

Do Something Now

Roz wants me to “Tell a story that she can do something about.”

Like you, I am occasionally paralyzed by 2020. There is something we can do. We do not need to agree on politics, parties, policies, or people. Something remains to unite us – I mean other than the nearly 100% genetic match we have, the warm red blood we pump. We are more alike than we ever admit. Today, we struggle to see that.

The worst crooks, the crooks who do the most damage to our country walk freely amongst us fully camouflaged. In the recent decade, Vermont fell victim to two massive fraud schemes – these relate to social, economic, and even environmental issues everywhere. Let’s start that story now.

[00:51] If you want to do something, maybe start with this formula: look, see, question, act. You can, pretty much, substitute your issue and cause in here. At the root of so much of what is going, there exist elements of corruption, fraud, and an institutional resistance to change.

It may hurt. You may be poking a hydra and it may just bite back. Don’t get focused at looking at the shiny thing in front of you. Put your head of a swivel, leverage the broad perspective of history and time. You can substitute a story from your neighborhood into this essay. You’ll certainly find missing laws, missed opportunities for real justice, people attempting to profit while defrauding others.

Vermont has been perfectly primed to fall victim to large fraud schemes. And before I entirely piss off a half-million human beings, let me point out that your state and your community is also a likely candidate. That’s the point. While Vermont is perfectly primed and we all missed the games played here, so is your region today.

Vermont is the land of quaint. Maybe we should trademark the country inn and the blaze of fall colors, or maybe we already have.

The postcard of Vermont lies to us both. Maybe with COVID-19, the wildfires, and the hurricanes the population pressure here may shift massively in counter-urbanization in a way that we have not seen in 200 years. The appeal of Vermont just shifted because a small family can raise a chicken, grow a potato, and attend under-populated schools.

The appeal of Vermont just shifted because after 9 months of a pandemic people see that the virus isn’t spreading and causing widespread deaths in this state.

Beware, all. Locals and incomers.

Vermont, Vermonters, Vermont business, and Vermont non-profits still barely recognize that we have been swindled out of nearly \$1 billion during the recent decade.

Context

[02:50] What is \$1B to Vermont? It is more than \$1,500 per person. It is almost 20% of our state’s annual budget. These fraud schemes were not evenly distributed. Those at the northern most region and the southern most region had the heaviest hits. The regions that are the worst off, lost the most.

Some of the impact cannot even be measured.

The southern scheme is named The Hermitage Club. The face of the project, Jim Barnes, fronted the alleged fraud. According to his friend Marc Okrant, Barnes is a man of integrity responsible for meteoric growth with this firm Oakleaf Waste Management of Connecticut taking it from nothing to \$650M per year enterprise between 1995 and 2010. Barnes once won the Ernst and Young National Entrepreneur of the Year Award. My research showed that Barnes sold his Connecticut-based waste management firm for \$425M – casting double-doubt on Marc Okrant.

In 2013 as the fraud scheme kicked off, Wilmington Vermont enjoyed a financial windfall of almost \$600,000. Landowners got about a 10% reduction in their taxes. The volunteer fire department learns it will be getting a new ladder truck. And the town finally gets to build a multi-use trail it has wanted for years. All due to Jim Barnes, the visionary behind the Hermitage Club.

Within six years, as the fraud scheme closes, the U.S. District Court complains about the cost of mailing notices to 1,400 creditors who stepped into a complicated, yet historically common, real estate fraud scheme related to the Hermitage Club. The same properties that generated a windfall now sell at tax auctions. The local taxes go up. Nearly every vendor in the region is owed money – vendors involved in the construction trades, food distribution, and professional services.

The Hermitage Club described a luxurious four-season resort for rich people in New York, Connecticut, New Jersey, and Massachusetts. It included fly-in/fly-out options for those with planes. It involved ski-in/ski-out options for winners in life. It included stunning Vermont views. The buildings would replicate classic Vermont barns and buildings (which I guess maybe doesn't mean rotting and falling down – because most around here are).

This fraud scheme rapidly involved conflicts-of-interest with local civic leaders. Within this framework, dissenters became evil. In fact, the hero became the villain and the early villains have yet to be recognized as heroes.

On the north end of this long skinny state is the Canadian province of Quebec. Within sight of that border stands a neglected ski hill named Jay Peak. The Jay Peak hill is taller, may have some better snow than our southern hill. During the exact same time frame, a series of investors arrived with big money, big drawings, big promises, and defrauded the people, the region, and others of nearly a half-billion in cash.

I live near the southern scheme: The Hermitage Fraud.

Vermont is attractive for fraudster. Your state may be attractive too – that's a warning.

Look

[06:18] Task One: Look

I'll review what I know about this state and some of its history.

In September of 2011, my town got hit with a Category 1 hurricane named Irene. For all of you folks on the gulf coast and the south east coast, you'll roll your eyes with this. That's just a Tuesday afternoon down there. I respect that. Vermont is two states from the ocean. Vermont is draped over the oldest mountain range on the earth. There is no long board surfing on break-

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ing ocean waves here. The devastation in my town was five times our annual budget. Roads, bridges, and houses got washed away. Irene reshaped the terrain and our rivers forever.

The local economy got hit too. Restaurant traffic down for months. Travellers avoided the place.

We looked at the subsequent economic lull with sorrow. Vermont's industry and population have been declining for 150 years. The rural areas, which is most of the state, watch the population decline year after year. We wonder: can we keep the school open? We watched the United States Post Office withdraw from our region for over a decade with reduced hours and reduced services. Our infrastructure suffers. With squeezed budgets our dirt roads get narrower, bridges and culverts fail more often, erosion carves away at the margins.

Businesses leave.

We live through a long-term, systemic economic decline. During the years 2010 through 2013, 180 of the 231 towns experience population decreases.

In 2015, Forbes magazine rated Vermont the 42nd best state in which to do business. Better than eight, baby! Better than eight.

In 2013, the largest employer in region, Vermont Yankee, a nuclear power plant announced it was shutting down. A cooling tower already collapsed in 2008. Underground pipes leak radioactive contamination according to testimony made to a state oversight panel. Radioactive isotopes were found in wells in 2010. Is that good news wrapped in bad, or bad news wrapped in good.

Say goodbye to cheap reliable power and a source of good paying jobs. Happy to see a crappy old leaking nuclear plant is shutting down. Oh, and they're leaving the nuclear material here within the flood plain of the Connecticut River.

Let's review the conditions:

- 1) Recent natural disaster;
- 2) Long-term systemic economic decline;
- 3) Long-term systemic population decline;
- 4) Businesses strongly dependent a single industry – here it is tourism.

These conditions run deep. Long-term economic decline goes hand-in-hand with a reputed poor business climate. Long-term population decline risks educational opportunities. Population decline reduces investment in public infrastructure such as roads, internet, and power. Federal grants reward areas with population. No people, no bridges.

Look around you. Do you see similar conditions? Vermont is not alone is it?

Fires, hurricanes, contaminated water systems, regions that are de-populating? Do you have economic development agencies shopping for hope on the open market?

Globally, researchers write about the “resource curse” or the “paradox of plenty”. Regions with an abundance of natural resources tend to have less economic growth, less democracy, and worse development outcomes than others. People have learned to exploit resources without leaving cash behind.

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That's the basic formula. You have coal, I want more money. You have oil, I can make money with that. You have diamonds, diamonds have value after they are out of the ground.

What does your region have that you can sell? What does your region have that others want?

Fraud steps in when there is something to exploit and a means of extracting cash.

In Vermont, we sell a view. We sell an image. We'll sell you Deer Hill Village, Maple Valley Village, Saddle Ridge, Cabin Village and Old Powder Horn Village. Each will have breathtaking views of Haystack Mountain and the Deerfield Valley – these are lines from the Hermitage website. You can see that postcard in your head, a white church spire in a valley surrounded by lush forests with vibrant colors of yellow, and red, and greens under a clear blue sky and hint of a puffy white cloud. Rivers run cold and clear. Rivers filled with hungry trout. You will be the king of that river. You will own (a part) of that mountain.

And Vermont is not that far from anywhere. I drove to Brooklyn last weekend in three-and-a-half hours. That's still not close enough to sell the vision. We need to extend the runway at the local airfield. I am going to bring in multiple flights a day from metro New York and maybe Boston too.

Fly-in, warm car to the country house that is immaculately cared for. Then the next morning, you ski out of the back door to a heated, high-speed chair lift. And for the money paid, you get a guarantee that you will never have a line.

[11:55] You are special. You earned this. You deserve this. The Locals want your business. You are magnanimous and generous by giving Vermonters the opportunity.

An English lord may have had it this good.

Not only that, when you are not using it, you'll make money. Others will come and rent your space generating revenue for you. Staff will clean for you. Food will be prepared for you. Spas await you.

Be royal; be the aristocrat you were always meant to be.

You know you are special because you can afford the \$85,000 membership fee. The \$9,500 annual dues demonstrate that you are worthy of the luxury. That's later in the scheme. The early adopters, they paid only \$20,000 to get in – if they bought in 2011. These early adopters paid only \$4,500 in annual dues.

By 2014, 200 people traded thousands in cash for this vision of themselves.

The town was excited too. 18 town homes have been sold for million-dollar price tags, or damn close to it. The next phase of building includes houses that will sell for \$3M.

The Town of Wilmington and the State of Vermont worked together to provide \$200,000 in tax credits to Jim Barnes and the Hermitage Club because he sold them a vision too. He promised to turn boarded properties into productive properties. Which never happened. They all went up for tax sales within four years.

[13:31] In December of 2014, with the opening of a new ski season, a new ski lodge stood ready. The timber framing and glass-front demonstrated world-class craftsmanship. Extreme Con-

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tracting LLC billed \$681,987 for that construction. A bill that went unpaid, goes unpaid. A vendor standing in-line for money. And this was not the first vendor to get screwed.

Local civic leaders did not look for the scheme. Local civic leaders did not see the scheme. And these same people tangled themselves in the scheme expecting personal financial gains.

I have hints of one or two people having very private suspicions based on Jim Barnes' behavior. Two groups of people started to see something while not looking for it.

The facts of the northern scheme with Jay Peak differ but only slightly. Similar timeline, similar visit of exploitation. Beautiful views though.

Vermont as Context

[14:45] Let's review the context. We have a resource others value highly whilst we struggle in a downward spiral.

Right here is something to exploit. Right over there is someone to sell the dream to. In the middle are businesses with needs too. We need to sell meals, beds, teddy bears, mittens, and maple syrup.

Land is cheap, and the resources are undervalued.

A pretty good foundation.

Vermont has a very small government. Due to the historical structures of old New England, towns were the original governments - long before the states existed and long before the national government. Most of the 255 municipalities depend on volunteers to operate. The town councils meet regularly, execute contracts, authorize payroll, etc. Rarely do the town councils, which we call selectboards for archaic and patronizing reasons, get more than a modest stipend for their time. Planning and zoning board tend not to get paid, and likely get no training. I chaired The Town of Halifax' planning and zoning board. Fire departments don't require much if any training of the volunteers. Halifax Fire Company does not even issue safety equipment that meets modern standards. Most towns do not have police departments. Town may contract with a sheriff's office or the Vermont State Police. Halifax pays for eight hours of patrol per month.

The state police recently moved their barracks further north leaving the Town of Brattleboro. The typical response is about one hour.

We have no county government.

This brings us to the state government. Many of these people are amazing and hardworking. I know them by their first names and used to just ring their mobile phones. We don't really have a bureaucracy. Its cozy and familiar. The staff are over worked. The state delegates all sorts of authority to quazi-governmental entities, commissions, boards, and the like.

These techniques keep government small. It keeps government local. It keeps taxes down.

Yet it doesn't detect or protect a community against fraud.

In Vermont, most decisions are akin to a beauty contest or a reality television show. You get voted in or voted out. We invest entirely in the value of a direct democracy. Few decisions are

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made independent of boards or commissions. Effective operations in this state require maintaining a high-degree of popularity. Facebook's like and thumbs-up got nothing on the mechanisms at work here.

Let me offer a couple of examples. The first is a bit off topic, but a perfect example. To start a rescue service or an ambulance service in Vermont, you must follow steps including buying equipment and advertising the intent in the local newspaper. You submit an application to the state. The agency has fewer than 10 employees. The application gets forwarded to the district emergency medical services (EMS) board. That district board has one member from each of the EMS entities in the region it serves. They vote you in. If you want to start a professional service, you must have your license approved by your future competitors. When I left the local EMS district board, the money, the services, and the budget focused on the two largest entities in the largest town, both of which were the only union organized.

[18:11] Regional planning commissions are the second example. They are political subdivisions of the state, which are given the authority to develop regional plans that contain policies that have standing in state regulatory proceedings, such as land use and energy. Vermont invests oversight power to these bodies. Their brief includes project review, emergency planning, transportation, trails, water quality, community development, energy, and natural resources. Towns appoint their two commissioners. The commissioners serve as unpaid volunteers. The Windham Regional Commission serves 27 towns in the southeastern corner of Vermont. In September of 2020, 20% of the 53 commissioners' positions are vacant.

The Windham Regional Commission appears to have no policy against conflict of interest. During the peak of the Hermitage Fraud, one member of the project review committee simultaneously served as the planning commission clerk for a constituent town, and the environmental manager for a neighboring ski area. In her capacity, she held a one-third vote on actions related to land-use permits for 27 towns - several ski areas, including the Hermitage Club.

See

[19:26] This brings us to "see".

Look, see, question, act.

We need to see things that may actually be obvious if we looked. We may also see things that are not obvious.

Jim Barnes scheme involved numerous civic leaders in the Town of Wilmington VT.

My state representative is named John Gannon. He sits on the State of Vermont Ethics Panel and the House Ethics panel. He also sits on the House Committee of Government Operations.

John Gannon served on the U.S. Securities and Exchange Commission in Washington DC from 1990 through 2001. He joined the Financial Industry Regulatory Authority in 2001. In 2004, he became president of FINRA Investor Education Foundation. He was executive producer of "Trick\$ of the Trade: Outsmarting Investment Fraud" which won a Telly Award in 2010.

John present serves on the Wilmington Selectboard (town council), serving since 2015. He is a board member of The Wilmington Fund VT and Wilmington Works and BetterInvesting, Inc.

You know what I am going to say, right? Don't you?

John Gannon was an investor in The Hermitage Club. He was an investor in the scheme before he stood for election to the Wilmington Selectboard. He was an investor for The Hermitage Scheme before he stood for election to the legislature.

In April of 2015, the Vermont Attorney General filed suite regarding environmental permit violations by the Hermitage. John Gannon advised that the Town of Wilmington not get involved in that process.

John Gannon serves on the board of Wilmington Works, Inc. At the peak of the Hermitage Scheme, Adam Grinold served on that same board, Wilmington Works. He now serves as the director of the state's economic outreach entity. Wilmington Works started in 2013, just as the same time this fraud scheme got started and in the aftermath of Hurricane Irene. Their mission: To build, improve and support a vital downtown that benefits the entire Wilmington, VT community. The entity promotes local business and coordinates tax incentives and grants. Grinold and his family sold millions of dollars' worth of property to Jim Barnes at the outset of the fraud scheme.

[22:11] Adam Grinold and his family simultaneously promoted The Hermitage Scheme get \$200,000 in tax incentives while selling properties into the scheme.

The government that should be providing oversight also is invested in the outcome of this project. At every level conflicts of interest existed from the town government to the regional oversight process. And the Vermont state government has a limited role.

What to see here?

First thing to see is that the State of Vermont and the town have no mechanism to detect nor prevent fraud schemes. It is hard for any of us to see what is missing in a regulatory landscape. And regulations have such a bad name these days. We're being told that regulations are evil. Regulations obstruct business. We're told that regulations harm economic growth.

We fail to see the very real harm caused by fraud. Jim Barnes, allegedly, committed numerous environmental violations, failed to provide honest and complete answers on his permit applications, and also left a wake of economic harm.

[23:17] There is zero oversight or preventative law enforcement on fraud. We barely have crime prevention in Vermont anyway. A lot of crimes in this state never get reported as crimes. A lot of the crime never gets investigated. I can back these statements up with facts.

The next thing to see is that we take a casual stance with conflicts-of-interest. It hard. Towns populations are shrinking. Families intermarry. School systems aggregate kids to classroom and sports teams that form bonds that last generations. We do not have rules or laws around conflict of interest. It seems obvious that one should not financially profit from a venture over which you are simultaneously providing oversight as a government official. It is permitted here.

Maybe we should question that?

Maybe we should question why Vermont, and other states, do not have a functional investigatory entity for financial and public sector crimes.

See the gaps. See the holes that exist around us.

And see the issues.

Jim Barnes repeatedly blamed the State of Vermont and the Windham Regional Commission for denying his necessary permits to move as aggressively as he needed. Yet, they did not. Barnes lied. The permits were not denied.

The permits were delayed because Barnes lied on his permit applications. The state land use permitting process requires a master plan – a full disclosure of near- and long-term activities, growth, etc. Barnes submitted plans from prior owners and prior decades. What WRC didn't know, could not see is that Barnes segmented his real estate purchase in limited liability companies. Finding real estate purchased by Barnes and confederates is obfuscated by this process. In my internet-based research, I found at least a dozen LLCs. I will likely find more by going through the land deeds in town offices. The owner's names may not be obvious. The commonality tends to be the address of the registered agent. In some cases, Jim Barnes name appears. In other cases, attorney Bob Fisher's name appears.

[25:42] WRC requested a master plan for the Hermitage and related projects. Jim Barnes would state it was complete, then hints of expanding land use and expanding real estate purchases would appear in the press.

Seeing conflicts of interest is difficult, especially when projects like these do not involve financial disclosure statements from investors, property owners, or public officials. It is difficult enough to find volunteers to run the local government. Asking for financial disclosure of these volunteers would make the recruitment more difficult.

But without strong policies, even strong laws, conflicts of interest will exist.

Look, see, question, and act... these are four steps towards doing something to prevent these messes.

These crooks depend on you not seeing what they are doing. They are like pickpockets and magicians. They use similar tricks of distraction and defection.

You are not meant to observe that Bob Fisher, the town's attorney suddenly starts working for The Hermitage Club.

Question

[26:46] What questions to ask?

Start with the classic question, right: Is this too good to be true? The answer is so hard to see. Easy to see in hindsight. It is a good question to ask though, right.

Another question to ask: What am I missing, what am I not seeing?

Are promises being kept? Jim Barnes promised money for a shiny new firetruck. Look for the little stuff. Little lie, big lie. The little lies may be obscuring bigger lies.

Are public statements truthful, fully truthful? Try verifying a few. Jim Barnes stated that the Windham Regional Commission was denying his permit and that they were delaying his permits. In fact, the commissioners observed a degree of complexity and moving targets. The sub-

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mitted plans did not align with the facts. Had Barnes been even cleverer, he would have been prepared for this mild test. Even though, there is a potential conflict of interest with one of the three WRC members overseeing the permit application the questions and slow downs created a disproportional and dishonest reaction.

[27:54] The Brattleboro Reformer reported on 09 August 2015, that Jim Barnes attempted to streamline the land use permitting process. Comtuck LLC bought the "East Tract" for \$500K, land that Hermitage bought for \$250,000 in 2013. That's a nice profit. And it reduced the footprint for the land use permitting process. Property near the airport was sold to 4V8 LLC for \$500K. Hermitage Inn Real Estate Holding Company held a \$2M mortgage deed with 4V8 as the borrower. Land bought in 2013.

Upon careful study, the project review committee at WRC observed that the Hermitage retained full control over the properties for future use and development. The mortgage holder was Jim Barnes' company. The LLC that he sold it to was formed in the weeks prior to the sale.

First the numbers don't make sense. Land worth \$250,000 sells two years later for double that. The mortgage loan is for two million, four times the value of the land. The control of the land and the lien holder remain with Jim Barnes.

This is what a detective might call a clue.

The action of selling the land in the middle of a permit process may not have been criminal, and it was also not investigated. That was a public act to defraud the people of Vermont.

Please let's attach fines and jail threats to these permits. Jim Barnes and his conspirators executed a shell game. The public land use permits do not state that lying on an application is a crime.

Those who questioned this fast-moving scheme were vilified by the community and in the press.

Act

[29:48] What actions to take?

First, Vermont laws related to fraud are very weak. Most of the basic fraudster stuff may meet with a year in jail and or a \$1,000 fine. The classic fraud laws are old and intended to protect the consumer. The fines are small, and the jail time is minimal.

Vermont still has a law that describes fine and jail time for painting or disguising a horse. Misrepresenting livestock is a separate crime. The transfer of chattel without notice of lien is a third law.

But you can lie on public documents, permit application, and lie to a government body without hinderance.

One action to take involves revising the laws related to fraud, false statements, and mispresenting official documents.

Second, conflict of interest laws should exist. Vermont town often have small populations with rather autonomous town governments. There should be some recognition of a red zone, yellow zone, and a green zone on conflicts-of-interest. You stand in the red zone, if you or your im-

mediate family have financial interest in a matter before your board, you must recuse yourself. Failure to do so must come with a criminal penalty.

We stand in the yellow-zone of conflicts of interest when there is a potential perception of conflict. The Windham Regional Commission had one member of the project review committee who simultaneously represented the town and a competitive commercial entity. Representing the town and the region may align nicely. Working for a neighboring ski area as the environmental permit person while overseeing the permit applications for another ski area seems a bit wonky.

When judges face conflicts of interest they engage a network of contingencies. A judge from another court steps in. In some legal matters, a special master or other third-party expert takes on a role.

With small governmental entities, maybe we use create a network of mutual aid to make sure that committees are staffed, have quorum, and have the objectivity we expect in governance.

We are biased and social creatures, we humans.

Third, for four decades Vermont increased its use of permits and courts to regulate land use and natural resource management. There is no corresponding process to protect the people of Vermont. Do we place a greater value on natural resources such as views, trees, and marble than we do on our people and their life savings?

I want both. I want to live in a region of exceptional beauty and be protected from fraudsters. What can we do to protect both, environment and people, from predators and crooks?

Four, should we have an independent inspector general? When I see financial or public sector crime in Vermont to whom should I go? When the Town of Halifax ran into a conflict of interest case this year, the town's people had few means of redress. They could petition to call a special town meeting to then force a vote to remove the offending town-council member. The authority to call a special town meeting rests with the town council slash selectboard. The conflict of interest involved a landowner selling a parcel to the town. The landowner was the town road commissioner, and boss of the town roads department, and a member of the three-person selectboard. The town has about 500 residents. The person-at-question has extensive family ties to the region. When it comes to recourse, we rely on the rules more associated with a reality tv show or a beauty contest. The lawyer advising the selectboard with its conflict-of-interest matter is Attorney Bob Fisher, the same guy with two-feet in The Hermitage Scheme.

There is no appeal process. There is no independent investigation into potential criminal activities. There was a violation of the town's procurement policy. Oh, and probably a violation of the state's open meeting law.

[33:51] In 2020, we the people have held ongoing discussion about who is above the law, and who is required to follow the expected normal of common law: murder, tax fraud, fraud with not-for-profit charities, lying to Congress, and more.

The crooks know how to see the gaps and holes in our criminal system. Crooks know how to build a robust network of allies to defend them.

A fraudster's ultimate decision rests on the likelihood of getting caught. Jim Barnes had to think that the State of Vermont will not detect his actions with The Hermitage Club.

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It is not likely that Jim Barnes thought much about getting caught, but if he did, the penalty is \$2,000 and a jail term of not more than 10 years. Given there is no law enforcement for such matters, then why should he care about that.

[34:43] Fraud works because people profit from it.

During the next months, I will examine both The Hermitage Club scheme in southern Vermont and the Jay Peak scheme in northern Vermont. These are two fraud schemes involving nearly a billion dollars and ski areas in a region that was entirely susceptible to such schemes. I'll continue to explore the means of doing something now and my new little mantra: look, see, question, act.