

Those who are able to synchronize better “facilitat[e] conversation,” lead people toward a certain way of thinking, and “explain themselves more clearly. . . . And they ha[ve] enormous influence” on how people think and make decisions.⁹ Quite a desirable set of skills for lawyers.

So how do we become supercommunicators? And what might that look like for lawyers in particular? The first step, Duhigg posits, is to identify the type of conversation you are having.¹⁰ To do this, Duhigg suggests

determining the “mindset” of each person in the conversation.¹¹ The mindsets will likely fall into one of three buckets:

- (1) “Decision-Making Mindset: What’s this [conversation] really about?”
- (2) Emotional Mindset: How do we feel?”
- (3) Social Mindset: Who are we?”¹²

Decision-Making Mindset

The decision-making mindset kicks in when we are thinking about problem-solving, “making choices or analyzing plans,” “negotiating options, discussing intellectual concepts, . . . [and] determining . . . our goals for this conversation” and how the conversation should flow.¹³ In other words, what should we discuss, and how will we structure the conversation?

Determining the structure and scope of a conversation would probably serve any advocate well. Often, communications between two parties in a dispute lump together all the different issues in play. In a single email or letter, one side might complain about, for example, the other side’s delay, interpretation of the relevant law, reading of the facts, and proposed path forward. In fact, the legal system seems to encourage this “kitchen sink” approach. In discovery, for example, lawyers are trained to lodge every conceivable objection—no matter how remote—to document requests or interrogatories. This makes it nearly impossible to have a concise and focused discussion about any particular objection. We lose sight of the goal when we are trained only to attack or defend.

To enhance and improve communication between two counterparties, we might take a different approach: first, identify your goals. Goals should be more specific than just “winning.” “Goals are what you want at the end” of the conversation or negotiation “that you don’t have at the beginning.”¹⁴ They are specific to each individual because “[a]ll parties value things differently, and often unequally.”¹⁵ In a divorce proceeding, for example, one spouse might value the house while the other values custody of the children. A group of plaintiffs in a civil lawsuit might each value differently monetary damages, repeal of a law, or punishment for the wrongdoers. Always “focus on your [specific] goals, not on who is right.”¹⁶

Second, address one issue at a time. We teach law students the IRAC¹⁷ structure for legal writing (Issue, Rule, Application, Con-

clusion) and instruct them to IRAC each issue or sub-issue separately. The same should be true for all types of communication in the law whether oral and written advocacy, negotiations, informal conversations, or settlement talks. Derek Thompson, a writer for *The Atlantic*, dubs the tendency to link together several hard topics “opening new tabs.”¹⁸ “Rais[ing] a single issue” at a time is “like opening a single tab on a browser.”¹⁹ When one person raises an issue, the other person can either address that issue directly, staying focused on the topic and goal at hand. Or, they can “mash[.]Control-T” over and over again to fill the conversation browser with related tabs,” or unrelated and unresolved issues that “inevitably delay mutual understanding and crash a productive dialogue.”²⁰ Thompson illustrates this point with an example of marital squabbles: “if one partner feels frustrated that the other didn’t do the dishes, don’t bring up the previous fight (tab two!), and don’t bring up a new fight (tab three!). Restrict the conversation to soap and plates.”²¹

This will not always be easy; sometimes forces will work against you. For example, in an appellate argument in front of several judges, a lawyer may be asked a barrage of unrelated questions at once. Or an opposing counsel will insist on linking together unrelated issues in a negotiation. But whenever possible, take one issue at a time, and stay focused on the goal.

Emotional Mindset

The next conversational mindset, the “emotional mindset,” “draws on neural structures” in the brain “that help shape our beliefs, emotions, and memories.”²² When we experience feelings while communicating with someone—whether anger, frustration, pride, fear, delight—we are in the emotional mindset.²³ People in the emotional mindset are not looking for advice or to solve problems; they are typically looking for empathy.²⁴

The emotional mindset may not seem to have a place in the law, but it creeps into many types of legal discourse. Discussions with clients often take place in the emotional mindset; clients may feel aggrieved, injured, or overcome with grief, anger, and worry. Clients often want to feel heard, not be lectured.

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often become emotional in discussions with counterparties, particularly when they feel that one side isn't playing fair. Negotiation expert Stuart Diamond, a professor at The Wharton School and the author of *Getting More: How to Negotiate to Achieve Your Goals in the Real World*, describes many reasons why people might get emotional in a transactional conversation, including when someone:

- "Misrepresents: lies about themselves or the facts, makes false accusations.
- Breaks commitments/agreements or won't make them.
- Devalues the other party by insulting, threatening, being hostile, causing loss of face, going over their head, questioning their authority or credibility, blaming them.
- Is greedy or self-centered: makes excessively high demands, oversteps their authority, doesn't reciprocate goodwill (doesn't thank you for a gift).
- Is undisciplined: doesn't adequately prepare, is inconsistent, loses control, personally or professionally.
- Dashes the other person's expectations: fails to show up for a meeting, treats others unfairly."²⁵

To improve communication, we must recognize "the difference between an emotional exchange and a practical one"²⁶ and then *synchronize*. There is no use trying to negotiate, problem-solve, or discuss substance when one side is emotional. Indeed, "[e]motion is the enemy of effective negotiations and of effective negotiators. People who are emotional stop listening. They often become unpredictable and rarely are able to focus on their goals."²⁷

Instead, recognize that feelings are in play, and work within the emotional mindset. When wading through an emotional discussion, don't name the other side's deficiencies or focus on where the other side went wrong—you did this! You said that!²⁸ Instead, try offering the other side an "emotional payment"—"an apology, words of empathy, or a concession."²⁹ Empathy is "highly effective" in any conversation, and can often move both parties closer toward their goals.³⁰ Pause and address the emotional needs before getting down to business.

Social Mindset

The last mindset—the social mindset—"emerges when we discuss our relationships, how we are seen by others and see ourselves, and our social identities."³¹ When we chit chat about where we are from, our families, personal preferences, or mutual acquaintances, "we're using our brain's default mode network, which plays a role in how we

think 'about other people, oneself, and the relation of oneself to other people.'"³² We may not think about the practice of law centering around our identities, but whenever we spend time getting to know a client, a witness, a judge, or even a counterparty, we likely engage in some social conversations.

In fact, we might better improve our professional work by spending more time in the social mindset. Human connection is a critical piece of every negotiation.³³ "Unless you connect in some way with the people you are negotiating with, you won't get a deal. Or, if you do get a deal, it won't be a good one, or it won't stick. Even if you hate the other side, you need to connect with them."³⁴

To connect, even with someone you know, "take the emotional and situational temperature of the people sitting across from you."³⁵ In other words, instead of approaching a conversation with an agenda and a list of issues, stop to think about how the other person feels at that moment.³⁶ Even if it's someone you know, you might not know what is going through their head that day: "someone may have had a bad commute that morning, someone else may not be feeling well, someone's kid might be sick, someone might be distracted by something else."³⁷ Think about "the pictures in their heads that day" before trying to launch into your arguments and agenda.³⁸

Becoming Better Communicators

The tricky part about communication is that we often mix mindsets during a single conversation.³⁹ A discussion might begin in the decision-making mindset when a client asks for help. I have a problem, how can you help me solve it? While getting acquainted with the client (social mindset), the lawyer learns that the client feels quite emotional about the situation and is motivated because they feel aggrieved (emotional mindset).

The lesson from *Supercommunicators* is to try to stay in sync.⁴⁰ People will not communicate effectively—and therefore not reach their goals efficiently—if they are not in the same mindset. If one person is emotional and the other is trying to problem-solve, "it's more apt to create conflict than connection."⁴¹ Duhigg offers a number of strategies for synchronizing, but the central principle involves listening and asking open-ended questions.⁴² By listening and determining what kind of conversation someone wants to have and what their goals are, you can "transform[] . . . a tussle . . . into a collaboration."⁴³

Ironically, many of the skills-based courses and activities in law school focus on speaking and presenting an argument, not listening. We prepare students for oral arguments, debates, moot courts, and trials, emphasizing public speaking skills and polish. Even the Socratic method (long a staple of law

school curricula), designed to stimulate critical thinking, often terrifies students because it requires students to *perform* in front of their peers. Perhaps we should also be doing the reverse: teaching students to *listen* to others and adjust their agenda accordingly. The more we teach students to ask questions, listen, and connect with others, the better communicators they will be.⁴⁴ Lawyers “can’t afford” to have lousy communication.⁴⁵ Better communication saves time and money, but it also builds trust with clients and moves parties closer to their goals.⁴⁶

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¹ Oliver Künzler, *Why Lawyers Should Never Underestimate the Importance of Communication*, INTERNATIONAL BAR ASS’N (Mar. 21, 2022), [lbanet.org/lawyers-importance-communication](https://www.lbanet.org/lawyers-importance-communication).

² MODEL RULES OF PRO. CONDUCT PREAMBLE (AM. BAR ASS’N 1983).

³ See STUART DIAMOND, *GETTING MORE: HOW TO NEGOTIATE TO ACHIEVE YOUR GOALS IN THE REAL WORLD* 2, 15-18 (2010).

⁴ CHARLES DUHIGG, *SUPERCOMMUNICATORS: HOW TO UNLOCK THE SECRET LANGUAGE OF CONNECTION* 8 (2024).

⁵ *Id.* (emphasis added). Duhigg offers a number of other tips for effective communication that are outside the scope of this article. See, e.g., Andee Tagle, *4 Habits of Highly Effective Communicators*, NPR (Feb. 29, 2024), <https://www.npr.org/2024/02/20/1196978652/life-kit-super-communicators-charles-duhigg> (summarizing Duhigg’s primary strategies for effective communication).

⁶ DUHIGG, *supra* note 4, at 8.

⁷ *Id.*

⁸ *Id.* These “supercommunicators” are often referred to in scientific literature as “high centrality participant[s]” or “core information provider[s].” *Id.* at 12.

⁹ *Id.* at 17 (quotations omitted).

¹⁰ Tagle, *supra* note 5.

¹¹ DUHIGG, *supra* note 4, at 17-18.

¹² *Id.* at 20.

¹³ *Id.* at 19.

¹⁴ DIAMOND, *supra* note 3, at 5.

¹⁵ *Id.* at 113.

¹⁶ *Id.* at 2.

¹⁷ There are many variations of IRAC—IREAC, CRAC, CREAC, etc.—but the basic principles are the same.

¹⁸ Derek Thompson, *How Happy Couples Argue*, THE ATLANTIC (Feb. 29, 2024) (quotation marks omitted), <https://www.theatlantic.com/ideas/archive/2024/02/how-to-fight-conversation-advice/677594/>.

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

²² DUHIGG, *supra* note 4, at 19.

²³ *Id.*

²⁴ *Id.* at 21.

²⁵ DIAMOND, *supra* note 3, at 136-37.

²⁶ Thompson, *supra* note 18.

²⁷ DIAMOND, *supra* note 3, at 135.

²⁸ Thompson, *supra* note 18.

²⁹ DIAMOND, *supra* note 3, at 135.

³⁰ *Id.* at 136.

³¹ DUHIGG, *supra* note 4, at 20.

³² *Id.* at 20-21 (quoting MATTHEW D. LIEBERMAN, *SOCIAL: WHY OUR BRAINS ARE WIRED TO CONNECT* (2013)) (noting that “70 percent of our conversations are

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social in nature”).

³³ DIAMOND, *supra* note 3, at 2, 34-35. Indeed, Duhigg concludes his book asserting that human “connection—authentic, meaningful connection—is the most important thing in life.” DUHIGG, *supra* note 4, at 246.

³⁴ DIAMOND, *supra* note 3, at 33.

³⁵ *Id.*

³⁶ *Id.* at 33-34.

³⁷ *Id.* at 33.

³⁸ *Id.*

³⁹ DUHIGG, *supra* note 4, at 21.

⁴⁰ *Id.* So, “[o]n a very basic level, if someone seems emotional, allow yourself to become emotional as well. If someone is intent on decision making,

match that focus. If they are preoccupied by social implications, reflect their fixation back to them. It is important to note that matching isn’t mimicry. . . . [But] [w]hen we align, we start to connect, and that’s when a meaningful conversation begins.” *Id.* at 22.

⁴¹ *Id.* at 21.

⁴² See, e.g., *id.* at 29-30, 51.

⁴³ *Id.* at 54.

⁴⁴ Perhaps they will also be better members of society. See generally DAVID BROOKS, *HOW TO KNOW A PERSON: THE ART OF SEEING OTHERS DEEPLY AND BEING DEEPLY SEEN* (2023).

⁴⁵ Künzler, *supra* note 1.

⁴⁶ *Id.* 🌐

WHAT'S NEW

Law Day 2024 Around Vermont



Barbie and Ken cast and crew, Law Day, Rutland.



Judge Tomasi and students, Law Day, Montpelier.



Judge Kalfus on Law Day in Bennington County

Law Day is traditionally recognized on May 1st to celebrate the rule of law and cultivate a deeper understanding of the legal system. It began back in 1957 when American Bar Association president Charles S. Rhyne envisioned a special day for celebrating our legal system. President Dwight D. Eisenhower established Law Day as a day of national dedication to the principles of government under law in 1958. In 1961, Congress made it official, designating May 1 as the day to celebrate Law Day.

The ABA has been a leading promoter of Law Day since its inception, and they continue to design materials around a theme every year for Law Day. These materials are made available to attorneys and legal professionals all over the country. This year the theme was "Voices of Democracy."

That said, as demonstrated by the many Vermont legal professionals and others who put on "Law Day" events this year, there's plenty of scope to be creative with Law Day, and almost any day can be Law Day.

Under the leadership of VBA President Judith Dillon, the VBA renewed its community outreach efforts this year, particularly in Vermont schools. County Bars are particularly well positioned to sponsor Law Day events, and this year they took the lead, again, in getting attorneys and judges into Vermont schools and community organizations to celebrate Law Day.

In Vermont, "Law Day" 2024 was commemorated both before and after May 1 up and down the state. This kind of community outreach is an important part of the VBA's wider workforce development effort directed at encouraging Vermont's students to consider careers in law. It's also key to the VBA's goal of educating the Vermont public about the rule of law in this election year.

Here's a roundup of Vermont "Law Day" events for 2024.

Chittenden County

VBA Board Member Alfonso Villegas organized the VBA's first "Law Day" program of the year at Burlington High School. It was held on Feb. 13 and included about 60 seniors from the AP Government class. Participants attended the two-hour presentation led by Alfonso and a panel made up of Vermont Supreme Court Justices Paul Reiber and Nancy Waples, their law respective clerks, Chris Mullaney and Bob Lyndon,

Jill Martin Diaz, executive director for the Vermont Asylum Assistance Project, and Kyle Clauss, a staff attorney at Legal Services Vermont.

The students heard from the justices about what it means to be a judge in Vermont. They also reviewed the process of creating and implementing laws. The panel discussed with the students – as potential future legal professionals – how they could impact the law. The students were given several group projects to answer questions from the panelists. This culminated in a simulated oral argument of “Whether a tomato is a fruit or a vegetable” – a reenactment of the U.S. Supreme Court case *Nix v. Hedden* (1893). Students acted as attorneys and argued before Justice Waples and Chief Justice Reiber.

Alfonso and a slightly remixed team were back at South Burlington High School on May 1, the actual/nominal Law Day. Panelists that day were Krista Cadieux, Senior Paralegal at Dinse, P.C., Kyle Clauss, Legal Services Vermont, Jill Martin Diaz, Vermont Asylum Assistance Project, Amy Palmer-Ellis, VBA Board Member and an assistant attorney general, and Vermont Supreme Court Law Clerks Bob Lyndon and Chris Mullaney.

The South Burlington event, which included seniors and ninth graders, ended with an oral argument by the students before “justices” Diaz and Clauss about the *Nix v. Hedden* question: Is a tomato a fruit or a vegetable?

After the main presentation, the students asked the panel to attend one of their classes. This provided the group with an opportunity to engage in conversation in the more intimate setting of a classroom. The students asked thoughtful questions and the teachers were very appreciative and requested a similar program next year. Villegas confirmed that the VBA would be happy to coordinate a Law Day presentation for South Burlington again.

Bennington County

The Bennington County Bar Association has a distinguished history of planning events with schools in their area to commemorate Law Day and this year was no different. Organized largely by attorneys John Lamson and Cristina Mansfield and Bennington Court Operations Manager Wendy Dickie, the County Bar helped bring legal professionals to speak with students of various ages in several area schools. “Our hope is to have Law Day activities in every school in the County one day,” said Mansfield.

The Hon. Kerry McDonald-Cady, who is currently sitting in the Bennington Criminal Court, met with the fifth and sixth grade classes at the Pownal Elementary School



Judge McDonald-Cady at Pownal Elementary School.

while Judge Howard Kalfus, of the Bennington Family Court, met with the eighth graders at the Manchester Elementary Middle School (MEMS). The Hon. David Barra, presiding judge of the Bennington Civil Unit, met with high school students at Mount Anthony Union High School (MAUHS).

The Pownal Elementary students were very curious about the day in the life of a judge. Judge McDonald-Cady displayed her robe which prompted questions about dress code but also great discussions around justice and procedural fairness. Judge Kalfus played a game without explaining and then changing the rules to demonstrate the importance of procedural fairness and due process. The MEMS students were also quite curious, asking insightful questions such as the reason judges cannot discuss pending cases. Included among the MAUHS students were members of attorney-turned-teacher John Lamson’s pre-law class. The high school students chatted with Judge Barra about voting rights and access, free speech and its limits, and the rights and duties of an informed citizenry. The organizers and judges all agreed it was a successful day and that both Vermont’s legal system and the community at large benefit from such rich conversations even with the youngest students.

Rutland County

On May 2, the Rutland County Bar Association and the Rutland Unit of the Ver-

mont Superior Court continued their longstanding tradition of presenting a “Law Day Mock Trial” to Rutland County area fifth grade classes at the Rutland County Courthouse.

This year’s theme was based on “Barbie – the Movie.” In the case “*Barbie v. Ken*”, Barbie sued Ken for trespass and damages during his and the other “Kens” stay at Barbie’s Dream House while she toured the real world.

Judge Susan McManus, presently sitting in the Rutland Family Division, presided over the case featuring “Barbie” played by Rutland Public Defender Zanna Bliss represented by Rutland County State’s Attorney Ian Sullivan, “Ken” played by Attorney Nik Houghton represented by Judge Alexander Burke, presently sitting in the Rutland Civil Division, “President Barbie” played by Attorney Phillisa Jones Prescott, “Gloria” played by Attorney Toni Dutil, and “Weird Barbie” played by Rutland Deputy State’s Attorney Daron Raleigh. Rutland Probate Judge Karl Anderson wrote the screenplay, State Court Administrator Teri Corsones organized behind the scenes and served as bailiff and Judge Cort Corsones, presently sitting in the Rutland Criminal Division, assembled Barbie’s Dream House (Exhibit A) at the courthouse the night before.

More than 200 students participated either in-person or remotely at the morning and afternoon performances. Chief Justice Paul Reiber, the current Rutland County Bar Association President, welcomed the students to each performance. 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 questions of the cast and crew in the courtroom. The students were provided a program featuring a schematic of the courtroom and a glossary of legal terms. Both juries found that Barbie had proven trespass against Ken. The morning jury found him liable for \$15,000 in damages but the afternoon jury found that instead of paying damages Ken was required to restore the Dream House to its original condition using his own labor.

The participating schools included Christ the King School, Fair Haven Grade School, Killington Elementary School, Poultney Elementary School, Proctor Elementary School, Rutland Intermediate School, Rutland Town School and the Tinmouth Mountain School.

Washington County

On April 18, Washington County Bar President Heather Devine, along with Tarrant, Gillies, and Shems Law Clerk Mike Lucey, Andrew Marchev, Esq., and VBA President Judith Dillon presented an early "Law Day" program at U32 High School in Montpelier. The topic was on the First Amendment "right of the people peaceably to assemble."

The legal volunteers worked with the junior history class of U-32 teacher Geoff Greene and his colleague Christian Martin to coordinate an event which included approximately 15 students.

The U-32 kids were separated into four groups who each met with one of the volunteer attorneys to engage in a discussion of three U.S. Supreme Court cases reviewing the limits on the right to assemble. (Village of Skokie v. National Socialist Party (1978); Schenck v. Pro-Choice Network of Western NY (1997); Edwards v. South Carolina (1963)).

The students provided reactions to the cases, and the groups tested how the court might respond to different fact patterns including a teacher leaving school to attend a protest at the statehouse.

On May 21, the Washington County legal professionals were back in action in the library of Montpelier High School. Nearly 50 students of teacher Jerry Tillotson's history classes participated. The students met with Judge Timothy B. Tomasi, currently the presiding judge in the Washington County Superior Court Civil Division, and attorneys Sarah Buxton, Heather Devine, Judith Dillon and Michael Tarrant.

The volunteers began with introductions and shared stories of their paths into their legal careers. The kids then got a quick lesson in the First Amendment right of peaceful assembly so that they could grapple with a hypothetical fact pattern involving a

planned protest of the Israel-Hamas war on a college campus:

The students advise the College administration that they will be having the protest which will include a gathering of students chanting remarks designed to draw attention to the conflict and seeking disclosure and divestment of the College's investments with entities that do business with Israel. Fearing the demonstrations would impede classes, interfere with the educational purpose of the College, and the potential risk to public safety, the College administration imposed a ban prohibiting the demonstration from going forward. The students filed an injunction asking the Court to lift the ban on the demonstrations.

The students were separated into two groups – one representing the administration and the other the student protestors. The volunteers discussed the famous U.S. Supreme Court free speech cases of Village of Skokie v. National Socialist Party (1978), and Cox v. New Hampshire (1941) with the kids. They spent some time learning the legal standards and preparing to discuss points and make arguments in support of their positions and then two advocates were chosen from each team to plead their case to Judge Tomasi (who wore his robe!) The court convened with Heather Devine serving as bailiff, insuring courtroom demeanor was observed. Each side had approximately 10 minutes to make their case. The Judge didn't render a decision, but he did ask questions of the "litigants." The students proved very capable of thinking on their feet and discussing questions not raised during the group discussions.

As things wrapped up, Judge Tomasi answered the kids' questions about the legal system, including about the most challenging cases he has handled, how many cases he handles, and "why do judges wear robes?" The presenters encouraged the kids to reach out to them or to the VBA with any questions they might have about a potential career in law and were given copies of the "On Your Own" Booklet for emerging adults.

And Back to Chittenden County

On May 30, "Law Day" continued in Burlington with a lively gathering at the Boys and Girls Club. Attorneys Steve Ellis of Paul Frank + Collins and Liz Miller worked with the staff at the Club to organize the event. The topic was "law and democracy" with a focus on the issue of non-citizen voting. Miller and Ellis are both members of the Club's Board. Ellis also chairs the VBA Labor and Employment Law Section. They were joined by Vermont Supreme Court Chief Justice Paul Reiber and Associate Justice Nancy Waples. State court adminis-

trator Teri Corsones assisted with organizing and though she wasn't able to attend, Teri did send her famous cookies to share.

After some introductions and pizza, the kids (grades 8-12) were divided into two groups who were assigned the pro and con positions on non-citizen voting based on a coin toss. The groups worked with Steve and Liz to outline their arguments. Each group then elected two advocates who argued their respective positions to the Justices, who proved to be a very hot panel. After the "court" took the matter under advisement, the legal professionals discussed the issues with the kids, took questions, and shared information about the law as a career. The Justices invited the group to come and hear an oral argument at the Vermont Supreme Court soon. Chief Justice Reiber gave one student his personal copy of the Vermont constitution as an impromptu prize. "It was a great experience that the kids will remember for the rest of their lives," Ellis said. "The kids understand that they are future lawyers, judges, and law enforcement officers. They are really engaged."

What's More? What's Next?

Did we miss any 2024 Vermont Law Day activities? If you or your county bar association sponsored an event or otherwise engaged in other community outreach recently let us know! Send us some photos and give us the who, what, when, where and why and we will spread the word. Your event may inspire others to reach out in their own communities. The VBA is hoping to see Law Day commemorations in all Vermont counties in 2025. It's not too early to start planning now...

If you are planning a law-related event with Vermont students at any time and would like pocket constitutions or, "On Your Own" booklets (for high school students) contact the VBA at info@vtbar.org and we will get them out to you.

Thanks to all the legal professionals who put time and energy into Law Day this year. With all the fun and success that accompanied this year's efforts, no doubt Law Day 2025 will be an even bigger event.

This report includes contributions from Teri Corsones, Wendy Dickie, Judith Dillon, Steve Ellis, Cristina Mansfield, Liz Miller, Kim Velk and Alfonso Villegas. 🍪

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WHAT'S NEW

Hello World: The First Dispatch from the Vermont Judiciary Committee on Artificial Intelligence and the Courts

Unless you've been living under a rock for the past several years, chances are you've heard about this new-fangled "artificial intelligence" thing. Ever since OpenAI released its flagship ChatGPT tool in November 2022, AI seems like the only thing anyone has been talking about, in entertainment, in business, and, of course, in the law.

The question is no longer "should lawyers use AI?" Whether or not lawyers "should," they absolutely are. Even if you personally aren't asking the chatbot du jour to spit out an outline for a residential lease or translate into modern English a dusty court case from the 1890s that's somehow still the most recent Vermont precedent for your motion, chances are the lawyer across the negotiating table or the courtroom probably is. There's no putting the

AI toothpaste back in its tube—it's here to stay, whether we like it or not.

But while the question of "should" has been answered (or, perhaps more accurately, been blown past at a high rate of speed), there remains a larger question of "how." The "move fast and break things" ethos of the tech world has long butted heads with the slow and steady processes of the legal realm. AI is no exception. Even as AI proliferates throughout law offices and courtrooms across the country and around the world, formal guidance and rules for how to appropriately use the technology and how it dovetails with preexisting court rules and ethical obligations remain patchwork and nascent, with no universal consensus in sight.

Against this backdrop, on March 4, 2024, the Vermont Supreme Court created the Vermont Judiciary Committee on Artificial Intelligence and the Courts. The Committee has been charged with conducting a top-to-bottom review of Vermont's court rules and rules of professional conduct, to determine how adequate the current rules are to tackle the use of generative AI tools such as ChatGPT and to identify where changes are warranted to update the rules for the AI age. The Committee has also been tasked with reviewing how AI may improve the nuts and bolts functioning of the judiciary, such as with case processing or case flow management, and forming policy suggestions about the best way to educate judges and court staff about AI and related issues.

The AI Committee is made up of 14 members, hailing from across the Vermont legal community and beyond. Supreme Court Associate Justice Bill Cohen serves as the committee chair, while the other members include Chief Superior Court Judge Thomas Zonay; Vermont Attorney General Charity Clark; Court Administrator Teri Corsones; Superior Court Judge Alex Burke; Vermont Bar Counsel Mike Kennedy; Judiciary IT Director Marie Schonholtz; Chief of Technology Services Marcia Schels; Chief of Planning and Court Services Scott Griffith; Chief of Finance and Administration Gregg Mousley; Laura Larosa, designee of the Chief of Trial Court Operations; State Court Administrator General Counsel Leda Moloff; Vermont Judiciary Law Clerk Alexander Cyr; and Professor

David Stein, associate professor of law and computer science at Northeastern University School of Law and all around AI expert. Rounding out the list is Ott Lindstrom, the Vermont Bar Association President's designee and the person who wrote these lovely words you are reading.

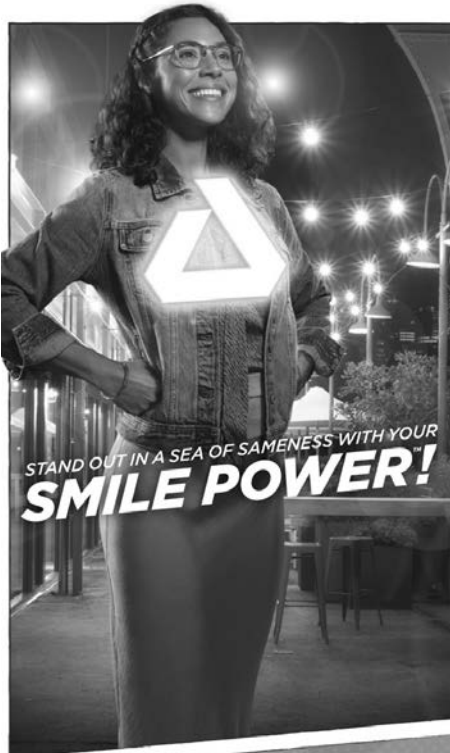
The Committee had its first meeting on May 15th. After a round of introductions and a quick crash course in how AI actually works for the non-techies, subcommittees were formed to focus on different aspects of the Vermont Supreme Court's directive. Individual subcommittees have been designated for the Committee's discrete tasks, one each for court rules, professional and judicial conduct rules, and court proceedings and operations, plus a fourth devoted to overarching policy and standards.

Going forward, the Committee and its subcommittees shall be holding regular meetings, with the end goal of producing a final report and recommendation in March next year. The task is an important one—beyond just shaping the Vermont Judiciary's approach to AI, as the first effort of its kind in New England, the Committee's work will undoubtedly have reverberations well beyond the borders of the Green Mountain State.

If you want to keep tabs on what the Committee is up to, frequent updates will be posted on its dedicated Vermont Judiciary webpage, <https://www.vermontjudiciary.org/about-vermont-judiciary/boards-and-committees/artificial-intelligence>.

I will also be making regular reports to the VBA about the Committee's goings on and may pop up again in these pages to bring the broader community up to speed. Or, if you're spoiler averse, stay tuned for the final report in March 2025!

Carl "Ott" Lindstrom is a litigation associate at Paul Frank + Collins P.C. and the former Chief Technology Officer at William & Mary Law School's Center for Legal and Court Technology.



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BE WELL

Healing from Burnout with Mindful Practices

It was February 2024, and I was in a horrible physical place, despite being a yoga teacher, a mindfulness instructor, relatively healthy and active, with a job full of purpose, meaning and stability. I was in denial for many months about the decline of my overall health and wellbeing. What could possibly be causing the failure of my body to function at an optimal level? My life included all the ingredients that should create a healthy and happy life and lead to optimal wellbeing. But, my body was shutting down and the seemingly disconnected symptoms were confusing my primary care physician: (1) insomnia – both unable to fall asleep and then stay asleep, so I would awake exhausted every morning, with an accompanying sense of dread for the day ahead; (2) extreme nerve pain in my back, arms, and hands caused by cervical spine impingements, which also caused extreme muscular pain in my neck and upper back (a long term consequence from being hit by a speeding truck while on my bike in a triathlon training race in 2008), which prevented me from being active and doing the things I loved in the winter months; (3) my digestive system was failing and I thought I was allergic to all foods and drinks that research said were “inflammatory,” which essentially made me scared to leave my house and return to work in the office as I never knew when the debilitating digestive issues would arise; (4) my immune system was malfunctioning as I was sick so frequently, it was negatively altering my life and my ability to work and have enjoyment in life; and (5) I was both anxious about the future as I felt and knew there was something seriously wrong with me, as well as depressed about where I was in my life. I

felt like a failure and an imposter at work and in my relationships.

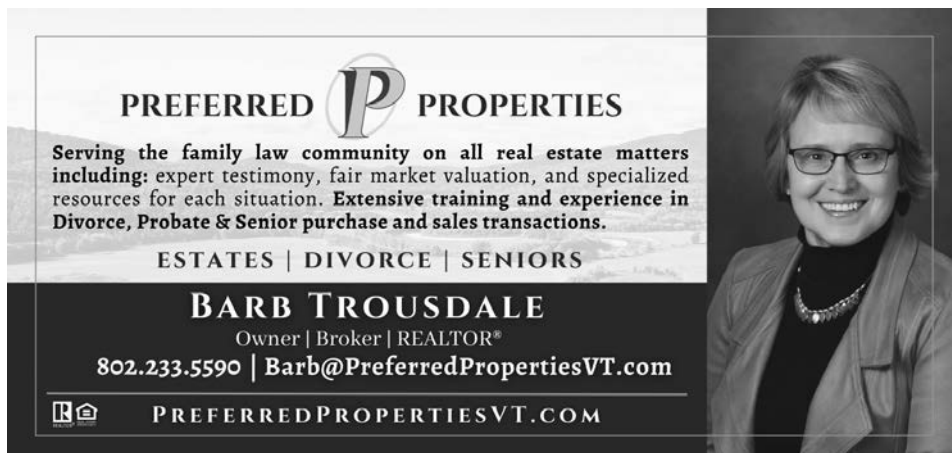
These were the darkest days in a Valley I had ever walked. I didn’t know what was wrong and how to find healing. Ultimately, my doctor, therapists, holistic healers – chiropractic, acupuncture and Chinese herbs, my supervisor and then myself realized I was suffering from Burnout caused by chronic stress that had manufactured an excess of debilitating stress hormones in my body over time. Luckily, as a state worker I had access to hundreds of hours of accumulated sick time and the ability to use them with a medical provider’s note through Family Medical Leave. The Family Medical Leave Act (FMLA) allowed me to take up to 12 weeks of leave time (sick, personal or annual time) in a calendar year. I did not even know that FMLA was available to me and felt a lot of guilt and shame around even using my sick time for my own healing and well-being. That was maybe for the first month when I didn’t do the best job of doing less. I wasn’t working at my legal job but was still quite “busy” with French language classes, guitar lessons, ski trips, telemark skiing, as well as my medical and healing appointments.


And I learned that one can burn out doing the things you love, if you never give your body and chance to pause, reset, and heal. It was a hard lesson to learn in my second month of not “working”: to do nothing. To clear space in my schedule and life and keep it clear. To spend a day with no plans, just open space, and see how it unfolds. But, I also realized, the more I did it, the better I got at it! The more inspiration and amazing things occurred in those boring down-time spaces with no plans. And

I started to intuitively create the space for the necessary healing, that I was craving at a deep level. I felt like the saying, “when the student is ready, the teacher appears,” actually, for me, became, “when the sick are ready to heal, the healing appears.” And the healing really solidified when I read the book, *Burnout: The Secret to Unlocking the Stress Cycle*, by Emily Nagoski, Ph.D and Amelia Nagoski, DMA. The theories they advance, when combined with my symptoms and then the things I was intuitively doing to heal myself, inspired some deep mental, physical and emotional healing for me, which continues to this day. And because I started to feel better than I had felt since 2000, when I went to law school, I realized I needed to share what I was learning with others in my mindfulness teachings. So, now is your chance to see if you are ready to use these theories and lessons and combine them with your own self-awareness to bring some healing into your life as well.

First, stress can be a positive. It is our automatic sympathetic nervous system activating to keep us alive. It’s our survival mechanism. And we need it to survive in this crazy world, so please embrace your stress reaction. Those stress hormones really help motivate us to take action and get things done. Honestly, if I did not have stress-inducing deadlines, I do not think I would ever get anything done. They also help us truly feel alive – nothing like almost getting in an accident to really stimulate the energy throughout your body. Try parachuting out of an airplane if you are unsure what maximizing the stress reaction really feels like. Additionally, when anyone is under stress and asks for assistance, both the stressed individual and the person providing the help both generate the hormone oxytocin, which contributes to relaxation, trust, psychologic stability, and reduction of stress responses, including anxiety. It induces an emotional sense of safety, connection, and high levels of social sensitivity.¹(see diagram on page 24).

The type of stress leading to burnout is chronic stress that evolves well past the “good stress” area where performance is increasing. It starts to devolve into the distress side of the above graph, where not only is human performance diminishing, it leads to fatigue, exhaustion, and eventually a total breakdown of the overall body. What causes chronic stress? Our reaction to “stressors” which are either actual or





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(Adapted from P. Nixon: Practitioner, 1979)

perceived threats that activate the stress/sympathetic nervous system response in the body. Essentially, it is anything you see, hear, smell, touch, taste, or imagine (memories) will do you harm. Stressors can be coming from outside or inside of you.

When we state we are “stressed” or feel “stress,” what does that mean? The feeling of “stress” is the neurological and physiological shift that happens in your body when you encounter a Stressor (discussed above). Essentially, the stress response is synonymous with stimulating the sympathetic nervous system, which is our flight, fight, freeze, faint, or fawn survival mechanism. And depending on the stressor, we may use a variety of these stressed manifestations to “survive” the stressor. This cascade of neurological and hormonal activity in the brain and nervous system initiate the following physiological changes to help you survive your sabre tooth tiger at-

tack/stressor: (1) Epinephrine pushes blood into muscles; (2) Glucocorticoids keep you moving (natural steroids, artificial versions – cortisone and prednisone); (3) Endorphins help you ignore how uncomfortable being “stressed” is; (4) Heart beats faster, blood pumps harder, blood pressure increases, and you breathe more quickly; (5) Muscles are activated and tense; (6) Sensitivity to pain diminishes; (7) Attention is alert and vigilant – focused on short-term, here and now; (8) Senses are ALL heightened; (9) Memory shifts to focus on experience/knowledge most relevant to current stressor; and (10) All other organ systems get deprioritized, including: digestion; immune function; growth; tissue repair and healing; and reproductive function.

However, just because you have dealt with the stressor does not mean you have dealt with the accumulated internal stress within the body.² Burnout occurs when the

body is stuck in a chronic stress/sympathetic nervous system reaction, never cycling through the parasympathetic system back to homeostasis. Homeostasis is when the biological systems maintain stability while continually adjusting to changing external conditions³ (see diagram below).

If you are wanting more clarity around how chronic stress/burnout wreak havoc on the body and mind (in addition to those I outlined earlier as my symptoms), I have included a non-exhaustive list below.

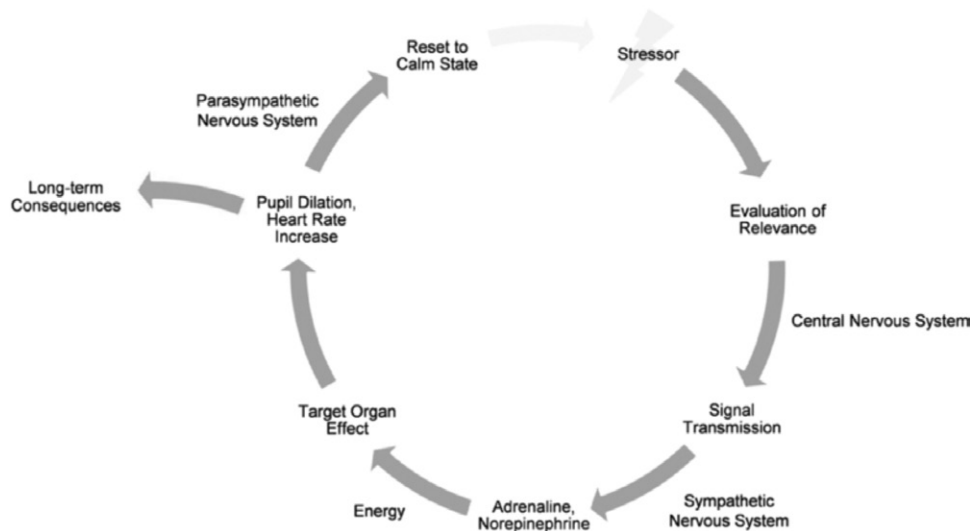
There are many negative **physical** effects of chronic stress/burnout, including: (1) Accelerates disease in our “weak areas”; (2) Mobilized energy to muscles causing muscular pain, tension and spasms; (3) Increases heart rate, narrows the arteries in the heart, and leads to cardiovascular disease; (4) Lowers metabolism; (5) Lowers immunity; (6) Decreases collagen, so skin loses its elasticity; (7) Headaches; and (8) Gastrointestinal effects.

There are many negative **mental** effects of chronic stress/burnout, including: (1) Damage to short-term memory because gray matter is reduced; (2) Unable to focus, looking for distractions; (3) Muddled thinking; (4) Impaired judgment; (5) Negative attitude; and (6) Highly reactive and emotional.

There are many negative **behavioral** effects of chronic stress/burnout, including: (1) Accident prone; (2) Loss of appetite or overeating; (3) Loss of sex drive; (4) Poor Coping Mechanisms Used – Drinking, Smoking, Disassociating with Social Media Scrolling or Binge-watching Netflix more to numb the pain/feelings; (5) Insomnia; (6) Restlessness; (7) Anxious; and (8) Depressed.

The most important aspect of this article is that there is hope to heal from burnout, and it is relatively simple to implement. Essentially, you must DO something to signal to your body that you are safe, so the nervous system can shift into the parasympathetic response where the body can rest, digest and heal. Your body can **ONLY** heal when it is in the relaxed parasympathetic state. Since the body stores stagnant energy and trauma,⁴ all of the accompanying stress hormones build up in the bloodstream and must be purged/released. Thus, most of us lawyers (and other stress humans) are walking around with decades of incomplete stress response cycles simmering away in our chemistry, just waiting for a chance to complete.

NOTE: It DOES NOT work to just tell yourself that everything is okay now. It is **NOT an intellectual decision**, it is a physiological shift. Thus, I offer you a few simple and fun mindful practices, which all embody three traits: (1) On Purpose; (2) In the Present Moment; and (3) Without Judgment. Since mindfulness both acts as a



brake for your sympathetic nervous system and triggers your parasympathetic nervous system, these practices will help complete the stress cycle and allow you to come back into homeostasis.

1. **Most Efficient Method is Physical Movement:** literally anything that moves the body enough to get you breathing deeply (ideally 20-60 mins/day). Movement tells your brain that you have successfully survived the threat and your body is safe. Two very simple practices you can do in your office setting include: (1) **Standing Tension Activation:** Take a deep breath, tense all muscles (hold tension for 20 seconds and your breath if you are able to), then shake it out with an exhalation out of the mouth; and (2) **Somatic Shaking:** Pick your favorite dance song. Plant two feet on ground, bonus if barefoot on earth, but keep feet grounded during entire practice. Start shaking entire body to the music. Ideally do this practice for 3-5 minutes every morning or after a stressful situation/event.
2. **Laughter:** find something or someone that makes you laugh and engage in a giggle as much and often as it is appropriate. This is a simple practice you can do in your office setting, ideally get others to join you: **Laughter Pose:** stand up and take a wide Stance; Inhale – Arms Up; Exhale – Arms Down, saying “HA” Once, twice, three times, etc. Every squat add another “HA” until you are organically laughing. I have been unable to get past 5 laugh squats without organically laughing.
3. **Deep, Slow Belly Breathing:** Many of us are shallowly breathing and using our secondary breathing muscles in the neck and upper back to breathe, when we should be using our diaphragm, which extends down to our abdominal cavity. Here are some office-friendly breathing practices: (1) **Simple Breath Awareness:** take 10 deep conscious breaths where you feel your belly extend on the inhalation and you gently pull your belly button to your spine on the exhalation (if you get distracted you can use some simple mantras inside your mind to help you focus: “Breathing In”/“Breathing Out”/“Thinking Again”); (2) **Lengthen Exhales by 2 counts:** Inhale 4, 5 or 6 counts; Exhale 6, 7 or 8 counts, respectively (complete 3 rounds); (3) **4-7-8 Breath Practice:** Inhale 4 counts; Hold breath 7 counts; Exhale 8 counts (complete 3 rounds); and (4)



5/5/10/5 Breath Practice: Inhale 5 counts; Hold breath 5 counts; Exhale 10 counts; Hold 5 counts (complete 3 rounds).

4. **Listening to Bird Songs:** Birds will not sing when there are predators around, so when they do sing it means no imminent danger is nearby. This connection to safety makes us feel relaxed and at peace. **Outdoor Practice:** Go out into nature and find a place to just be, sitting or standing, and listen for the birds.
5. **Hearing and Seeing Wood Fires:** Historically, fires have meant many things to humans, but safety from danger is the main attribute our nervous systems feel as fires keep both large and small predators away. Also, many times being around fires indicates social connection, warmth and the ability to obtain nutrition. All things that help us feel safe and grounded. So, make a fire and just observe the healing effects.
6. **Positive Social Interaction:** Casual, but friendly social interactions reassure the brain the world is a safe place and you can be safe when you are around others.
7. **Affection that Comes from a loving and beloved person or animal, where there is mutual like, respect and trust:** As mentioned above, oxytocin is a neurohormone that motivates us to either seek or receive help when we are under stress, and it physically counteracts negative stress hormones. Oxytocin is also anti-inflammatory, keeps blood vessels relaxed during stress, and helps the heart cells heal from stress-induced damage. Just as a side note, reducing inflammation is one of the most powerful ways to improve your overall wellbeing and health. New research has shown that Ozempic and other drugs like it may have something of a medical superpower: lowering inflammation in the body.⁵ These are some practices to help stimulate the release of oxytocin within you and the person you practice them with: (1) Six Second Kiss with intimate partner; (2) 20 Second Hug with someone you love and trust, both standing over your center of balance, supporting your own weight; (3) Show affection for a loved one or cuddle a pet (if you live with one); (4) Do something kind for a neighbor or stranger, even from a distance; or (5) Reach out for support, build and maintain social relationships - social media.
8. **Crying:** Listen to a sad song, watch a sad movie. There is a reason sad songs and movies are popular!
9. **Creative Expression:** Literary, visual, and performing arts of all kinds give us the change to move through big emotions and feel a release!

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I hope my experience of burnout and subsequent healing will prove to be helpful to the legal community. There is no shame in asking for help, and as you have learned, it actually decreases your overall stress hormone levels and can start the process of completing your stress cycle. I have personally found that the combination of the above mindful activities and working with my medical primary care physician, my professional supervisor and employer, physical therapy, chiropractic, acupuncture, Chinese herbs & supplements, and mental health therapy have all helped me feel better than I have felt in over 20 years! Now that I think about it, I have not felt this good since the year 2000, interestingly enough, right before I started law school. Thus, I am living proof that even when you hit rock bottom physically and mentally, there is hope for not only returning to equilibrium, but for me, exceeding my baseline wellbeing. And because I feel so amazing, I do not

plan on stopping any of my holistic practice. I do hope many of you will join me in the future on this path towards improving overall wellbeing, no matter where you land on the burnout continuum.

Samara D. Anderson, Esq. is a Technical Regulatory Compliance Advisor for the Department of Children and Families, a Registered 200-hour Yoga Medicine™ Yoga Teacher (completing her 500-hour certification), a Mindfulness Based Stress Reduction (MBSR) Teacher-in-Training, and a social entrepreneur teaching mindfulness to stressed professionals while creating a non-profit community farm in Vermont to use therapeutic animals, nature, and mindfulness to heal people. She also co-chairs the VBA Lawyer Well-Being Section. If you want to continue practicing mindfulness with Samara to continue to cultivate becoming a Super Lawyer or Super Hu-

man, there are many virtual and in-person options available: (1) join the VBA Mindful Moments for Lawyers that she teaches every other Tuesday at noon for 30 or 60 minutes (Note: not teaching in July and August); (2) Attend free 30 minute mindful sessions Samara teaches through the Agency of Human Services on Mondays and Tuesdays, 12-12:30 via Zoom (email to be added to the meeting notification samara.anderson@vermont.gov); or just contact for private 1:1 or group mindfulness instruction.

¹ A Novel Role of Oxytocin: Oxytocin-induced well-being in Humans, Etsuro Ito, Rei Shima, and Tohru Yoghioka, published online in *Biophys Physicobiol* (August 24, 2019).

² Adapted materials on healing from burnout from the book, *Burnout: The Secret to Unlocking the Stress Cycle*, Emily Nagoski and Amelia Nagoski (2019).

³ *Homestasis: The Underappreciated and Far Too Often Ignored Central Organizing Principle*

of Physiology, George E. Billman, appeared online in *Front Physiol* (March 10, 2020).

⁴ Two amazing resources for trauma and stress in the body are: (1) *The Body Keeps the Score: Brain, Mind, and Body in the Healing of Trauma*, Bessel Van Der Kolk, M.D.(2014); and (2) *When the Body Says No*, Gabor Mate (2003).

⁵ This research was discussed in *The Morning: The promise of Ozempic*, New York Times digital edition (June 24, 2024). "Inflammation is a key part of the body's defense system. When we sense a threat, such as one posed by a pathogen, our cells work to help us fight off the intruder. But chronic inflammation contributes to heart disease, lung disease, diabetes, and a host of other major illnesses. If new obesity drugs really do reduce inflammation, that could explain their effect across such a wide spectrum of diseases." Currently, the research has shown that these weight loss medications "target the areas of the brain that regulate appetite. But there are questions around what else the drugs do to the mind," as these drugs have been shown to curb other compulsive and potentially negative behaviors, like drug, smoking and gambling addictions. 🗣️



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Sell Out: The Other Side of Succession Planning for Law Firms

Most law firm succession planning programs (such as they are) resemble running out of gas in your car, as you're driving through the desert. That doesn't sound appealing, of course – but, the vast majority of attorneys looking to stop practicing, just decide to quit one day, and then look around, to see whether they can hand their law firm off to another attorney. Predictably, that usually goes poorly; and, the attorney seeking to dismount from the practice of law, has to take what she can get, or suck it up – and, keep practicing, until another alternative shows itself: if it ever does.

Even if you've been spending time preparing a pathway for the transition of the law firm you own, in a traditional way – that's mostly an exercise in logistics. You've got a backup attorney, or an associate attorney, who can sub in for you, when you're on vacation, or who could potentially take over the entire business. You've got an office space; and, you've got the right staff in place. But, in many cases, law firm systems are lacking, and the marketing processes are less than top shelf. That means that, although you've primed your firm to be passed on, you haven't really focused on turning your law practice into an asset – that could be sold, for top dollar. To extend the prior analogy, that's like driving a fueled-up vehicle across the desert, safely – only to then get back home, to try to sell it to someone, just to realize that your car is still a piece of crap: just one with gas in it.

So, the question becomes – Can you transition a law firm effectively, while also selling it for its highest price? The answer is 'yes'. You can transform your law firm from a Yugo into a Porsche.

Here's how:

Develop & Maintain Turnkey Processes. What's true of pretty much every other business is also true of law firms – utilizing turnkey processes, that can immediately be adopted, with ease, by a new owner, makes your business more valuable. One of the reasons McDonald's became such a valuable property – though it's certainly not the *only* reason – is that the brothers who founded the restaurant basically invented fast food, by creating processes around every single thing they did in their restaurants. That was massively appealing to savvy buyer, Ray Kroc. Of course, you're not inventing law practice, here; but, you can distill down the various workflows in your

law firm (for case management, for intake, for marketing, etc.), to make those accessible to anyone who would step into your shoes. The best news is that it's so much easier to manage processes using modern software; and, the better news is that many processes can be automated using machine learning and artificial intelligence. That's about as turnkey as it gets.

Use a Brand Name. Speaking of Ray Kroc – he knew that the McDonald's name (that was the real last name of the brothers who founded the restaurant, by the way) was far better suited for selling hamburgers than his own. Would you buy food from a place called Kroc's? It's much the same way with law firms, only worse – because law firms are service businesses, mostly reliant on word-of-mouth referrals; that means that the name of the founder/owner is maybe the most valuable thing you can sell in a law practice. The big issue is that, as soon as the business is sold, the founder moves on – whether right away, or over time – but, either way: everybody knows it's over for that named attorney; so, it's *really* tough to transfer those personal relationships. So, while it may seem counterintuitive, the best strategy for a long-term sales proposition, is to actually *devalue* the name partners' names, and focus on building up a brand, that can outlive their business careers, and which is also more easily transferable to someone with a different name.

Pay for Advertising. Most law firms rely entirely on in-person networking for generating new business; as alluded to above, that's not really something you can transfer to a new owner, with any degree of reliability. But, you know what you can transition effectively: a paid advertising campaign, run by a reputable digital marketing agency – yup, you can literally just hand that over, and it will keep operating successfully, like you never left. Of course, this is something of a subset of the notion of relying on turnkey processes in increasing the value of your law firm, and is supplemented by other workflows you would develop, like an effective intake process.

Revise Your Pricing Strategy. One of the reasons that technology companies are far more valuable than law firms (other than the fact that they're not service businesses), is that their pricing model is really sticky –

that's because they run on subscription services. You know them; you hate them; yet – you can't cancel them. Lots more attorneys are adding subscription options, to increase the value of their law firms. But, you could also offer flat fees, or sell products out of a legal practice. Consumers know that hourly billing promotes inefficiency; and, in my experience, law firms that wean themselves off of hourly fees, actually make *more* money. Now, you don't have to switch your *entire* business model; but, the more you can sprinkle in alternative pricing models, the more valuable a law firm you'll own.

Court Multiple Buyers. Most attorneys set up a situation in which they will transfer their law firms to a trusted associate or colleague; and, they just pass over the business, in return for a declining revenue percentage, over a term of years – probably because that option involves the least hassle. But, if you were selling your home, would you only invite one buyer in to look at? Of course not! You would want a maximum number of potential buyers in place, to drive up the cost of the asset. So, you should use the same model, when selling your law firm. Also, if you wait long enough, and alternative business structures for law firms comes to Vermont – well, then: you might even sell to a tech company.

...

The thing is: lawyers spend their entire careers wringing their hands over revenue – there's never enough, and they're always trying to make more. Yet, when it comes to selling the law firms those same attorneys have spent years and years building up – they're willing to dispose of them for a song. It doesn't make any sense. So, lean into building your law firm into the most valuable asset you have for your retirement – when you'll need the money the most.


And, while this might be viewed as simply the maximizing of value for departing lawyers – there are also significant advantages for buyers, who inherit 'turnkey' law firms, in that those businesses will tend to generate more revenue for them, as well, over the course of time; and, that's because the buyers are not wasting time building systems from scratch. But, one thing that is becoming clear, in many jurisdictions (including Vermont – which supports a 'graying bar'), is that the supply is likely to out-

strip the demand. In other words, there are far more senior attorneys, than junior attorneys. Given that scarcity problem, for senior lawyers, the best plan would be to hitch your wagon to a junior lawyer, as soon as possible – so, that you can work *together*, to build the *most* viable law firm, with a ready-made hand-off in place, for turning things over to the next generation. Given that logical position, it's perhaps surprising, then, that, in Bar President Judith Dillon's recent column in the Vermont Bar Journal, she shared statistics indicating that fully 65% of senior lawyers would not be willing to, or were unsure whether they would be willing to, mentor a young lawyer. That smacks of a missed opportunity.

Put another way, it can be a competitive advantage, for those senior lawyers, who take up a mentoring role – because those attorneys will be better suited to execute a transition plan, over time.

And, it's not simply about the money – there is an inherent social value for senior lawyers, in assisting the next generation of attorneys, to get a leg up. Not only that – but, increasing the number of viable law firms in an underserved community is a social good, unto itself.

Jared D. Correia, Esq. is a former practicing lawyer, who has been a business management consultant, exclusively for law firms, since 2008. In that time, Correia

has worked with thousands of law firms, all over the world, ranging in size from solo offices to Big Law firms. He is an internationally recognized legal technology expert. Correia is the founder and CEO of [Red Cave Law Firm Consulting](#), which offers services directly to lawyers, as well as through bar associations, for member attorneys. Correia has been the host of the [Legal Toolkit podcast](#) on [Legal Talk Network](#), since 2009. He is also the host of the [NonEventcast podcast](#) for [Above the Law](#), as well as a frequent contributor to its [NonEvent legal technology hub](#). Correia is a regular presenter for legal organizations and writes often for law firm business management publications. 

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Maya Tsukazaki: My Work as the 2022-24 Vermont Poverty Law Fellow

Opening Doors: Working with Noncitizens in Vermont

The Poverty Law Fellowship is a project of the Vermont Bar Foundation. The fellowship extends two years of support to exceptional young attorneys devoted to enhancing legal access for marginalized Vermonters. The Fellowship, which began in 2008, has been made possible by contributions to the VBF from law firms, individuals, businesses, and organizations. Maya Tsukazaki is the eighth attorney to be awarded a fellowship. Maya's fellowship is focused on access to justice for noncitizen Vermonters.

"Does this mean I can go to college now?" This was the first question that Daniel (name changed for anonymity) asked me when we received the exciting news that his petition for Special Immigrant Juvenile Status had been approved, and he could soon obtain his first social security card and work permit. In my two years as Vermont Poverty Law Fellow, nearly every client I have worked with has asked me some version of this at some point in my representation: "Can I get my own apartment now?" "Could I go to driver's education?" "Will this allow me to finally visit my family?" "Can I now work wherever I want to work?"

Sometimes, even very limited legal intervention can mean the difference between deportation or remaining safe in the United States with family and community. However, obtaining immigration status without an attorney is almost impossible in the current immigration system, particularly considering the narrow and stringent pathways to successful obtaining immigration relief. For those who are eligible for one of the limited immigration pathways that currently exist, like Daniel, obtaining status is not only protection from deportation, but also often the doorway to many other ancillary benefits that many U.S. citizens take for granted.

On June 14, 2024, I helped co-organize a symposium at the Vermont Law and Graduate School campus on serving asylum seekers in Vermont, which had nearly 400 attendees in-person and virtually, demonstrating how many Vermonters are dedicated to working with and lifting up migrant Vermonters. I was also heartened by the passage of the education equity bill Act 163 this legislative session, which was championed by a diverse group of orga-

nizations and advocates, including myself, led by Migrant Justice. There are many more ongoing efforts in various sectors to make Vermont a safer and more welcoming place for noncitizens, including establishing an Office of "New Americans," universal representation for Vermont residents facing risk of deportation, or the effort this past legislative session to make "immigration status" a protected class in the Vermont Fair Housing Act.

However, there is a lot left to be done before there is equitable access to justice for noncitizens in Vermont. In particular, the work of the Center for Justice Reform Clinic, where I have been working over the past two years, will continue and adapt as we see criminalization of immigration increase. Some may know that a large swath of Vermont falls under the jurisdiction of Customs and Border Protection (CBP). I worked with several clients (and organizers) to successfully see their immigration court cases terminated years after CBP arrested and detained them for seemingly nothing more than driving as a Latinx person in Vermont. Still, it was upsetting to learn of multiple clients and community members stopped and arrested by CBP over the past two years – some of whom were subsequently detained or deported. And while Vermont's Fair and Impartial Policing Policy was recently strengthened, loopholes remain that will inevitably put future noncitizen Vermonters at risk. As there is no right to government-appointed counsel in immigration court, with a changing political tide, more attorneys are certainly needed to defend Vermonters against the imminent risk of deportation.

As I conclude my fellowship, I am very thankful for the opportunities to work with other groups across Vermont, including new organizations like Vermont Asylum Assistance Project, mutual aid efforts like the VT-NH Asylum Support Networks, and particularly, the vital and resilient advocacy of Migrant Justice and its membership. For Daniel, for the client who was a 40-year Vermont resident, for the clients recently fled threats and torture in their home country, this work is only possible when impacted individuals and community partners work together.

My work, as well as nearly every legal services organization in Vermont, is only possible with the support of the Vermont Bar Foundation. Thank you to the Bar for



your continued support of access to justice by supporting the Vermont Bar Foundation and the Poverty Law Fellowship.

Maya Tsukazaki (she/her), originally from Washington State, is a graduate of American University Washington College of Law. She also holds an M.A. in International Affairs: Post-Conflict Transitions from American University. She has represented non-citizens before state courts, immigration courts, administrative agencies, the Board of Immigration Appeals, and the Fourth Circuit Court of Appeals. At the conclusion of her Poverty Law Fellowship at the Center for Justice Reform Clinic, Maya will be relocating with her husband to Salt Lake City to serve as the inaugural Unaccompanied Minors Immigration Attorney at Catholic Community Services of Utah. 🇺🇸



Five Ways to Get More From Your Mediations

1. Think broadly about interests, not just legal positions

In most cases, litigation is a binary process that produces a winner and a loser. Many advocates think of settlement negotiations the same way. But this view is far too narrow. It is much easier to settle a case if you can create value before trying to claim value.

For example, in an easement dispute that could go either way, a proposal that the parties split the difference between their positions may make sense from a legal perspective. But a proposal focused on the interests of the parties – a broader and more usable easement for the plaintiff in exchange for a land swap to allow the defendant to expand their garage – could create substantial value for both parties. Mediation lets parties create value by going beyond the outcomes litigation can offer, but only if the parties, and their counsel, think broadly about their interests and not just what they could win or lose in court.

2. Empower clients

Empowering clients to participate in a mediation can unlock tremendous value. First, research shows that having an opportunity to be heard and understood goes a long way towards resolving disputes.¹ If your client cannot share their experience, they may find it very difficult to move forward.

Second, parties to a conflict come to a mediation carrying the experience and negativity of that conflict. A growing body of research shows that how people feel directly impacts their flexibility, creativity, and performance. People primed to feel amusement or contentment, for example, can think of a larger and wider array of thoughts and ideas than individuals primed to feel anxiety or anger.² In another study, doctors given candy correctly diagnosed a condition based on a standardized fact pattern nearly twice as fast as a control group and were far less likely to anchor on initial incorrect diagnoses.³ Clients empowered to express themselves, and set down some of the weight they have been carrying, can often think far more creatively and flexibly about potential solutions going forward.

Third, the interests and goals of the parties are a critical feature in any mediation. Lawyers cannot possibly know everything about their clients' interests and parties can often create significant value for each other by thinking creatively. Businesses engaged in a commercial dispute, for example, may be unable to agree on a cash payment to

resolve a dispute, but be able to agree on a payment in kind that both find more favorable based on their relative expertise and needs.

3. Make sure you have enough information before the session

Having enough information to meaningfully evaluate a case is critical. On the other hand, one of the major benefits of settling a case is avoiding the tremendous costs and delays associated with discovery generally. Good advocates can benefit substantially by identifying the key issues in each case, and making sure they have enough information to evaluate those issues before the mediation, without also needing to fully grind through discovery about everything else.

4. Know both parties' best alternative to a negotiated agreement

A good advocate can also get substantially more from their mediations by thoughtfully exploring the universe of potential outcomes if the case does not settle before the mediation session. This type of assessment is most powerful when it is comprehensive. A good assessment should cover the range and likelihood of potential outcomes, how well they would serve the interests of each party, the time and cost to get to each potential outcome, and whether the parties have any goals they cannot accomplish through litigation alone. At best, completing this process can allow a well-prepared advocate to create value by helping parties accomplish goals they cannot through litigation alone. At worst, it can help counsel advise clients when it makes sense to walk away from a potential deal.

5. Choose a mediator thoughtfully

Does your case require a more facilitative approach with a mediator who can help the parties feel heard and understood and encourage parties to think creatively about potential solutions? Does it require a heavier dose of evaluation with a mediator who can deeply analyze the case and help the parties assess their risks and opportunities? Will the mediator you are considering follow-up as much as may be necessary after the session? Does the mediator you are considering have the necessary background to learn your case? Each of these factors can be significant in any particular case.

The District of Vermont has published data through 2016 for more than 2000 cas-

es tracked through its Early Neutral Evaluation program. Approximately 45% of the cases tracked were settled at the scheduled session.⁴ The overall average for panelists receiving more than 50 tracked cases was higher at 50.7%.⁵ But both figures are meaningfully lower than the 70 to 80% rates local and national data suggest mediators can reach.⁶ In short, the available data suggests that experience alone is not necessarily a strong proxy for efficacy and that mediators who employ best practices across multiple areas can add real value and help parties resolve matters.

David Boyd is a shareholder at Gravel & Shea PC. He has been mediating cases as an advocate for more than 15 years and opened his mediation practice after attending the weeklong Mediation Intensive Program offered by the Program on Negotiation at Harvard Law. His complete biography is available here: <https://gravelshea.com/team/david-a-boyd/>

¹ David A. Hoffman, *Mediation: A Practice Guide for Mediators, Lawyers, and Other Professionals*, 1-23 (Massachusetts Continuing Legal Education 2013) (“Social scientists have found that successful dispute resolution in many cultures requiring an airing of the grievance by the grievant in order for the parties to put the matter behind them.”)

² Shawn Achor, *The Happiness Advantage*, 44 (Currency 2010).

³ *Id.* at 47.

⁴ Historical reports through 2016 are available at <https://www.vtd.uscourts.gov/early-neutral-evaluation-ene>. As of the date of the 2016 report, 2127 cases had gone to a session and 955 had settled in whole or in part. United States District Court, District of Vermont, Early Neutral Evaluation Program 2016 Annual Report (the “2016 Report”), Appendix 1; <https://www.vtd.uscourts.gov/sites/vtd/files/2016%20Annual%20Report%20Final.pdf>.

⁵ The 2016 report lists 16 mediators with 50 or more assigned cases and they collectively settled 648 of the 1279 cases that went to session, for an overall average of 50.7%. 2016 Report, Appendix 1; <https://www.vtd.uscourts.gov/sites/vtd/files/2016%20Annual%20Report%20Final.pdf>.

⁶ See, e.g. Hoffman, *Mediation*, 1-18 (“National figures indicate a success rate for mediation of approximately 80 percent”); J.M. Brett et al, *Effectiveness of Mediation: An Independent Analysis of Cases Handled by Four Major Service Providers*, *Negotiation Journal* Vol. 12, Issue 3, Annotation (1996) (calculating that mediation “was capable of settling 78% of cases” based on a review of 449 cases by four major ADR providers); State Bar of Michigan, *Alternative Dispute Resolution Section, Mediation Works!*; <https://connect.michbar.org/adr/home/mediationworks> (estimating that “nearly 70% of all cases sent to mediation result in settlements that day”); 2016 Report, Appendix 1; <https://www.vtd.uscourts.gov/sites/vtd/files/2016%20Annual%20Report%20Final.pdf> (listing two panelists that had completed more than 10 sessions with settlement rates in excess of 70%).

Law in the Public Interest: Meet Robert Depper, Esq.

Robert Depper, General Counsel at the Vermont Department of Labor, took the long road to the Green Mountain State from his origins in the southern deltas of Arkansas. Depper started his job at the DOL in April 2022.

Doug Keehn, Co-Chair of the Vermont Bar Association's Government and Non-profit Division, spoke with Depper about the kinds of experiences and influences that bring skilled public interest attorneys, from all places and backgrounds, to practice in Vermont.

DK: First, a belated welcome to Vermont, and to Vermont public interest legal practice. Did you begin your career as a public interest attorney?

Depper: Thank you, and it depends on what you mean. I was doing public interest work, certainly, before entering the legal profession or running my own practice. It turned out to be just a matter of time before my legal career became fully public interest.

DK: A lane-merge from private practice into public interest law is increasingly common. In your case, what was the appeal?

Depper: Not the money, of course. But as many people in our sector will tell you, money isn't the only compensation. One of the most important early lessons I learned was how many of the things that we need most can't be bought. You have to find them. Wise choice of place, community, and career can get you the most important things in life, things that a paycheck can't.

DK: How did you first learn that lesson?

Depper: To some degree, I was raised with it. My family went back a long way in a small delta town of El Dorado, Arkansas, with attorneys going back several generations. We're liberal Democrats in a very "red" place. But I was taught that the quality of your word, and your credibility, transcends labels. That was the foundation of my concept of community, not just of profession.

DK: Did that principle bear out?

Depper: Universally. I served in the Peace Corps from '01 through '03, in Uzbekistan and Armenia. Even across differences in cultures and lived experiences, I saw that relationship quality is essential to quality of life. Integrity, empathy – these



Welcome to Vermont! Judge Daniel Richardson handles swearing-in duties.

ethics pay off everywhere. They can't be bought; they can't be substituted. And if you sacrifice them, they are very hard to replace.

DK: Are there other lessons from Peace Corps service that you've carried into your legal career?

Depper: More than I can list. Serving in partnership with host country nationals exposed me to the complexities of community service. Metrics alone don't work. For example, whether or not that agricultural well gets built, all is in vain if you don't develop goodwill along the way. You have to spend the time, invest in genuine relationships, to understand and meet the broader interests that that well has to serve. Otherwise, all you've done is dig a hole. Figuratively, as well as literally.

DK: Were those the experiences that led you into a legal career?

Depper: Not alone. Education was a big factor, too. And exposure to diverse people and ideas. At the University of Arkansas my peer group was highly varied, friends

I'd describe as aficionados – not just representatives – of different cultures. For example, anthropology taught me that humans make meaning and mediate their relationships with one another and the world through culture. I found critical race theory's insight that lawmakers tend to make laws that favor their identities, whether intentionally or not, profound and observably true. If the legal process doesn't involve everyone, the structures that emerge won't serve everyone. Law is a reflection of the culture that creates it.

DK: Would you say your path into the law was ideal-driven, then?

Depper: Well, ideals, but also personality. I learned that I am constitutionally incapable of not pointing out where something's not working. I realized I can't just theorize; I like being in the gears, in the guts. A legal profession became the obvious path.

DK: A lot of law students, particularly those motivated by public interest values,

find law school a shock to the ideals. Did you experience anything like that?

Depper: I was lucky to avoid that. It helped to stay nonconventional, to step out of central casting. I joined the Journal of Islamic Law and Culture. That really went against the grain in the early 2000's. I clerked and helped to edit an international law dictionary. I became a licensed solicitor in England and Wales. Good legal education isn't indoctrination, so much as a conscious integration of tools.

DK: So how did private practice draw on that approach?

Depper: After law school I practiced with a local firm, and then ran my own firm, for eleven years. One advantage to starting out in local private practice is you're a citizen first, a member of the community, who just happens to practice the law. And if you take that role seriously, a certain degree of your expression will be protest. Citizen protest is very important. Attorneys, in particular, need to test and learn the bounds of what government can do in the public interest. We need to understand it as resident-participants first, before we go sticking our hands in the gears.

DK: Sounds very Lincoln-esque.

Depper: [Laughs.] And Jeffersonian.

DK: So you reached the public interest legal community, but why the Vermont public interest legal community?

Depper: Believe it or not, that was not deliberate. My wife really likes the east coast, New England in particular. But she is

also my best career advisor. She urged me to look for regional work I would love and be good at. I had worked with the Department of Human Services in Arkansas. Public counsel aren't just courtroom advocates, they're also involved with legislation, lobbying, litigation, training, policymaking. So when the Department of Labor was looking for counsel, it immediately caught my eye. And as soon as I met with my now-colleagues, for my part anyway, the choice was made.

DK: Were there any difficulties making the transition to Vermont?

Depper: Professionally? Not at all. The law is not the complicated issue. You have to understand people. If you really enjoy the law, if you enjoy what it's trying to do, then you can get dropped anywhere. As long as you care about the people you serve.

DK: How about personally? Has your family encountered any native skepticism toward "flatlanders"?

Depper: Same answer, really. Vermonters know if you're here for real, or if you're treating their home like a second home. One of the things that struck me first about Vermont is the genuineness. Vermonters are invested in each other. Get three Vermonters together, and they're forming a committee to improve something. That respect, negotiating with your neighbors, getting involved with a capital "I," is what struck us most.

DK: And do you see any similarities in Vermont to other places you've lived?

Depper: That's maybe drifting into constructive criticism. I see some of the same difficulties that I saw in Arkansas. Putting ideology above ethics. In Arkansas, most of the extremism is sucked up by the Right. Aspirational ideas and energy are critical for progress, but ideology can be used to excuse certain ends irrespective of the cost to the community. The Left can make that mistake, too.

DK: How so?

Depper: By forgetting that we live together. I've learned that we can change unjust structures, and that structures are made of relationships. They're never perfect, but they can be improved. Instead, if you shortcut around genuine relationships, you just wind up with different unjust structures. I worry that the rest of the country won't re-learn that lesson in time to avoid serious societal damage. But it's not too late here. We have all the tools. Community, like the law, isn't indoctrination – it's a conscious integration of tools.

Assistant Attorney General Douglas Keehn is Co-Chair of the VBA's Government and Non-Profit Division, with Co-Chair and fellow Assistant Attorney General Ryan Kane. Keehn is a graduate of UC Santa Cruz, UCLA School of Law, and the UCLA Public Interest Law and Policy Program. He works to protect Vermont's public health care programs and beneficiaries through the Attorney General's Medicaid Fraud and Residential Abuse Unit.



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Modernizing Family Law in Vermont: The Argument for Adopting the Uniform Family Law Arbitration Act

I. Introduction

The Family Law Arbitration Act (FLAA) is the result of three years of dedicated work by the Uniform Law Commission (ULC), reflecting one of their longer drafting efforts. In creating this Act, the ULC consulted judges, lawyers, and the ABA Commission on Domestic and Sexual Violence. The FLAA introduces a new framework for arbitration in family law matters, tailored to meet the needs of separating or divorcing couples and families. Most importantly, the FLAA incorporates the critical oversight role of the Court as *parens patriae* in child-related matters.

The FLAA introduces a versatile dispute resolution process that could revolutionize the way pre-decree and post-decree matters are handled in Vermont. It offers a private, time-saving, and cost-effective alternative that could significantly ease our crowded court dockets and strained budgets. For lawyers it adds a powerful tool to their toolbox, enhancing their ability to serve clients with a modern, effective alternative to traditional dispute resolution methods.

II. The Need for a Specialized Form of Arbitration in Family Law Cases

There are nearly 8,000 total domestic actions filed on average each year in Vermont.¹ Making matters more difficult, some counties still have a backlog of cases from COVID. Non-emergency domestic cases do not have priority on court dockets. In many of these domestic cases, parties are unable to agree on issues pertaining to pre-marital agreements, property, and financial matters. It can take 18 months or longer to resolve cases involving children and children's issues including parental rights and responsibilities, and child support. If Vermont adopted the FLAA and even some of these litigants moved their unresolved issues to arbitration, it would help clear court dockets so that remaining domestic cases could move through the system more quickly.

What's more, the traditional court process was not designed with the needs of families in mind. The prospect of litigation can be overwhelming for people navigating what is likely one of the most difficult periods of their lives. Avoiding court, along with its accompanying anxiety, expense, and uncertainty has long been the preferred path for

both attorneys and their clients in family law matters.

Alternative Dispute Resolution (ADR) methods have gained popularity in family law, with negotiation and mediation as the two primary methods. Negotiation, whether engaged in directly by the divorcing couple at their own kitchen table, conducted by the attorneys on behalf of the couple, or through face-to-face negotiations between the parties and their respective attorneys, is the most traditional ADR method.

Mediation is frequently the next step when negotiation fails. Many couples start out in mediation and can fully resolve their case without engaging attorneys at all if they so choose. Mediation is a process in which the parties engage a neutral third-party whose role is to achieve a mutually agreeable solution in a safe and confidential environment. The mediator helps the parties express their needs and interests, generate options, and offer possible solutions. In some cases, the mediator may assist the parties in reaching a resolution by helping each side craft reasonable offers, present those offers to the other party, and engage in a back and forth until a final agreement is reached. The goal of mediation is to resolve disputes quickly and satisfactorily without the expense, delay, and anxiety of litigation. The mediator, however, has no power to impose a resolution.

Because some 90% of cases settle via mediation, many jurisdictions across the country now require a good faith attempt at mediation before allowing litigants their day in court. Pursuant to V.R.F.P. 18, judges in Vermont may order the parties to participate in mediation if the court determines that the issue(s) could be resolved in mediation. Rule 18 further provides that the court should not order mediation if there are allegations of abuse, if a relief-from-abuse action is pending, or if there is a final Relief From Abuse (RFA) order in effect. Rule 18 does allow for mediation to be waived when the parties themselves certify that they have already attempted mediation and have provided the court with a report of the mediation. Judges in Vermont tend to steer pending cases to mediation whenever possible.

Mediation is not a panacea. It does not always succeed and is not always appropriate. Mediation may yield a less favorable outcome, particularly for women. Studies have shown that women score higher on

agreeableness than men.² This attribute, which may have its origin in socialization, may cause women to be more inclined to compromise. In their efforts to resolve the case, mediators and/or attorneys may pressure the party that seems more accommodating, compliant, and willing to make larger concessions. Even if this pressure is unconscious and unintentional, it can lead to an agreement that disproportionately favors one party, resulting in a suboptimal long-term solution. Beyond the risk of unfair outcomes, mediation cannot resolve all cases. If it fails, the parties will need to litigate the unresolved issues in court.

Enter arbitration. Arbitration can occur after mediation fails or in lieu of mediation. Vermont's existing Arbitration Act (VAA)³ was enacted primarily to resolve commercial or civil matters and does not well accommodate the special needs of family law cases. It is, therefore, seldom employed by family law practitioners. The VAA does not require the arbitrator to follow Vermont's substantive law regarding marital property, pre- or post-marital agreements, cohabitation agreements, spousal support, or the best interests of the child in decisions on parental rights and responsibilities. This means that arbitrators are not bound to apply the established legal standards and principles that are designed to protect the parties and children involved in family law disputes. Arbitrators may employ their own ideas of equity, which can lead to outcomes that may not align with the parties' expectations based on Vermont's family law. This potential for variance underscores the importance of carefully considering whether arbitration under the framework of the existing VAA is appropriate for resolving family law issues.

III. Key features and Benefits of the FLAA

The ULC recognized the need for a separate uniform act related to the arbitration of family law matters. During the drafting of the FLAA, the Commissioners agreed that the act would need to directly tie into individual state substantive family law. This is the FLAA's primary distinguishing feature. If Vermont adopts the FLAA, an arbitrator would be required to apply Vermont law in deciding family law issues.

The FLAA also requires the arbitrator's final decision to include specific findings of

fact. It is also subject to confirmation by the court. The court must determine whether the arbitrator's award complies with state law and is in the best interest of the child. Importantly, the arbitrator is not permitted to issue an order regarding status; only the court has the power to issue a divorce decree, terminate parental rights, grant an adoption or guardianship, and determine other status relationships.

The FLAA includes the following additional key features and benefits:

Agreement to Arbitrate

Arbitration under FLAA is voluntary. The agreement to arbitrate must, however, be in writing, and must identify the issues to be arbitrated. It then becomes an enforceable contract, subject only to traditional contract defenses (i.e., fraud, duress, lack of capacity). Either party may petition the court to enforce it.

A unique feature of the FLAA is that while the parties can agree in advance to submit issues to arbitration, including child-related disputes, the agreement to arbitrate such child-related disputes must be re-affirmed or agreed to at the time the dispute arises.⁴ For example, the parties can agree in a pre-marital agreement to submit all issues to arbitration at the time of divorce. However, if at the time of divorce, they are unable to reach an agreement on custody or visitation, they must re-affirm the agreement to resolve their parenting dispute through arbitration. This provides ample protection for a party to opt-out of arbitration of a child-related dispute if at the time the dispute arises they believe the traditional court process is the better forum. Thus, they do not remain locked into arbitration either pre- or post-decree. An arbitration award on child-related issues is never a final order in any event, because such orders can be modified until the child reaches adulthood.

Choice of Arbitrator

The FLAA recognizes that decisions involving families and children often require an arbitrator with specialized training. Under the FLAA, an arbitrator must be a lawyer admitted to practice, a judge or retired judge, or a licensed professional in a relevant field (i.e., child and family therapist, social worker, Ph.D. in applied psychology).⁵ Further, the FLAA specifies that the arbitrator must have training in domestic violence and child abuse. Presumably, if the parties select a judge, retired judge, or a practicing lawyer, they will seek those who have considerable experience and an ongoing interest in family law.

That said, the FLAA allows the parties to waive the specialized requirements and instead employ an arbitrator who possesses alternative experience or qualifications. If an arbitrator is not specified at the time the

parties enter into the agreement, they can specify a process by which the arbitrator will be selected.⁶

Flexibility of the Process, Timing, and Location

Another key benefit of the FLAA is flexibility. For example, the Act allows for parties to engage in a mediation/arbitration hybrid process, whereby first they attempt to resolve their issues via mediation, and then, if mediation fails, the matter is submitted to binding arbitration. The parties could choose one person to function in both roles, which has the added benefit of getting to a final decision more quickly. Or, they could agree to retain two separate professionals, one to act as mediator, and one to arbitrate if mediation fails to resolve the dispute.

One of the most frustrating aspects of traditional litigation is getting firm dates for court hearings. The possibility always exists that the date will be postponed or interrupted by other matters on the court's docket. Complex cases that require multiple days of hearings may be scheduled over the course of months. Divorcing couples may still have to wait an additional number of weeks or months after the hearing has concluded for the court to render a final decision, which is then subject to appeal. In contrast, the arbitrator's final decision is not appealable (save for correction by the arbitrator due to evident mistake or mathematical miscalculation). It is subject only to confirmation by the Court. Once confirmed, an award is then enforceable as a judgment.

With arbitration, hearings may be scheduled during the evening or over the weekend as suits the parties and the arbitrator. This is obviously hugely beneficial to parties with inflexible work schedules or childcare challenges. Moreover, before the agreement to arbitrate is finalized, the arbitrator must disclose any barriers that might prevent them from being able to issue a timely award, allowing the parties to select a different arbitrator if necessary.

Hearings can be formal or informal, depending upon the arbitrator's process or the process agreed upon by the parties. They can be held in a conference room or office, which may help to further reduce the parties' anxiety. An arbitration hearing need not be recorded, unless the issue concerns a child-related dispute. In that event, the arbitrator is required to cause a verbatim record of the proceedings to be made.⁷ The making of a record is now easily accomplished through use of various technologies and without the additional cost of a court reporter.

Reduced Financial and Emotional Costs

As with other forms of alternative dispute resolution, the parties share the associated costs of the arbitration. Under the FLAA,

the arbitrator has the authority to allocate arbitration fees and other expenses between the parties. This is an important consideration that attorneys will want to discuss with clients prior to entering into an arbitration agreement. Of course, the swiftness possible with arbitration can reduce legal fees considerably. For cases that, due to their complexity, are scheduled for multiple days of hearings over the course of several months, lawyers must prepare and re-prepare prior to each court date. This repetitive preparation can drive up costs, making arbitration a more economical option. In cases involving children, timely resolution is crucial because young lives are at stake, so attorneys should weigh the financial costs of arbitration against the personal costs of delays in court schedules. Parties may also decide that the presence of their attorneys is not necessary, especially for minor and recurring post-decree parenting issues, and especially if the arbitrator conducts such hearings informally.

FLAA Domestic Violence and Child Abuse

If a party is subject to an RFA order, or the arbitrator believes that a party's safety or ability to participate is at risk, the arbitrator must stay the proceedings and refer the parties to court. This intervention allows a judge to ascertain whether there are reasonable procedures in place to protect a party from harm and perhaps to issue a RFA order if necessary. The arbitration may not continue until the party at risk affirms the arbitration agreement in a record and the court determines there are reasonable protections in place to protect the party from risk of harm.

The FLAA also requires the arbitrator to be alert to issues of child abuse or neglect. If the arbitrator believes that a child is abused or neglected, the arbitration must be terminated, and the arbitrator is required to report such abuse or neglect to Vermont's Family Services Division.⁸

One unique aspect of the FLAA is that it allows a party to bring a support person to the arbitration. This provision was included, in part, to ensure that a victim of domestic violence can bring a person of their choosing to give them the confidence to appear. The support person, however, cannot be a witness or act as an advocate.⁹

IV: Other States Have Successfully Enacted the FLAA

Interest in arbitration for family law cases has grown across the country and continues to grow. Even before the promulgation of the FLAA many states recognized the need for and have already enacted state-specific legislation to address arbitration in family law disputes. While the statutes vary, there is a growing body of case law regarding ar-

bitration in family law matters.

The Uniform Law Commission draws from the experience of these states, as is evident in the final draft of the FLAA. To date, Washington, Montana, North Dakota, Pennsylvania, Arizona, Washington, DC, and Hawaii have enacted the FLAA. The Act has been introduced in Kansas. Adoption of the FLAA would be a step towards more efficient, effective, and cost-effective resolutions of family disputes in Vermont.

V. Conclusion

If Vermont adopts the FLAA, family law attorneys should understand the particulars of the Act and be able to explain how arbitration works to their clients. They should discuss whether arbitration would be an appropriate method for resolving their current or potential future disputes to assist their clients in making this decision, as they already do with other forms of alternative dispute resolution.

The FLAA is an important step towards improved family law dispute resolution for the following reasons:

1. It will reduce court backlogs, freeing up valuable time for other family law cases.
2. It will establish safeguards for the arbitration process in family law matters by incorporating Vermont substantive law. At present, arbitrators in Vermont are not required to follow Vermont substantive law, and there is no assurance that arbitration is an intentional and sound process.
3. It will make arbitration a more accessible and reliable tool for reducing stress, anxiety, and other emotional and financial costs.

Margaret Olnek is an Assistant Professor of Law at Vermont Law and Graduate School where she teaches family law and professional responsibility. She is a certified divorce coach and a litigator with more than twenty years of experience. She is admitted in Colorado and Vermont.

¹ <https://www.vermontjudiciary.org/about-vermont-judiciary/court-statistics-and-reports>

² Costa, P. T., Jr., Terracciano, A., & McCrae, R. R. (2001). Gender differences in personality traits across cultures: Robust and surprising findings. *Journal of Personality and Social Psychology*, 81(2), 322–331. <https://doi.org/10.1037/0022-3514.81.2.322>

³ 12 VSA § 5651 et. seq.

⁴ Section 5(c), Uniform Family Arbitration Act

⁵ Section 8(a), Uniform Family Arbitration Act

⁶ Section 8(b), Uniform Family Arbitration Act

⁷ Section 14, Uniform Family Arbitration Act

⁸ Section 12 (c), Uniform Family Arbitration Act

⁹ Section 10, Uniform Family Arbitration Act. 

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Professor Nicole Killoran NAKilloran@vermontlaw.edu

My Experience with the Incubator Program

After more than a decade working with an Amlaw 100 firm, I felt professionally – and psychologically, and emotionally – ready to launch a solo practice. Yet I hesitated. The logistics of starting a one-person law firm were daunting. What about insurance? Incorporation? Docketing software, billing software, computer support? Who has time to figure all this out? Where would I even begin? My biglaw firm was a fine and rewarding place full of colleagues I liked, I reasoned. But I knew I was ready for a change.

Then, in mid-2022, at the VBA's Pro-Bono CLE at the statehouse in Montpelier, I heard a discussion of the incubator program that is sponsored by the VBA and Vermont Law and Graduate School. The presenters described how new lawyers, looking to launch a solo career, could receive support and mentorship. I wondered if practicing lawyers could qualify, and decided to apply and find out. I learned that practicing lawyers are, in fact, a significant constituency among the "incubees" as I came to know them. I was offered the chance to become one of their new members. I took a deep breath. I signed up.

I am now approaching the end of my 18-month term as an incubee, and I could hardly be more grateful to the program and my newfound colleagues and mentors for giving me the support and courage – yes, courage – to become a solo practitioner. Insurance, incorporation, software, computer support? Solved in a single conversation. But it goes so much further than that.

I was a specialist at my previous firm. I know patents and intellectual property backwards and forwards, but as a solo, I'm called to a much more generalist role. My new clients, many of whom come through the pro bono and "low bono" service that forms a central part of the incubator program, need a lot more than IP. They need help with agreements, new business incorporations, leases and negotiations. Could I, a specialist among specialists, really be of much help? Yes, as it turns out: every Tuesday and any day in between, the incubator program provides a network of readily accessible expertise. It couples the support of a law firm with the freedom of being a solo practitioner.

For anyone considering a solo practice, I can hardly imagine a better infrastructure than the incubator program.

For my part, I love my new work as a solo. For the first time in my professional

career, "work-life balance" is a term with real meaning. I have a few long-standing clients that followed me from my previous firm, but a much larger number of newer local clients have been introduced to me through the program. I am deeply gratified to be serving my community in such a direct and tangible way. I feel connected to my profession – the legal profession, a helping profession – in a way I had never before experienced. When the floods of July 2023 impacted our state, and especially my neighbors in Montpelier and Barre, the VBA was ready with a platform from which the incubees could provide needed service to the flood victims in our midst.

As a Vermonter and an American, as a lawyer and a human, I believe we face incredible challenges in the years to come. As a father, I am determined to meet these challenges with as much grace and humility as I can summon. I will meet these challenges together with the members of my community, or not at all. Whether we are finding ways to educate our kids through a pandemic, rebuilding flooded basements and roads, or any of the other myriad tests that await, we can only do it together.

I am incredibly grateful to the VBA and the incubees for being such a key part of my community, and for providing such a crucial link to our broader profession and our body politic. I might be solo, but I'm far from alone.



Brian Bailey is the owner of Bailey Legal Services, PLLC in Berlin, Vermont, and is a professor at the Vermont Law and Graduate School in connection with its Small Business Law Center. He is licensed to practice in Vermont and Indiana, and at the US Patent and Trademark Office. He has been practicing law since his graduation in 2008 from Chicago-Kent College of Law.



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Law Firms Gear Up to Battle Deepfakes

The Rise of Deepfakes

While lawyers have certainly been aware of deepfakes for years, everyone was fighting malware infections. As we constantly remind lawyers, the cybersecurity world evolves rapidly – and the prudent law firm will evolve as well.

In the past year, deepfakes have become the second most common cybersecurity incident, lagging only behind those persistent malware infections that law firms have been battling for years.

Mind you, we are not suggesting (yet) that law firms are being deluged by deepfakes. However, having watched the rise of deepfakes in businesses, law firms know darn well that they will be invited to the party by cybercriminals – and that they must be prepared.

Cybersecurity Awareness Training

Over the years, we have given hundreds of CLEs on cybersecurity training for law firms, but for the first time, we are now including training to protect law firms against deepfakes, which may well involve such things as client voice cloning along with other forms of deepfakes.

It only takes a matter of seconds to clone a client's voice from a sample of the voice. While there are many permutations of deepfakes, a common scenario for a law firm might be a call requesting a lawyer to wire a large sum of money as part of a business transaction. It is amazing how much information cybercriminals have at their command to make such requests plausible.

Law firms hold some of the most sensitive data of their clients, and yet they are unprepared to adequately protect that data. Deepfakes may prove a considerable challenge to law firms if they don't institute adequate training.

How Can You Defend Against Deepfakes?

While each deepfake scenario may be different, there are means to defend against deepfakes! Nothing expensive or complicated about this, but why not set a secret code word? Perhaps a word unlikely to come up in a legal conversation like "dinosaur" or "hayride?" Whenever a client calls you – or communicates with you via any form of unsecure audio or video communication - ask for the code word. If they don't have it, terminate the communication.

Beware, they may say they forgot the code word. Start from the beginning – you call them at a known good number and establish a new code word. Is this perfect or all-inclusive in protecting you? No. But it's a start and it doesn't cost a cent.

Do change the code words from time to time, just in case. We're certain that legal practice management systems will (if they haven't already) build verification techniques into their systems allowing two-way authentication.

Tried and True Hallmarks of Deepfakes

One hallmark: The communication is urgent, particularly when monies are to be wired immediately. The authors all agree that you should take special care when you are asked to deal in cryptocurrencies which are still often fraught with risks.

Gift cards? Oh yes, we have seen a law firm where an employee was asked to buy gift cards by the "managing partner." She bought \$1200 worth of gift cards which ended up in the criminal's hands. And no, the firm did not reimburse her. A law firm's version of "tough love" we suppose.

Other indicators of probable fraud include "don't tell anybody what you're doing" warnings, asking for personal/confirmation information, and telling you to keep the communication itself on the "down low."

Things That Used to Identify Deepfakes

The world was a simpler place not so long ago. You could look at a deepfake video and see things like strange skin tones, odd lighting effects or jerky movements. The speech wouldn't sound quite right or was out of sync. Perhaps the eyes didn't blink or the body moved a bit strangely. You'll still see some of the old defects, but increasingly artificial intelligence is making many deepfakes harder to spot.

On the flip side, AI is often now used to detect AI-generated deepfakes. And it's very likely that, even as AI deepfakes become better and better, so will AI deepfake detection technologies. Our foe is also our friend when it comes to AI.

Final Thoughts

Worth a careful read: The story of how a finance worker at a multinational firm was tricked into paying out \$25 million by a deepfake video call from the company's chief financial officer which included sever-

al members of staff on the call, all of whom were also deepfaked. <https://www.cnn.com/2024/02/04/asia/deepfake-cfo-scam-hong-kong-intl-hnk/index.html>. It is time for law firms to prepare for deepfake attacks before they too become headlines!

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SIGN UP for VBA Low Bono Opportunities!

The VBA runs the following grant-funded programs which pay lawyers a reduced fee (low bono) to represent disadvantaged and low-income clients:

Victims of Crime Act Project: The VBA has applied for another federal VOCA grant. If approved, we will be paying \$100/hour for 10-20 hours assisting clients in legal matters relating to their victimization. Cases include custody and divorce, partition actions, assisting with evictions, collections defense, estate planning, no-stalking orders and much more. Because of the particular need for lawyers to take on family matters, we offer free CLE training programs in parental rights and post adoption contact agreements ("PACA") representation.

County Low Bono Project: The Vermont Bar Foundation and the Vermont Supreme Court fund the VBA's County Low Bono Project. You receive \$75 an hour for 3-6 hours helping low-income clients in landlord/tenant matters, foreclosure and collections defense, child support contempt defense, PACA matters, and adult involuntary guardianship cases. Training programs for free CLE credits are available.

Small Business Legal Assistance Project: Vermont Law and Graduate School and the VBA have once again joined forces to assist small business owners with their legal needs. Funded by a new federal earmark grant, we pay you \$75 per hour for up to 10 hours of legal work in such areas as business formation, leases and contracts, business succession, intellectual property, employment law, business tax issues, regulatory compliance and other business-related matters.

For more information, please contact mashcroft@vtbar.org.

Why Solo Attorneys Should Never View Succession Planning as Optional

The two most common excuses I've heard over the years for not having a succession plan in place are these. It's either "my plan is to die at my desk," which isn't a plan at all, or "I just haven't been able to find the time," which almost always means they know it should be done but it's never going to happen. If either excuse rings true for you, now's the time to start for two reasons.

First, if you happen to be a solo, you really don't want to leave the headache of having to wind up the practice and trying to figure out what to do with all your closed files to an unsuspecting non-lawyer spouse. In fact, to this day I still get the occasional call from someone who finds themselves in this very situation. One commonality these callers all have is significant distress and anger over being left with a mess they are ill prepared to handle, and which unfortunately can all too easily lead to unintended consequences.

Here's one example of how the failure to plan can end badly. Most attorneys know full well that client property shouldn't be destroyed prematurely or haphazardly; but of course, non-lawyer spouses often haven't a clue. And also understand that even if they did, non-lawyer spouses aren't bound by the rules of professional conduct. The end result is sometimes all closed files are promptly destroyed because the grieving spouse doesn't know what else to do. Then, after doing so, the spouse comes to learn that one of those destroyed files is needed to properly defend against a claim of malpractice. Making matters worse, the spouse also eventually learns there is no

insurance coverage in place because she didn't know that at the time of passing, she had to contact the malpractice carrier in order to purchase tail coverage. The unintended consequence is the deceased attorney's estate may end up not being what everyone was counting on it being.

Second, Rule 1.3 of the ABA Model Rules of Professional Conduct addresses diligence. The Rule reads, "A lawyer shall act with reasonable diligence and promptness in representing a client." This means attorneys are to act with commitment, dedication, and where appropriate even zealous advocacy, workloads are to be reasonable so that all matters can be resolved competently, and that procrastination is an enemy that is to be avoided at all costs. Yet an attorney's obligations don't end there. There is an obligation to prevent neglect of a client matter post attorney death or disability. Comment 5 to this rule goes on to state "To prevent neglect of client matters in the event of a sole practitioner's death or disability, the duty of diligence may require that each sole practitioner prepare a plan, in conformity with applicable rules, that designates another competent lawyer to review client files, notify each client of the lawyer's death or disability, and determine if there is a need for immediate protective action."

Given all that I have seen and experienced as a risk manager over the years, I personally have trouble coming up with a set of circumstances where I would feel comfortable saying no such plan would be required for a solo. The only question for me is how to get there.



Okay, so what do I need to do to create a succession plan?

The most important detail to take care of when planning for your death or disability is designating a successor. This attorney will need to agree to be responsible for administering the winding down of your practice. Again, it's important to remember that the purpose here is not to try to find someone who is willing to come in and take over your entire practice. It's about finding someone willing to step in and take the lead in winding down your practice. Keep this distinction in mind because it can help when it comes to trying to find someone willing to take on this important responsibility.

That said, should the unexpected ever happen, this person will need to be able to make rapid decisions and, for a brief period of time, take on some of the responsibilities of an additional practice. This means your designated attorney should be someone who is competent, experienced, and displays the utmost professionalism because this person must be able to be expeditious about notifying clients, conducting file review, taking any necessary protective actions, and transitioning files to other attorneys. Your designated attorney should also be someone who is quite familiar with your areas of practice and not likely to have a significant number of conflict concerns arise should they ever need to step in.

An additional benefit of designating a successor attorney (and consider making this a reciprocal designation if both of you

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are solos) is that this individual can also act as your backup attorney thereby allowing you to take extended absences from your office for work, pleasure, or health reasons. Also, don't forget to make sure appropriate employees are made aware of who your designated attorney is and how to contact this individual should this ever become necessary.

Once the successor designation process is complete, there are a few other tasks worth doing. Consider providing notice of the existence of and reason for a designated attorney in your fee agreements so clients are aware of the steps you have taken to protect their interests in the event of an emergency.

Develop and maintain an office procedures manual that discusses your calendaring system, conflict system, active file list, open and closed file systems, accounting system, and any other key system. This resource will prove valuable in helping your designated attorney quickly come up to speed on how you run your practice. This is also just one of a number of reasons why it is so important to keep critical systems such as the calendar and conflict system current at all times.

Your designated attorney will need to review all client files as quickly as possible in order to determine if any immediate protective action is necessary. Given this, never get lackadaisical with your file documentation process. The documentation in all files should always be thorough and current. Missteps can all too easily occur as a result of poorly documented files.

Finally, write a letter for the designated attorney that details duties for all employees; includes login instructions to all necessary computers and systems; provides financial details such as location and account numbers for all bank accounts, particularly client trust accounts; and contact information for all staff and principal vendors such as banks, insurance companies, utility companies, and the landlord. In short think about what you would need to know if you were the person coming in to wind down your practice and capture that intellectual capital in a way that will be useful to the designated attorney.

Additional assistance in developing a plan for your death or disability can be found in a handbook published by the Oregon State Bar Professional Liability Fund. This valuable free resource is available online and may also prove quite useful to your designated attorney should his or her services ever be needed. In the handbook *Planning Ahead: A Guide to Protecting Your Clients' Interests in the Event of Your Disability or Death* you will find items such as a checklist for closing another attorney's office, a sample notice of designated assisting attorney, sample letters to clients, a

sample authorization for the transfer of a client file, and much more. Also, be aware that a number of resources based upon the materials in this Oregon guide are also available on the websites of a number of other state bars.

Since 1998, Mark Bassingthwaighe, Esq. has been a Risk Manager with ALPS, the nation's largest direct writer of professional liability insurance for lawyers. In his tenure with the company, Mr. Bassingthwaighe has conducted over 1200 law

firm risk management assessment visits, presented numerous continuing legal education seminars throughout the United States, and written extensively on risk management, ethics, and technology. Mr. Bassingthwaighe is a member of the State Bar of Montana as well as the American Bar Association where he currently sits on the ABA Center for Professional Responsibility's Conference Planning Committee. He received his J.D. from Drake University Law School. 📧

CONNECTIONS PUZZLE

by Kevin Lumpkin, Esq.

Kevin is trying something different for this issue of the VBJ. This puzzle is in the style of the *New York Times* Connections puzzles.

Each word in the puzzle belongs in one of four categories. Your job is to pick out the four sets of four words and identify what they have in common. Thanks to Matt Greer, Esq. for test-solving.

See page 44 for the Spring Journal's Crossword Solution.

AD	WAR	PEACE	PRO
SAD	HOLLYWOOD	LOW	RES
RICH	SUI	NOVO	BLUE
DOLLAR	DEPRESSED	BAR	ZODIAC

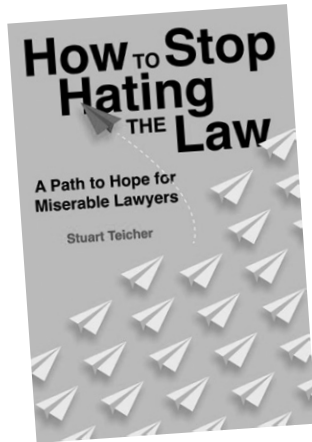
Category #1: _____
(Theme: _____)

Category #2: _____
(Theme: _____)

Category #3: _____
(Theme: _____)

Category #4: _____
(Theme: _____)

BOOK REVIEW



How to Stop Hating the Law: A Path to Hope for Miserable Lawyers

By: Stuart Teicher

Publisher: BookBaby (2024)

118 pages

Reviewed by: Philip Back, Esq.

Wellness is important. When I first began practicing law, there were no wellness CLEs, and mental health was not discussed in law school. Things have changed.

Several years ago, I was a litigator, and I hated it. It consumed me and made me anxious. I didn't talk to any other lawyer about it for fear that it would affect my career. But my wife, a non-lawyer, knew, and she bought me a meditation book written for lawyers.¹ I was at such a low point that I read it, and it helped. It made me hate my job a little less.

That is the point of Stuart Teicher's new book, *How to Stop Hating the Law*. Although meditation is a common component of wellness CLEs, it is not the focus of Teicher's book. Instead, Teicher describes a process, in a relatable style, with a modest goal: how to stop hating the practice of law. The book, and this review, are not criticisms of meditation and mindfulness. Those techniques and practices are important and useful tools in your attorney-wellness toolbox. But Teicher offers a different "tool" to help accomplish the same wellness goal. Teicher's technique can complement the other tools—meditation and mindfulness—or it can be used alone because it's not always necessary to use all the tools in a toolbox to accomplish a task.

Teicher's style makes the book easy to read. It is written as if the author, in his signature New Jersey style, is talking directly to you—a practicing lawyer. It is not written like a textbook, treatise, or even an instruction manual. The book comes across as a long essay (only 118 pages), not an impersonal academic text with citations to other boring academic texts.

The book starts out simple and explains its modest goal. The author assures you he cannot make you love your life or your job. He merely wants to help you better tolerate your job. That seems like a good enough start. For those who want to transform themselves into happy people who love working as a lawyer, this book offers few insights. But reading this book and following its instructions may put you in a better position to becoming a mythical happy lawyer if you ever find the elusive guide to true happiness. Given the epidemic of mental health problems in the legal profession, *How to Stop Hating the Law* is a good book for many lawyers who secretly struggle to get out of bed each day.

The other legal self-help book I read, about meditation and mindfulness, offers instructions that can be used by anyone, even though the book is written for lawyers by lawyers. Meditation, mindfulness, and mental wellbeing are not subjects unique to the legal profession. Even a stressed-out hamburger cook in a cartoon sitcom benefits from learning meditation in an episode of *Bob's Burgers*.² The point is that the mindfulness techniques taught in books and CLEs can benefit anyone, not just lawyers.

By contrast, *How to Stop Hating the Law* does not have such universal application. Many of its tips and guidance can be used by people in professional or managerial positions, but the insights and instructions offered by Teicher are clearly intended to improve the wellbeing of lawyers specifically. Even though the book is geared towards a particular audience, it is unmistakably a self-help book. There are instructions and exercises that are meant to be followed in a particular order, which distinguishes this book from a novel about a lawyer's wellness journey or a reference book about mental health.

The first part of the book is a short introduction, explaining who this book is for, and why you should continue reading. It examines common problems in the legal profession, which most lawyers can relate to, and persuasively argues that lawyers cannot "meditate ourselves out of the misery that is the practice of law" (Teicher, 2024, Part 1). Teicher is upfront about the fact that he is not a therapist or mental health counselor, and if you need those services, he advises you to seek professional help. But Teicher doesn't try to be a therapist. Instead, he asks you to hear him out and give his method a try because, "What other choice do you have? You're friggin' miserable. . . . If you have a better idea, go for it. But if you had a better idea, you

probably wouldn't have started to read this book" (Teicher, 2024, Part 1).

The book is written for cynical, skeptical lawyers who are at the end of their psychological ropes. The author's "secret missing ingredient is . . . *brainwashing*. You need to brainwash yourself to tolerate the practice" of law (Teicher, 2024, Part 1). Teicher could have easily told us that he is teaching mental conditioning, a new paradigm, or cognitive behavioral techniques, but his target audience has heard about all that crap. He knows that "brainwashing" yourself is a technique you definitely haven't tried, and if you are ready for a self-help book written by someone like you—a lawyer, not a psychologist—then this is the wellness book for you.

Teicher offers six steps on "a path out of the misery" (Teicher, 2024, Part 2). The first couple of steps seem easy enough for someone who is struggling and seeking help. Step one: Accept that it's time for change and admit that your life or practice has become unmanageable. Step two: Take a hard look at yourself and your practice. Admit and identify your personal flaws. The author provides useful insights and exercises to help accomplish these steps, which require deep thinking and self-reflection.

The next two steps build on the first two. They require a change of mindset. Once you've admitted you need to change (step one) and identified your personal flaws (step two), it is time to redefine success (step three) and accept that a mission greater than yourself can restore fulfillment to your career (step four). Again, accepting that there's more to life than materialism, and that balance and contentment are necessary (step three), are not earth-shattering concepts. (If this idea is foreign to you, then this book alone is unlikely to help you.) However, step four "is where I might lose you. . . . [because] this next part—about the need to find a mission that's greater than yourself—this is where you might jump ship" (Teicher, 2024, Part 2).

If the need to develop a mission statement, in order to find meaning in your life, is too much for you, then the next two steps are going to be particularly difficult. Step five requires you to embark on a comprehensive plan of incremental change, personally. This means developing habits to clean up your space and person, build and improve personal relationships, and getting a hobby. Once you do that, you should then essentially become an expert in your legal field and stick out in a crowd, e.g., dress differently.

The last step—embark on a comprehensive plan of incremental change in your

practice—is where you complete your transition from a miserable lawyer into a brain-washed corporate tool. Step six, which takes up almost half the book, encourages you to live your life according to your mission statement, incorporate your mission statement into your work, become charismatic, become a better manager in your office, and become a “thought leader” in the profession (Teicher, 2024, Part 2). Each of these sub-steps has its own set of instructions, such as read your mission statement every day, create “measurable action goals,” be empathetic, delegate tasks, and develop a *brand* (Teicher, 2024, Part 2).

Step six is the hardest step for me to appreciate, despite the useful advice on office management and interpersonal relationships, because the end result sounds like a person so different from myself—someone I don’t want to be, even if this

person doesn’t hate his job. I suspect many other Vermont lawyers, particularly those in very small offices, will feel the same way. Budweiser, Disney, Nike—those are brands; you, by contrast, are a person. But if your goal is to excel in business and be praised for your work, then the instructions in this book are solid, common-sense actions you can take to improve your work and your life, even if you’re not particularly miserable.

In conclusion, this book isn’t just for miserable lawyers who feel trapped and hopeless; this book is for any professional who seeks to improve his or her business. The author’s insights and writing style make this book approachable to both the miserable and the non-miserable alike.

Philip Back, Esq. is a legal advisor for the Department for Children and Families, and

a former assistant attorney general. He has held various legal positions in state government since graduating from the University of Florida, College of Law, in 2008.

¹ Jenna Cho & Karen Gifford, *The Anxious Lawyer* (2016).

² *Bob’s Burgers: Bridge Over Troubled Rudy* (Fox television broadcast May 2, 2021). 📺

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

IN MEMORIAM

Robert James Perry

Robert Perry, formerly of Shelburne and North Hero, died peacefully on Dec. 2nd, at Carlyle Place in Macon, GA. Bob grew up in Essex Junction, son of Claude and Clara Perry, brother of Bill and Claude Jr. He earned an engineering degree from the University of Vermont and was inducted into Tau Beta Pi, the engineering honor society. Forsaking his engineering degree, he left with his wife Jane and 3-week-old daughter, Lynne, for law school at the University of Virginia, where he graduated in 1965.

Fulfilling his ROTC obligation to the US Navy, Bob was fortunate to receive his first choice of duty station, Seattle before it was hip, where his son Jonathan was born. The family returned to Vermont in 1969, where Bob established his law practice, Perry and Schmucker, and was able to serve several generations of clients.

He is survived by his grandchildren: Jasper, Sydni, Will, and Becca, wife Jane, and family members: daughter Lynne, son Jonathan, daughter-in-law Charlotte, brother Boo, and many nieces and nephews.

Bob loved the Green Mountains and Lake Champlain. In his later years, a great day had a bike ride around North Hero and a cold beer as the sun set over the Adirondacks. There were lots of great days.

Kathy J. Strahm

Kathy J. Strahm, 64, of Saint Albans, died at 9:55 am on Thursday, May 23 at a friend’s residence in Indiana after battling brain cancer. She was born on July 2, 1959, in Angola, IN and adopted by Glen and Betsy (Johnston) Strahm, her loving parents from Monroe, IN.

On Oct. 14, 2006, she married Lucie Carmichael of Montreal, Canada, who survives her. Kathy is also survived by her mother, Betsy Strahm of Bluffton, IN; brother, Larry (Karen) Strahm of Pegram, TN and two additional siblings from her birth mother; half-sister, Cassandra (Jeffrey) Silva of Sturgis, MI and half-brother, Kenneth (Laura) Andrews of Bisbee, AZ. She also leaves behind nephews, nieces, other relatives and many friends. She was preceded in death by her father, Glen Strahm.

Kathy excelled academically and athletically in both high school and college. She graduated with academic honors and numerous athletic awards from Adams Central High School, Monroe, IN in 1977, and Indiana Central University, Indianapolis, IN in 1982.

Kathy was an Attorney at Law, having graduated from the IU School of Law in Indianapolis, with a Doctorate of Jurisprudence, in 1985. She worked as a Public Defender of Family and Criminal law from 2000-2022 in the Vermont Chittenden, Franklin and Grand Isle County courts. She served as a Deputy Prosecutor in Fayette

County, IN in 1999 and was Chief Deputy Prosecutor of Brown County, IN from 1991 to 1994. As an attorney for the Indiana Department of Natural Resources, she drafted The Indiana Wetlands Primer, for Indiana Coastal Management Program for the Lake Michigan shoreline. She was a sole practitioner for parts of her career and also served as a Public Defender in the Marion County Municipal Courts.

Kathy was an accomplished umpire in women’s softball. She attained her International Level Umpire certification in 1987 and was assigned to work in the 1996 Summer Olympics in Atlanta. She umpired the 1990 Women’s World Championship, the 1987 Pan American Games and the 1987 Jr. Girls’ World Championship. She worked many ASA tournaments and NCAA championships and the NCAA Women’s College World Series in 1992. She served as the Umpire-in-Chief for the NCAA Women’s Softball 2007-2011. She served as a Member of the Board of Directors of the NASO (National Association of Sports Officials). She was inducted into the Indianapolis Softball Hall of Fame in 1996.

David Alan Jenkins

The Hon. David Alan Jenkins, 89, of Burlington, passed away peacefully on May 29, 2024, surrounded by his loving wife and two daughters.

David was born in Springfield, MA., on Feb. 6, 1935, the youngest of four children,

to Edward Sampson and Ruth (MacLeod) Jenkins. The family moved to Burlington in 1939 to a house which David called home for more than 80 years. Many experiences helped shape the man who contributed much to our state and community. Two principles aligned throughout his life: service above self and a strong Christian faith.

A student of Taft Elementary School, David was a member of the sixth grade class that received a generous gift, an original painting titled "The Babysitter," from the American painter Norman Rockwell in memory of a fellow classmate who had died. Decades later, David took an active role in retaining the painting for the community when the school district proposed selling it. The painting now resides permanently at the University of Vermont Fleming Museum.

Boy Scouts provided an important compass in David's boyhood, and he was thankful for many opportunities through scouting that strengthened his character and established a strong sense of leadership.

At Burlington High School, David was a notable athlete in football, basketball, and track and field. He was proud to have played quarterback for the Seahorses under the guidance of coach Buck Hard and was one of the "five iron men" who helped

the varsity basketball team claim the 1953 Vermont State High School Championship trophy. That team went on to win the quarterfinal round of the New England State Championship tournament played at the Boston Garden, one of two Vermont teams to ever do so.

Acceptance to Dartmouth College opened many doors for David, and he remained very proud and inspired by the experiences the Big Green D provided. He played freshman basketball, sang in the glee club, joined Sigma Alpha Epsilon fraternity and chose to study history because he believed that "unless we know history, we are doomed to repeat it." He graduated in the Dartmouth class of 1957 and fulfilled his military scholarship commitment by serving in the U.S. Coast Guard Reserve, where he sharpened his leadership skills and discovered an interest in maritime law.

David met Susan Merritt Killebrew on a blind date. They married in June 1962 and lived in Hartford, CT., while he pursued his law degree at the University of Connecticut Law School. To accomplish this, he worked full time for Southern New England Telephone Company by day and attended law school by night. He completed his degree in 1965 and was admitted to the Connecticut Bar that same year.

In 1966 David brought his young family back to Burlington, was admitted to the Vermont Bar and began to establish his career. He quickly became partner of the law firm Hoff, Curtis, Bryan, Quinn and Jenkins. He was elected by the Burlington community as alderman and city counselor for Ward 6 from 1970 to 1972. He was appointed as the first full-time Burlington city attorney in 1972, working with mayors Francis Cain and Gordon Paquette. After practicing law for 14 years, David was appointed by Gov. Richard Snelling as a District Court judge in 1979 and as a Superior Court judge in 1981, where most of his work was presiding over criminal and civil trials. He was one of nine Superior Court judges who traveled in rotation to the 14 counties across the state. These appointments were a point of pride for David, and he appreciated the opportunity to travel the entire state and serve each community. He retired from the bench in 2005 and continued to serve from time to time for another five years.

David tirelessly volunteered throughout his life. Some of his many endeavors included Sunrise Rotary (2007 to 2024), Burlington fire commissioner, public member of the Vermont Medical Practice Board (2008 to 2019), Meals on Wheels driver for Chittenden County, and serving as a deacon and trustee for his church. David was a lifelong member of the First Congregational Church and raised his family honoring and living the traditions of his faith. Also, he was an inspirational lifelong learner and an active member of the Grand Lodge of Vermont Free and Accepted Masons, attaining the Scottish Rite 32nd degree with the Vermont Consistory.

David was passionate about sports, including tennis, Alpine and Nordic skiing, hiking, and fishing. He was very proud of his Scottish descent and the rich heritage of the Clan MacLeod. He often donned a shirt, slacks or scarf of the clan's dress or hunting tartan, always exclaiming the motto "Hold Fast MacLeod!" He enjoyed strong and enduring friendships with school classmates, colleagues and friends throughout his life. Many were lifelong, and they often gathered to reminisce about youthful capers and life's challenges and successes. These friendships were important touchstones to him. He had many happy memories of high school and college reunions and annual fishing trips to Maine with a steadfast group of friends.

David is survived by his loving wife of nearly 62 years; daughters, Lisa (Beckner) Bryan and Heather (Sam) Jewell; four grandchildren, Merritt and Lucien Bryan and Benjamin and Elizabeth Jewell; and many nieces and nephews. He was preceded in death by his parents and his siblings,

Here's the Spring Journal's Crossword Solution!

S	H	A	M		P	O	P	S	C	I		A	P	T
M	I	R	O		E	N	U	R	E	D		S	E	A
A	K	I	N		K	E	T	O	N	E		H	E	N
S	E	E	K	S	O	U	T		T	A	T	E	R	S
H	R	S		H	E	P		H	A	S	A			
			F	R	S		L	O	U		K	A	H	N
R	I	C	E	U		N	A	I	R		I	D	E	E
B	L	U	E	B	O	O	K	S	I	G	N	A	L	S
I	S	L	E		V	I	E	T		E	G	Y	P	T
S	A	T	B		E	S	S		E	T	S			
			I	C	R	Y		A	D	U		M	A	O
B	E	R	E	F	T		E	G	G	P	L	A	N	T
A	V	E		L	U	S	T	R	E		A	N	K	H
B	E	A		A	R	I	D	E	R		O	G	L	E
E	N	D		T	E	N	S	E	S		S	E	E	R



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inPERSON

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onLINE

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Joan Zwick, Ruth Elizabeth (Betty) Maley and Dr. Edward W. Jenkins.

Matthew I. Katz

Matthew Ira Katz was born on August 6, 1946 to Abraham and Minnie Katz in New York City. They lived in Queens Village with his older brother, Sheldon. They spoke Yiddish and grew up surrounded by a large extended family. Abe worked in the diamond district as a stone setter, while Minnie stayed at home. He died on June 25, 2024, in Burlington.

Matt graduated from New York City public schools. He attended Trinity College in Hartford, Connecticut, graduating in 1967. He immediately went on to Rutgers Law School in Newark, New Jersey, where one of his favorite professors was Ruth Bader Ginsburg. He married Elaine Kaplan in 1968, in Northampton, Mass. Upon graduating from law school in 1970, he and Elaine moved to Burlington. At the age of 23, he started his law career at Vermont Legal Aid as a staff attorney in the Burlington office.

During his three-year employment at Vermont Legal Aid, he was co-counsel for the plaintiffs in *Beecham v. Leahy*, a challenge to the constitutionality of Vermont's abortion prohibition law. He won in the Chittenden Superior Court in a landmark decision from the Vermont Supreme Court that predated the US Supreme Court decision in *Roe v. Wade*. Matt valued civic duty, serving on several local boards and committees, and running unsuccessfully for Burlington city Alderman on a platform to increase local bus service.

Matt moved on to the Burlington law firm of Latham, Eastman, Schweyer and Tetzlaff, where he began as the firm's counsel for the University of Vermont. He became a partner at the firm and developed experience in commercial litigation, repre-

sending clients in banking and construction.

In 1985, Gov. Madeleine Kunin appointed Matt to a Vermont Superior Court judgeship. Like all superior judges at the time, he sat in superior courts in many counties and presided over all kinds of trials in civil, criminal, and family cases. He developed expertise in civil cases, and often sat in the Chittenden Superior Court in Burlington. On his retirement, the Assistant Judges named the second floor courtroom in the Chittenden Superior Court the "Judge Matthew Katz Courtroom" in his honor.

Although Matt sat primarily in civil cases, it was a criminal case that gave him the most notoriety, again involving abortion. A group of anti-abortion protestors were arrested for illegal activities in connection with protests at Planned Parenthood and were brought before Judge Katz in criminal court. He ordered them to be released on bail, but only if they gave their names, which they refused to do. A standoff resulted, and the protestors were placed in jail. Other anti-abortion protestors then conducted a protest at Judge Katz's house, the only time in Vermont that such a home protest has occurred.

Matt was also known for his humor. In the lulls that occasionally occur in trial proceedings, Matt would write limericks and draw cartoons on what was occurring in court. To capture his essence, many were read at his retirement party.

Later in his career, he was nominated to be a member of the prestigious American Law Institute. The ALI is the nation's leading independent organization producing scholarly work to clarify, modernize, and improve the law through restatements. Membership in this historic and prestigious organization is by invitation and a recognition that a person is at the top of their field as a leading professor, advocate or judge.

Matt retired in 2011. Eight months later, he had a stroke that impaired his mobility and speech. He joined the Aphasia Choir,

a group of stroke and traumatic brain injury survivors who, despite speech deficits, sing using a different part of the brain than is impacted by aphasia. He sang with the choir at its annual performances. He had so many incredible and giving coaches in his physical, occupational and speech therapists and medical team. He enjoyed NDAA (adaptive) Kayaking with old friends at the Waterbury Reservoir and in the Champlain Islands and he always looked forward to attending Tuesday UVM stroke group meetings. During this phase of his life, those around him were inspired by his positive attitude and resilience. We are thankful for all the wonderful people who cheered Matt on during his recovery.

In 2015, the Vermont Bar Association created the Matthew Katz Award to be given to persons in the judicial system who demonstrate the characteristics of Judge Matthew Katz. These included a deep commitment to the law, professionalism, and fair treatment for all who come before the judiciary.

Matt had many interests outside the law, including nature photography, cooking, history and current events. He was adept at lemon currant scones, and a family favorite was his mushroom barley soup. He was partial to biographies and listening to the MET Opera on the weekends. He and Elaine traveled widely together. Their adventures included backcountry trekking to the Havasupai Indian reservation, hiking, fly fishing and horseback riding in Arizona and Colorado. He enjoyed traveling through Europe, taking photos, absorbing historical landmarks and enjoying the cuisine. Just a week prior to his stroke, he and Elaine completed a biking trip through southern Italy.

Matt was a special mentor, husband, father and Zaide. Never one to impose, upon request, he was always willing to add grammatical and content suggestions to papers. He was very proud of his ability to say more with less. He will be missed but never forgotten.

Matt is survived by his wife of 55 years, Elaine Katz; son Ben, and his wife Dr. Megan Malgeri of Burlington and their two daughters, Sylvia and Louisa. Matt had many beloved friends and family. We would like to recognize the many attorneys, judges and friends who visited the house and nursing home to read to Matt. He had visitors 3-4 days per week solidly for the past 12 years. The love and compassion his friends displayed was nothing short of magical and brought great joy to Matt. You all brightened his life.

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