

Fraud in Vermont?

Fraud in Vermont, I am shocked, shocked. But why not? The state won't likely investigate. The attorney general won't likely press criminal charges. The laws are weak. And opportunities abound. In a fine example, of the resource curse, Vermont's freedoms, views, cheap land are all for sale. Bienvenue, welcome, welkomen, bienvenido, huanying – come on over, especially if you have money. Let's explore the Jay Peak Resort fraud scheme now.

[00:41] In 2016, federal investigators exposed a massive on-going fraud scheme at the Jay Peak Ski Resort near the Canadian border in northern Vermont. In my 30 September 2020 essay, "Do Something Now", I explore a fraud scheme involving a resort on the southern boundary of this same state. The two fraud schemes overlap in time. Both fraud schemes involve ski areas and resorts. Both fraud schemes involve real estate and land development. Authorities from the State of Vermont did not engage in criminal investigations nor pursue criminal charges against alleged fraudsters in either scheme.

With the southern scheme, The Hermitage Club, creditors and victims are slogging out a fight in civil courts and at the bankruptcy court. There are 57 named creditors listed in the court documents which expands to 1,400 families or individuals.

With the northern scheme, the Security and Exchange Commission (SEC) investigated then filed 52 civil counts of securities fraud in April of 2016 against Ariel Quiros and Bill Stenger. The SEC charged the two with misusing \$200 million in the scheme. The matter was settled.

The Vermont Digger, a non-profit news organization in Vermont, tracked and reported on the Jay Peak case. Alan Keays at the Digger, states that the then Attorney General for Vermont, William Sorrell was deferring criminal investigations or prosecutions to the U.S. Attorney's office in Burlington VT. Sorrell, who did not run for re-election, said "I'm surprised" that no criminal charges were sought.

[02:25] "I stand by the decision to defer the matter to federal criminal investigative authorities who have way more horsepower and much more expertise in complex commercial crimes than the state," Sorrell said.

In an April 2019 Vermont Digger article, I read "Federal prosecutors in Vermont have been tight-lipped about the probe, refusing to either confirm or deny whether an investigation is still underway. Through a spokesperson, Christina Nolan, the U.S. Attorney for Vermont, declined comment last week." – meaning mid-April of 2019.

Let me interject with an uncompensated commercial plug! There is great journalism being done by hardworking and curious people – they need support from readers. Vermont Digger is one such organization, VT Digger dot org depends on donations. Please support investigative journalism with subscriptions and donations keeps information flowing. The days of adverts, personals, job postings are long gone and no longer fund the front page. You can.

Like the southern scheme, Vermonters, victimized by fraudsters, must fend for themselves in civil court and likely duke-it-out in bankruptcy court fighting over scraps.

[03:41] What role does the State of Vermont have in protecting its citizens?

With the Jay Peak scheme, one may also ask what role did Vermont officials have in the promotion of the scheme?

Look, see, question, act.

Former Governors Jim Douglas and Peter Shumlin, U.S. Representative Peter Welch, and U.S. Senator Patrick Leahy lent their credibility to the fraud scheme. They travelled overseas to promote the project. Shumlin appeared in a promotional video. According to the April 2019 Digger article, I'll quote: "And there were personal relationships – Leahy and Stenger were friends and Shumlin had a close relationship with Quiros – that were advantageous to the developers. (Shumlin, who took more than \$20,000 in campaign contributions from the Jay Peak developers and associates and stayed several times with a girlfriend at Quiros' luxury condo in New York City, went so far as to tell investors the state was auditing the projects.)

The developments at Jay Peak were never audited by the state – or anyone else, according to SEC filings."

[04:52] One does not have to look too hard to see the famed hydra in this network. In the show notes (my website), I have posted a photograph with Representative Peter Welch, Bill Stenger, Senator Patrick Leahy, Senator Bernie Sanders, Governor Peter Shumlin, Ariel Quiros, and Bill Kelly. Of course, politicians will ham for a staged photograph with nearly anyone. A photograph of this sort is not proof of association, confederacy, or guilt.

Until the depth of the connections is revealed. The prior two U.S. Attorneys were married to each other. Their married team works within a political network that connects the congressional delegation to the then governor: staff and resources seem to flow between the congressional delegation and prior gubernatorial administrations. The present U.S. Attorney was nominated by Senator Leahy and appointed by Donald Trump – a bipartisan effort.

[05:43] One might observe a degree of coziness between the investor-slash-developers, the politicians, and the lack of oversight that permitted the scheme to bloom and grow. [Played excerpt from *Eideweiss* from *Sound of Music* with the line "bloom and grow"] (by the way the von Trapps of *Sound of Music* fame settled in Stowe Vermont)

New York City and State

[06:15] Vermont and New York share a long boundary line from Canada down to the Massachusetts area. Except for a few violent squabbles in the 18th century when Vermont militia and New York militia engaged in a few battles, the border has been quiet since Vermont acceptance to the United States as the 14th state in 1791. New York has a greater population, greater wealth, and home to one of the globe's great cities and financial centers.

The State of New York took on the Trump Foundation which was founded in 1988. David Fahrenthold of the *Washington Post* won a Pulitzer prize for his investigations into financial links between the foundation and the 2016 presidential election campaign. The New York State Attorney General, Barbara Underwood, filed civil suit against the foundation which resulted in the foundation being shut down.

I mention this because the AG for a single state took on a sitting president and widely-known charity foundation.

The City of New York invested in a Major Economic Crimes Bureau within the Manhattan District Attorney's office. The office, lead by Cyrus Vance Jr, has taken down numerous multi-million-dollar fraud schemes including:

- a \$120 million-dollar scheme involving the Salander-O'Reilly Gallery;
- a \$100 million-dollar scheme where Yale University was victim;
- a \$100 million-dollar mortgage fraud scheme.

The district attorney's office has brought millions of dollars in settlements to New York City.

New York State and New York City have demonstrated a willingness to take on fraudsters and big-money criminal pursuits.

Want to avoid prosecution? Move your scheme north and east. With a bit of cleverness, you too can swindle hundreds of millions from investors.

Vermont Resources

[08:09] I can picture a cartoon illustration of a small human fishing at the edge of a quiet pond then in the next frame, the fisher-child is wide-eye, the pole shaped like a "U" as a very big head and very big eyes immerge from the still waters. Depending on age, experience, and tolerance for adventure, some may stay in the fight.

We hear stories of people fishing from kayaks too small to land fish they caught. On my website, I have a photo of Jay Hicks on his kayak in Kodiak Alaska. He has a 186 pound/84 kilo fish taking up half of his plastic kayak. This photo and related story came from the Anchorage Daily News which was published on the 2nd of September 2020. The fish and fisherman measure about the same length and appear to be about the same weight.

You've got to be a bit cracked to halibut fish near Kodiak Island in a tiny plastic boat. Yet, I think Jay Hicks may just have the qualifications we need for Vermont Attorney General. Jay when you are done with your hitch with the U.S. Navy, please do consider coming here to fight some real crime.

Vermont invests very few resources in protecting the people of Vermont from crime. We have an elected Attorney General. While researching this people, I learned of the Department of States' Attorneys. I previously knew about the state auditor. And of course, there is Vermont State Police.

These are the four sentinels or guardians for law enforcement:

1. Attorney General,
2. States Attorneys,
3. State Auditor
4. and state police and police agencies.

Vermont Attorney General

[09:49] I have endeavored to follow details about the AG related to the Jay Peak fraud scheme. I got confused by a series of “not-it” claims. In Vermont, we have an AG saying: “that was the hand I was dealt with”.

AG Donovan create a false dichotomy between criminal and civil actions. Well, if I bring a criminal case after civil cases, then rights of the fraudster will have been violated. If I bring a criminal case before the civil case, then the investigation will give the crook more time to shift assets. Thereby justifying no action.

[10:49] Donovan cites Vermont Rules of Professional Conduct for attorneys, rule 4.5 which I will quote: “A lawyer shall not present, participate in presenting, or threaten to present criminal charges in order to obtain an advantage in a civil matter.”

AG Donovan points out that the SEC brings the civil cases and the U.S. Attorney brings the criminal case. That helps the feds avoid rule 4.5.

Look, see, question, act.

Is the rule truly intended to prevent simultaneous criminal and civil action?

Did the authors of this rule intend to prevent the effective use of the full scope of law?

Who is protected by this administrative rule?

Let’s ask a better question, how do we work within the framework of this rule?

At the broadest interpretation, one might see that this rule may prohibit the AG from exercising his authority, or the authority of the entire office. That seems entirely stupid.

Or, one might just see that we are one lawyer short on a solution. If the AG cannot work both sides of the issue (civil and criminal), does that seriously mean that the State of Vermont cannot.

We need the State of Vermont to protect its citizens from crooks and do it soon please. I opened the rule and read the sole comment attach to rule 4.5: “The civil adjudicative process is primarily designed for the settlement of disputes between parties, while the criminal process is designed for the protection of society as a whole.”

[12:17] When interested in protecting society as a whole, the AG may want to focus on criminal proceedings. I read that correctly, right?

This week, I spoke with my state legislator, John Gannon. John stated that he tried to get the attorney general involved in the southern fraud scheme, The Hermitage Club. John said to me, “Some of what [Jim Barnes] did was pretty blatant and obvious. There were consumer fraud lawsuits brought by individuals that got default judgements and stuff. [Jim Barnes] was pretending to build townhomes when he wasn’t. That is not that hard of a fraud to prove. I am saddened that given that there were consumer fraud lawsuits that were brought that the attorney general could have stepped in and looked at that.”

Laura Sibilias, another state representative from southern Vermont, states that she too asked the AG to investigate and involve himself in the Hermitage Club fraud.

The AG did not investigate the Hermitage Club fraud. The AG also did not investigate the northern fraud at Jay Peak Resort.

[13:20] Instead, the AG deferred his responsibility to federal investigators.

What action is needed here? Maybe a team that investigates criminal complaints involving financial crime and fraud. Other states use a tiered approach: municipalities, county, and state resources. In a quick internet-based search, I learn that the state's attorneys do not report to the Attorney General. There something called the Department of State's Attorneys. Within this framework I find a special investigative unit. This SIU is defined within Vermont Statute (24 VSA §1940). The legislature informs me that the SIU "shall investigate" crimes involving violence to children, sexual exploitation, human trafficking. They "may assist with the investigation" of domestic violence and crimes against vulnerable adults. Thus, ends the scope. I'll put the entire law on the website as part of the show notes. They clearly have nothing to do with financial crimes – because of the limitation of a law written by humans.

[14:30] The cute little boxes on the Vermont Attorney General website shows us their priorities. They are:

- Opioids;
- Consumer & Small business help;
- Elder Protection;
- Environmental Protection;
- and Civil Rights.

Look, see, question, act. What is missing?

- Vermont is getting \$600K for a violation of consumer protection act related to surgical mesh.
- Vermont is getting \$10M in settlements from big tobacco.
- Vermont got an injunction related to the United Postal Service.
- And a 31-year-old guy got arrest for child pornography.

The missing element is a strategic vision for detecting, investigating, and prosecuting financial crimes; crimes related to public sector corruption; cyber/identity crimes; or crimes of larger scope. These are crimes against people. These crimes create victims and harm. Jay Peak promised 10,000 jobs and demonstrated \$400 million invested towards new opportunities. Instead the region plunges yet deeper into despair and economic hardship.

[15:40] When the Vermont AG states that he, as one lawyer, cannot simultaneously pursue criminal and civil cases on related matters or related bad-buys, then maybe the state should make an investment towards diversifying and expanding the state's law enforcement capabilities. Or develop a strategic vision to meet the modern complexities honestly and completely.

Before you yell at me for the world's least popular idea in 2020. Protests, everywhere, ask so many other states to shift funding from police to social services, mental health services – let me restate the core issue: Vermont does not engage in law enforcement with respect to major crime such as financial and public sector crimes.

[16:25] Vermont and Vermonter fell victim to nearly \$1 Billion in financial crimes that we know of in the recent decade. Meanwhile, the Manhattan District Attorney has recovered hundreds of millions of dollars in settlements to New York City during the same decade.

The Manhattan District Attorney established a Conviction Integrity Program, Crime Strategies Unit, Cybercrime and Identity Theft Bureau, Forensic Sciences/ Cold Case Unit, Hate Crimes Unit, Public Integrity Unit, Special Victims Bureau, and Vehicular Crimes Unit. All of these were started after 2010.

[17:01] One might want to explore a cost-benefit analysis executing effective law enforcement.

- How much did this state invest in attracting these fraudsters to our state?
- How much did this state invest in tax incentives and grants to aid these two schemes through start up? The southern scheme got \$200,000 in tax incentives.
- How do we budget for this sort of law enforcement?

The AG office just received \$10M from big tobacco. It seems a process of cash recovery exists when we settle cases. NYC did it. Can we?

Take this analysis one step further, how much would you pay to protect a \$1B loss from Vermont? In the loosest of terms, two schemes each worth over \$400 million over a 10-year period. We lost roughly \$100,000,000 per year to unmonitored fraud schemes. That's a lot of money, people.

Vermont State Auditor

[18:03] I'll close with a quick review of the Vermont State Auditor. On the 4th of September 2020, the Vermont Auditor published a report called "Interim Report on EB-5 Program: History and Status of the Program in Vermont". I have not mentioned the EB-5 program so far in this essay, on purpose. In the press, in our state government, and in this particular report, the blame for the Jay Peak Resort fraud scheme is placed entirely on the EB-5 visa problem. Which is a mistake, or as Don Keelan, a local journalist says: "A Whitewash".

EB-5 is a visa program implemented by the United States Federal Government. We sell access to an accelerated track to citizenship by soliciting cash investment in businesses. This program has been associated with some fraudulent schemes since 2006. And why not? There are uber-rich people wanting green cards and a pathway to US citizenship. An investment of a few hundred thousand dollars and a commitment to support 10 employees is trivial. The folks are seeking a green card, not a return on a cash investment. Through this perspective, it is a cash transaction – a trade. They bought a green card and did not give a single solitary hoot about a remote ski area.

[19:19] The Vermont Auditor's report discusses the EB-5 program with painful technical details including a multi-colored complex flow chart.

The final sentence of the auditor's conclusion reads: While some of the hardship caused by the EB-5 scandal has been mitigated for some investors, the fallout of this alleged fraud on many of the investors and Vermont is ongoing."

The auditor places 100% of the blame on the federal visa program. I think the auditor Douglas R. Hoffer entirely missed the photograph of governors and senators and alleged fraudsters standing shoulder-to-shoulder.

The EB-5 was a tool in the fraud, it was not the cause of the fraud. The primary cause of the fraud was a fraudster intending to commit fraud. You don't blame the magic wand. It is like blaming the deck of cards for the slight of hand at a poker table.

We must look at these problems and see ourselves in the root cause of the problem. We cannot solve a problem unless we assert control over aspects of that problem.

Returning to this damned report from the auditor... The subtitle is: "History and Status of the Problem in Vermont". There is absolutely no history of the use and scope of the EB-5 visa program in the Vermont. There is zero effort to identify the status of EB-5 related projects in this state. The title is wrong!

I did my first ever FOIA- freedom of information act request of the state auditor. Let's see if I can get a full list of EB-5 related programs in this state. I've quietly wondered if this EB-5 program was used at ski areas in southern Vermont or other land-use programs. It seems this EB-5 tag may identify potential issues requiring criminal investigation.

Oh, I forgot, we don't do criminal investigations. Sorry.

[21:04]