STATE COURTS IN A TIME OF FEDERAL CONSTITUTIONAL CHANGE*

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I suppose we can start with the question: why are we judges in this business? What is there that makes us want to be judges? Most, perhaps all of us, could be doing something else, be in private practice, working for a big concern, or working in another state. But here we are, judges in Vermont. Why?

I am confident that one reason that we are judges is that we want to do justice. We want to do it equally, and we want to uphold rights and liberties even as we enforce the duties and responsibilities that accompany those rights and liberties.

Vermont, as we all know, has a grand tradition in the history of political and civil rights and liberties. From the days of Ethan Allen, Vermont has been in the forefront of protecting the individual and his or her individuality. As early as 1802, in *Selection of Windsor v. Jacob*,[1] the Vermont Supreme Court held that under article 1 of the Vermont Declaration of Rights no inhabitant in this state could hold a slave. Vermont was a main line on the underground railway. It was a Brattleboro, Vermont, brigadier general, John Woolcott Phelps, who in the Civil War at Ship Island, Mississippi, in December, 1861, addressed an emancipation proclamation to the loyal citizens of the Southwest, months before Lincoln's first draft of his emancipation proclamation, and so far in advance of Administration thinking at the moment that Phelps was forced to quit the army and return home. It was General Meade at Gettysburg who said: "Put the Vermonters out front." It is not surprising that former Chief Justice of Vermont Luke Poland was a leading proponent in the United States Senate of the fourteenth amendment; that Senator Justin Morrill, a member of the Joint Committee on Reconstruction, helped to write and voted in favor of the liberalized versions of the thirteenth, fourteenth, and fifteenth amendments as well as the Civil Rights Acts to follow; and that, when Senator George Edmunds replaced Senator Poland (who became a Representative), Senator Edmunds' reputa-

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1. 2 Tyl. 192 (1802).

tion as a lawyer was so great that he was soon made chairman of the Committee on the Judiciary from where he was not only principal spokesman on the floor for the fifteenth amendment but also deeply involved in passage of the Enforcement Act of 1870 and the floor manager of the Enforcement Act of 1871. The last is, of course, the so-called Ku Klux Klan Act which today is the primary bill through which federal constitutional rights are enforced; it is known as and called in our trade, as you know, sections 1983 and 1985 of the Civil Rights Act.

This remarkable tradition of Vermont leadership in the protection of political and civil liberties continued, of course, in the 1940's when the testimony of then Governor Ernest W. Gibson, Jr., before the Congress as to his experiences in the Pacific Theatre with the military justice system was largely responsible for Congress's enactment of the Uniform Code of Military Justice. The tradition was even further enhanced in the 1950's by Senator Flanders' call for the censure of Joe McCarthy and in the 1960's by Senator Aiken's quietly bringing about the compromise that resulted in the Housing Rights Act of 1964, the predecessor to the Voting Rights Act of 1965. Other Vermonters too numerous to mention have been active in the protection and promotion of political and civil rights. What, you are probably saying, does this have to do with state courts?

First, I am stating it as a fact and not pejoratively that over the last ten or so years the Supreme Court of the United States has gradually, and now in an accelerated fashion, been narrowing federal constitutional law as it had been broadened from the early 1950's roughly through 1968 to protect individual rights and liberties. For two decades the Court had been following the teachings of Justice Bradley in *Boyd v. United States*[2] that "constitutional provisions for the security of person and property should be liberally construed . . . . It is the duty of courts to be watchful for the constitutional rights of the citizen, and against any stealthy encroachments thereon."[3] It will be recalled that Justice Brandeis said of *Boyd* in his *Olmstead* dissent that *Boyd* was a case that will be remembered so "long as civil liberty lives in the United States."[4]

There has been a trend in recent opinions of the United States

2. 116 U.S. 616 (1886).
3. *Id.* at 635.
4. Olmstead v. United States, 277 U.S. 438, 474 (1928) (Brandeis, J., dissenting).

Supreme Court to retreat from, perhaps in some cases to suspend, the full enforcement of Justice Bradley's teaching. In 1976, for example, under the due process clause the Court found no liberty or property interest in the reputation of an individual who had never been tried, much less convicted, who was publicly branded as a criminal by the police, without notice or hearing.[5] Recently, the Supreme Court held that prison inmates have no reasonable expectation of privacy as to any personal property, whether a wife's photograph, a personal letter, or whatever.[6] We note that in the field of first amendment law the Court has to a certain extent cut back on the protections of *New York Times v. Sullivan*,[7] by narrowing the definition of a public figure, so, too, with fifth and sixth amendment guarantees. Of course, the exclusionary rule protection afforded in the case of a fourth amendment violation was narrowed in *United States v. Leon*,[8] which upheld a "good faith" law enforcement reliance on a search warrant issued without probable cause. There are other examples almost too numerous to mention.

Leaving aside the modifications made by the Court of substantive constitutional law, the Court has also in a series of decisions over the last ten years invoked doctrines involving jurisdiction, justiciability, and remedy to keep litigants from going to federal court in the absence of showings which Justice Brennan has said are "probably impossible to make."[9] So, too, the doctrine of *Younger v. Harris*[10] has been broadened to permit state prosecutors to block federal court protection of constitutional rights through state indictments. The remedy of habeas corpus to state prison inmates has been, again in a series of decisions, so narrowed as to make access to the federal courts both unavailable to most and, in any event, long delayed to the few who still have access.

Whether one agrees with these decisions or not—and, as some of my friends might suspect, I happen to agree with the dissenting Justices more often than not—the fact of the matter is that the trend exists, and in an increasing number of cases this means that there is little or no protection under the federal Constitution for

5. Paul v. Davis, 424 U.S. 693 (1976).

6. Hudson v. Palmer, 468 U.S. 517 (1984).

7. 376 U.S. 254 (1964).

8. 468 U.S. 897 (1984).

9. Brennan, *State Constitutions and the Protection of Individual Rights*, 90 HARV. L. REV. 489, 498 (1977).

10. 401 U.S. 37 (1971).

many "rights" which had been recognized in the last twenty to twenty-five years.

As you may by now have guessed, I am here to propose that you take a whole new, fresh look at the Vermont State Constitution. I have been more than happy to note the Vermont Supreme Court's keen awareness of the state constitution in addition to the federal Constitution as a source of important individual and community rights. At the risk of tiring you with things you already well know I will first mention some of the cases displaying that awareness and then take a quick look at the Vermont Constitution itself.

In *State v. Badger*,[11] the Vermont Supreme Court, after first resolving most of the search and seizure issues in favor of the defendant on the basis of the federal Constitution, then articulated the special function it performed with respect to state constitutional law. It is worth repeating some of Justice Hill's outstanding opinion, not only because of the understanding it manifests but also because of the historical perspective it provides:

> Our first concern is comity between this Court and the United States Supreme Court. We stand on a different footing when we evaluate federal constitutional claims. On federal issues, we are no more than an intermediate court, attempting to apply the "supreme law of the land," *Cooper v. Aaron*, 358 U.S. 1, 18 (1958), as pronounced by the United States Supreme Court. Supreme Court authority over our federal rulings is absolute. Yet, if our ruling is based upon an adequate and independent state ground, federal review is limited to a determination of whether Vermont law violates some provision of federal law. . . . Fulfillment of this Court's responsibilities as a member of the federalist system requires us to consider the availability of state grounds before federal appeal.
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> The institutional concern is buttressed by an even weightier consideration: the authority of the Vermont Constitution itself. The Vermont Constitution is the fundamental charter of our state, and it is this Court's duty to enforce the constitution. See *State v. Ludlow Supermarkets, Inc.*, 141 Vt. 261, 264, 448 A.2d 791, 793 (1982). Although the Vermont and federal constitutions "have a common origin and a similar purpose," *State v. Brean*, 136 Vt. 147, 151, 385 A.2d 1085,

11. 141 Vt. 430, 450 A.2d 336 (1982).

> 1088 (1978), our constitution is not a mere reflection of the federal charter. Historically and textually, it differs from the United States Constitution. It predates the federal counterpart, as it extends back to Vermont's days as an independent republic. It is an independent authority, and Vermont's fundamental law.[12]

Badger itself reaffirmed the principle that "[e]vidence obtained in violation of the Vermont Constitution, or as the result of a violation, cannot be admitted at trial as a matter of state law."[13] Given the United States Supreme Court's recent decision in *United States v. Leon*,[14] the reasoning underlying *Badger* (as well as on the holding itself) may prove especially critical:

> Introduction of such evidence at trial eviscerates our most sacred rights, impinges on individual privacy, perverts our judicial process, distorts any notion of fairness, and encourages official misconduct. See Mertens & Wasserstrom, *Foreward [sic]: The Good Faith Exception to the Exclusionary Rule: Deregulating the Police and Derailing the Law*, 70 Geo. L.J. 365, 376-89 (1981).[15]

Other decisions of the Vermont Supreme Court have announced important principles not presently recognized in federal constitutional jurisprudence. In *State v. Ludlow Supermarkets, Inc.*,[16] for example, the state supreme court struck down the Vermont Sunday closing laws on the basis under chapter 1, article 7 of the Vermont Constitution alone because of the laws' "objective of favoring one part of the community over another . . . ."[17] Interestingly, reference was made in then Chief Justice Barney's opinion to a *dissenting* opinion of Justice Stevens in the United States Supreme Court.[18]

Similarly, in *In re E.T.C.*,[19] Chief Justice Billings held for the court that a juvenile cannot waive his right to counsel and against self-incrimination during police interrogation without a guardian or responsible advisor present. The court held that the youth must

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12. *Id.* at 447-49, 450 A.2d at 347 (citations omitted).
13. *Id.* at 452-53, 450 A.2d at 349.
14. 468 U.S. 897 (1984).
15. *Badger*, 141 Vt. at 453, 450 A.2d at 349.
16. 141 Vt. 261, 448 A.2d 791 (1982).
17. *Id.* at 269, 448 A.2d at 795.
18. *Id.*
19. 141 Vt. 375, 449 A.2d 937 (1982).

be given an opportunity to consult with that adult, that that adult must be genuinely interested in the welfare of the juvenile and completely disassociated and independent from the prosecution, and that the adult must be completely informed of and aware of the youth's rights.[20] In *E.T.C.*, Justice Billings expressly noted that the United States Constitution, as currently understood, did not go as far with respect to the rights of juveniles, and based the decision on chapter 1, article 10 of the Vermont Constitution.[21]

In other cases, as you know, the Vermont Supreme Court has based its decision on both the federal and state constitutions. For example, in *State v. Quintin*,[22] the court stressed that waivers of fundamental rights—in that case the right to counsel—"will not be inferred from doubtful conduct."[23] Perhaps more important, and certainly more apropos, was the Vermont Supreme Court's holding in *In re Kasper*,[24] that the state and federal constitutional guarantee of the right to counsel meant the right to lawyering of " 'reasonable competence.' "[25] In light of the United States Supreme Court's decisions in *Strickland v. Washington*,[26] and *United States v. Cronic*,[27] which appear to have reduced the availability to a criminal defendant of a sixth amendment challenge to his conviction, the Vermont law "wing" of *Kasper* may prove to serve Vermonters well. Similarly, in *State v. Towne*,[28] the state supreme court reversed a criminal conviction due to violation of the *state* consitutional right to confront all witnesses testifying against one; the decision is especially noteworthy—the appellant in that case failed to make the appropriate objection at trial, which, Chief Justice Billings noted, might have precluded appellate review of the issue.[29] It did not because, in the supreme court's words, what was at stake was the denial of a "most fundamental of rights,"[30] and an error of "constitutional dimension."[31] Again, what permitted justice to be done in *Towne* was sensitivity to *state* constitutional

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20. *Id.* at 379, 449 A.2d at 940.
21. *Id.* at 378, 449 A.2d at 939.
22. 143 Vt. 40, 460 A.2d 458 (1983).
23. *Id.* at 48, 460 A.2d at 460.
24. 142 Vt. 31, 451 A.2d at 1125.
25. *Id.* at 35, 451 A.2d at 1126.
26. 466 U.S. 668 (1984).
27. 466 U.S. 648 (1984).
28. 142 Vt. 241, 453 A.2d 1133 (1982).
29. *Id.* at 245, 453 A.2d at 1135.
30. *Id.*
31. *Id.*

norms.

The scope of the state constitutional protections is not, of course, limited to criminal matters. In addition to *Ludlow Supermarkets*, discussed above, the Vermont Supreme Court in *Beauregard v. City of St. Albans*,[32] turned to the Vermont Constitution to protect the right to the free exercise of religion. In *Beauregard*—an action commenced under 42 U.S.C. § 1983—the court affirmed a lower court finding that a plaintiff had been denied a position on an academy's board of trustees because of his religious preference. In its discussion of the state law issue, the court invoked the language of *Badger*, noting its concern for " '[o]ur duty to enforce the fundamental law of Vermont, our role in the federalist system, and our obligation to the parties . . . .' "[33]

Well, these are just a few of the outstanding Vermont Supreme Court cases that permit—nay, require—that every constitutional issue be examined first from the state and then from the federal viewpoint.

But what a great constitution the Vermont Constitution is! You know, we tend to forget that the provisions in Madison's Bill of Rights that were presented to the First Federal Congress and became our revered federal Bill of Rights were all derived from the state constitutions. And the Vermont Constitution contained most of these provisions from and after 1777. Chapter 1 of the Vermont Constitution is, of course, entitled a Declaration of the Rights of the Inhabitants of the State of Vermont, and section 71 of chapter II makes certain that all of that Declaration is more than merely a declaration, saying that the "Declaration of the political Rights and privileges"—you note that it has added the words "and privileges"—"of the inhabitants of this State, is hereby declared to be a part of the Constitution of this Commonwealth"[34] (did you know that we are a commonwealth?); and—here is a provision with sting—that Declaration "ought not to be violated on any pretense whatsoever."[35]

So we return to the Declaration of Rights which now also means "privileges" of the inhabitants of the state of Vermont. Article 1 does something that nothing in the United States Constitu-

32. 141 Vt. 624, 450 A.2d 1148 (1982).
33. *Id.* at 631, 450 A.2d at 1151.
34. VT. CONST. ch. II, § 71.
35. *Id.*

tion does; it adopts as a matter of constitutional law the Declaration of Independence. It says "that all men are born equally free and independent, and have certain natural, inherent, and unalienable rights, amongst which are"—you note the broad language "amongst which"—"the enjoying and defending [of] life and liberty, acquiring, possessing and protecting property, and pursuing and obtaining"—that is an interesting word, "obtaining"—"happiness and safety . . . ."[36] The second clause in article 1 follows from the first, that therefore no person, whether born here or "brought from overseas, ought to be holden by law, to serve any person as a servant, slave or apprentice" except by consent after the age of twenty-one or "bound by law for the payment of debts, damages, fines, costs or the like."[37] Had the United States Constitution similarly provided, a Civil War might have been avoided. In any event, Vermont was the first state to abolish slavery.

Article 2 of the Declaration of Rights is a typical eminent domain/just compensation provision which has been carefully construed by the Vermont Supreme Court over the years. What makes it remarkable is something I learned just the other day. The eminent domain clause—doubtless because of the conflicting New York and New Hampshire grants—was the first such clause in any state constitution. The threat of the New York Legislature in particular, and legislatures generally, to private property helped to make, in the words of one commentator, the Vermont Constitution of 1777 "far more protective of individual rights than the other early constitutions."

Article 3 assures freedom of religion as well as freedom of nonreligion: "no man ought to, or of right can be compelled to attend any religious worship, or erect or support any place of worship, or maintain any minister, contrary to the dictates of his conscience";[38] it adds that no man can be deprived of any civil right as a citizen on account of "religious sentiments" or "peculia[r] mode of religious worship," and that no authority can be "vested in, or assumed by, any power whatever, that shall in any case interfere with, or in any manner control the rights of conscience . . . ."[39] An additional clause admonishes that Christians ought to observe the

36. VT. CONST. ch. I, art. 1.
37. *Id.*
38. *Id.* ch. I, art. 3.
39. *Id.*

Sabbath and keep up some sort of religious worship "which to them shall seem most agreeable to the revealed will of God";[40] it says nothing, however, about non-Christians.

Article 4, added by the 1786 constitution, declares that there ought to be a remedy secured at law to all for injuries or wrongs to "person, property or character" and that right and justice shall be obtained freely without obligation to purchase it, completely, promptly and without denial or delay.[41]

Article 5 gives police power to the state which, of course, the state had by virtue of common law.[42]

Article 6 reminds all officers of the government, legislative or executive, that they are the trustees and servants of and in a legal way, "accountable" to the people.[43] I suppose this clause, which has seldom been construed, has quite a bit of bearing on immunity under state law, though one case has said it is "but a truism of a republican form of government . . . ."[44]

Article 7 reminds us that government is instituted for the common benefit of all and not for the particular advantage of any single man, family or group and that the people as a whole have a right to reform or change government.[45] I have mentioned the *Ludlow Supermarkets*[46] case, resting on this clause.

Article 8 deals with voting rights[47] and article 9 with citizens' responsibility to contribute their proportion to the expense of protecting life, liberty and property and the yielding of personal services by all except conscientious objectors.[48] That article also contains the little injunction to the legislature to make sure that "the purpose for which [money] is to be raised ought to appear evident to the Legislature to be of service to community than the money would be if not collected."[49]

Article 10 deals with the rights of persons accused of crime,

40. *Id.*
41. VT. CONST. ch. I, art. 4 (1786).
42. *Id.* ch. I, art. 5.
43. *Id.* ch. I, art. 6.
44. *Welch v. Seery*, 138 Vt. 126, 128, 411 A.2d 1351, 1352 (1980).
45. VT. CONST. ch. I, art. 7.
46. State v. Ludlow Supermarkets, Inc., 141 Vt. 261, 448 A.2d 791 (1982).
47. VT. CONST. ch. I, art. 8 (1786).
48. *Id.* ch. I, art. 9.
49. *Id.*

ensuring a right to be heard both pro se and by counsel and to demand the cause and nature of an accusation.[50] It contains a confrontation clause as well as a right to subpoena witnesses. It guarantees a speedy public trial by an "impartial" and "unanimous" jury,[51] neither of which provisions are in the federal Constitution. It contains a provision against self-incrimination and permits waiver of the right to a jury trial with the consent of the prosecuting officer.[52] In *State v. Slamon*,[53] the Vermont Supreme Court held under article 10 that the use of a letter found in the case of a search by a search warrant for stolen goods must be excluded from evidence as "equivalent to compelling [the person] to be a witness against himself . . . . "[54] That was the first state court case anywhere that I have been able to find enforcing an exclusionary rule. Though some later cases seemed to overrule this decision,[55] the Vermont Supreme Court's holding in *Badger*[56] brought the law full circle so that the *Slamon* exclusionary rule still holds as a matter of state law.

And article 11 of the Vermont Constitution is, of course, the provision protecting "the people" against search and seizure.[57] It is in quite different language from the fourth amendment. The first clause is the flat-out statement "[t]hat people have a right to hold themselves, their houses, papers, and possessions, free from search or seizure . . . ."[58] The fourth amendment to the federal Constitution makes no such flat statement, only stating that the right of the people "to be secure . . . against unreasonable searches and seizures, shall not be violated . . . ."[59] Article 11 of the Vermont Constitution does not speak only to "reasonable searches or seizures." The *Badger* case ensures that the people of Vermont have the rights under state law against illegal searches and seizures that federal law in the case of officers' "good faith" no longer provides.[60]

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50. *Id.* ch. I, art. 10 (1777, amended 1974).
51. *Id.*
52. *Id.*
53. 73 Vt. 212, 50 A. 1097 (1901).
54. *Id.* at 215, 50 A. at 1099.
55. *In re* Raymo, 121 Vt. 246, 154 A.2d 487 (1959); State v. Stacey, 104 Vt. 379, 160 A. 747 (1932).
56. *See supra* text accompanying notes 11-15.
57. VT. CONST. ch. I, art. 11.
58. *Id.*
59. U.S. CONST. amend. IV.
60. *See supra* text accompanying notes 11-15.

Article 12 of the Vermont Constitution provides, like the seventh amendment to the federal Constitution, for civil trial by jury,[61] and it has already been construed by the Vermont Supreme Court more broadly than the federal Constitution. *State v. Hirsch*[62] held that the jury in article 12 means a common law jury of twelve, even though *In re Marron*[63] held that a justice's court jury of six was permissible provided there was an appeal de novo to a county court jury of twelve.

Article 13 provides "a right to freedom of speech, and of writing and publishing [one's] sentiments" and enjoins that "the freedom of the press ought not to be restrained."[64]

Article 16 provides for the people's right to bear arms for the defense of themselves and the state and enjoins against standing armies and the "strict subordination [of the military to] the civil power."[65]

Article 18 and its marvelous clause noting that "a firm adherence to justice, moderation, temperance, industry, and frugality" is "absolutely necessary to preserve the blessings of liberty, and keep government free"[66] have been broadly construed as by necessary implication prohibiting excessive fines and cruel and unusual punishment.[67] What a broad reading of this fundamental document.

And articles 19, 20, and 21, providing for a natural and inherent right to emigrate from one state to another[68] (surely a predecessor of the Underground Railway), a right to assemble, to instruct and petition the legislature,[69] and the right not to be transported out of the state for the trial of any offense committed within it,[70] all sum up to a declaration that is broader in many cases than the federal Bill of Rights.

So what a wonderful opportunity there is, as the Vermont Supreme Court in *Badger*,[71] *Ludlow Supermarkets*,[72] *E.T.C.*,[73] and

61. VT. CONST. ch. I, art. 12.
62. 91 Vt. 330, 100 A. 877 (1917).
63. 60 Vt. 199, 12 A. 523 (1887).
64. VT. CONST. ch. I, art. 13.
65. *Id.* ch. I, art. 16.
66. *Id.* ch. I, art. 18.
67. State v. Burlington Drug Co., 84 Vt. 243, 78 A. 882 (1911).
68. VT. CONST. ch. I, art. 19.
69. *Id.* ch. I, art. 20.
70. *Id.* ch. I, art. 21.
71. *See supra* text accompanying notes 11-15.

Towne[74] has done, for Vermont once again—or perhaps I should say still—to lead the way as a fine example for some of the other states, and indeed perhaps for the Supreme Court of the United States itself, of what the Bill of Rights really means, or should mean.

My recitation a few minutes ago of the proud and long history of the contribution made by Vermonters and Vermont law to the story of the advancement of rights and liberties throughout the nation was intended to show that what I am urging today is not radical or dangerous or subversive. Nor is it intended to be disrespectful of the work of the United States Supreme Court. The recognition that the people's most precious rights have their origin in the states is as old as this republic, and as basic as our very structure of government. If we believe, as I think we all do, in the sovereignty of the states, then we must take seriously the substance of state law. Our Vermont Constitution has, I have tried to show, teeth, but it will continue to bite only so long as you state judges—and please pardon the extended metaphor—keep it sharp. The life of the law is, as Holmes in his wisdom understood and taught, experience, and it lives largely because we judges keep it nourished and maintain its health. Like doctors, we must not shrink from developing new tools that aid us in our mission.

What a great challenge for the Vermont state court judges! I salute you and—I started to say "your"—but say "our" Vermont Supreme Court for once again putting the Vermonters out front.

But I am also here to remind you trial judges of your responsibilities. Now, more than at any time since the 1950's, is the role of the state court trial judge all-important. Now whether ultimate justice will be done is dependent upon the judge who in the first instance tries the case, issues the warrant, holds the suppression hearing, orders the *Wade*[75] or identification hearing, rules on the admissibility of evidence in criminal trials and finds the facts in civil trials.

When the United States Supreme Court in *Stone v. Powell*[76] effectively denied fourth amendment claims on federal grounds to

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72. *See supra* text accompanying notes 16-18.
73. *See supra* text accompanying notes 19-21.
74. *See supra* text accompanying notes 28-31.
75. United States v. Wade, 388 U.S. 218 (1976).
76. 428 U.S. 465 (1976).

state prison inmates in federal habeas corpus cases, Justice Powell's opinion stated that "we are unwilling to assume that there now exists a general lack of appropriate sensitivity to constitutional rights in the trial and appellate courts of the several States."[77] He quoted now Deputy Solicitor General Paul Bator that "there is 'no intrinsic reason why the fact that a man is a federal judge should make him more competent, or conscientious, or learned . . . than his neighbor in the state courthouse.' "[78] While Professor Bator was speaking with reference to federal law, I would agree with him more broadly.

As for your role as trial judges, subject to appellate review, I am sure we are all reminded of Justice Jackson's statement as to the United States Supreme Court that "[w]e are not final because we are infallible, but we are infallible only because we are final."[79] While I do not agree with *Stone v. Powell*, I agree with these underlying sentiments. You have the competence and the ability.

Now the Supreme Court of the United States has placed upon you the added burden that in most instances no longer do you have a federal court sitting to remedy a mistake of justice in the first instance. Perhaps this is as it should be, perhaps it is not, but in any event you have had thrust upon your shoulders the challenging task of protecting individual rights even while you enforce community duties. As a citizen of Vermont, I am happy that you have such a well-crafted constitution to enable you to do this and a supreme court that sits in enlightened good judgment. I am totally confident that you trial judges, district and superior, will perform your task with equal vigor.

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77. *Id.* at 494 n.35.
78. *Id.*
79. Brown v. Allen, 344 U.S. 443, 540 (1953).