

**ETHICS**

**Ethics and the Practice of Law**

A supplement to the *New Hampshire Bar News*  
from the Ethics Committee  
of the New Hampshire Bar Association

Find our special supplement in the center of this issue.



Learn about the health benefits of moving one's body, even while at work, in an article by Crystal Reynolds. Story on page 3



Attorney Jon Meyer examines a recent SCOTUS case dealing with student free speech on social media. Page 8.



Pandemic Silver Linings. The Court is applying high-tech solutions to problems caused by the pandemic. Page 32.

## September 11, 2001: Remembering the Day the World Changed Expressions of Unity and Sadness from the New Hampshire Legal Community

By Scott Merrill

On the morning of Sept. 11, 2001, many members of New Hampshire's legal community headed to work thinking it was just another day.

But some events in history happen suddenly and become etched in the collective consciousness of a generation. Because of their momentousness, they create an uncanny ability for people to recall precisely where they were and what they were feeling at the time.

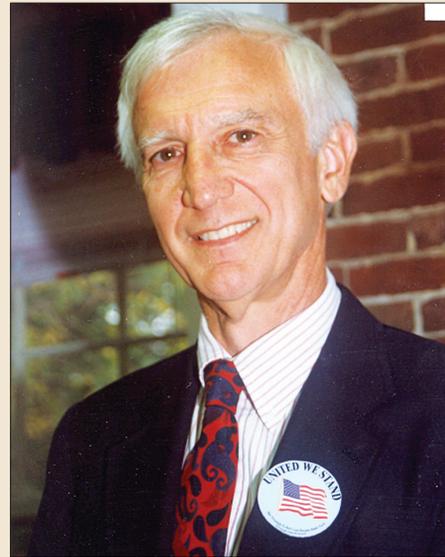
Sept. 11, 2001 is now one of those days for those in the legal community who remember the timeline of events as they unfolded on radios and televisions across the Granite State.

As the facts of that day became clear—nearly 3000 dead and over 6000 injured in an attack by Islamic extremists—the initial shock turned to fear, anger, confusion, and for some, a call to action.

### United We Stand

Despite a sense of helplessness, there was a moment—maybe it was a few weeks, maybe a year—when the United States felt united following the Sept., 2001 attacks in New York, Pennsylvania and Washington D.C.

For New Hampshire attorney Kenneth “Ken” Bouchard, who died in 2017 after a long battle with young-onset Alzheimer's Disease, being united after the attacks meant rising to the challenge of



Attorney Kenneth Bouchard, who died in 2017, wearing one of the buttons he helped design following the Sept. 11, 2001 attacks. NHBA Photo

doing what he could to help those who were directly affected.

In the Oct. 5, 2001, *Bar News*, Bouchard, like others who had been glued to their televisions around the state, said the attacks left him feeling helpless.

At the time he asked himself: “What can I do?”

“We can't all go to Washington or New York to volunteer. We can't make contact with the families of the many missing, lost, injured and deceased,” Bouchard said in 2001.

What people could do, he envisioned,

was to help those in need in a visible way.

For Bouchard, who grew up in a family of seven that often struggled to make ends meet, the events of Sept. 11, 2001, hit close to home. Years earlier, Ken had been in a long-term relationship with a woman, Paige Farley-Hackel, who was on one of the planes from Boston that crashed into the towers. The pair had remained friends, and Ken was also friendly with Farley's mother, according to his widow Brenda Bouchard.

“His friendship with Paige was a big impetus to starting the United We Stand campaign,” Ms. Bouchard, said.

With the help of his wife, his law partner Paul Kleinman, and others, a grassroots nonprofit organization called United We Stand, Inc. was created whose purpose was to sell patriotic buttons and decals.

Proceeds from the buttons, which sold for \$2.00, as well as the decals, were sent to the Red Cross disaster relief fund which benefited survivors of the attacks.

Kleinman said the idea for United We Stand was Ken's, noting that Ken would sell the buttons and decals at his daughter's travel-soccer events which made up a good portion of the proceeds that were donated. Additional donations were also made by lawyers in the Bar and their clients.

“United We Stand was Ken's brain-storm. He was always such a great idea

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## PRACTITIONER PROFILE

### An Advocate for Those In Need

DRC-NH Attorney Jennifer Eber has made a career out of compassion

By Kathie Ragsdale

Jennifer Eber prides herself in advocating for those who can't always speak for themselves, and in helping to educate young people so they can find their own strong voices.

Staff attorney at Disability Rights Center-New Hampshire in Concord since June, she assists individuals with disabilities navigate issues with hiring and job-related obstacles, including requesting reasonable accommodations, and also helps educate employers about the requirements



the chimpanzee), and decades of advocacy for animal welfare and law related educa-

tion programs. She spearheaded the publication of “Beyond High School: A Guide to Your Rights and Responsibilities” for the New Hampshire Bar Association's Law Related Education program, and now chairs the standing committee on Law Related Education.

Raised in Connecticut, Eber went on to attend Dartmouth College in Hanover, New Hampshire, majoring in economics and mathematics. But her longstanding “passion for animal welfare” soon took her

of the Americans with Disabilities Act (ADA), among other responsibilities.

That follows 30 years as a practitioner at Orr & Reno in Concord, where she was a director (one celebrity client was Travis

the chimpanzee), and decades of advocacy for animal welfare and law related educa-

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## THE DOCKET

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## On Perseverance, Connection, and the Huge Gorilla in the Room

By Lynne Sabean

King Kong has been portrayed over the years in a multitude of ways. Sometimes, he was depicted as a monster. At other times, he was an anti-hero or the “8th wonder of the world.” In the original 1933 film, he varied in size from 18-60 feet. The movie’s creators reportedly shrugged off this inconsistency so long as the threat seemed ongoing and menacing.



When the film was remade in 1976, some key scenes were reimagined. For instance, the iconic scene where the giant primate swatted off warplanes was relocated from the Empire State Building to the World Trade Center. Perhaps the movie makers saw the Twin Towers as a more contemporary symbol of American capitalism and prosperity, a place from which someone could easily reach for the stars and sky. Or maybe it was just because Kong could have more secure footing with one leg on each of the twin towers. The penultimate moment of filming occurred when a styrofoam “Kong” tumbled from the rooftops of the WTC before thousands of local extras.

Fast forward a quarter of a century. On September 11, 2001, unprecedented terrorist attacks on the Twin Towers, the

Pentagon, and Washington, DC surprised and shocked the world. The billowing black smoke arising from the World Trade Center hits could be seen from more than a hundred miles away. We watched in horrified disbelief as hundreds leaped frantically from the buildings’ windows, hoping to beat impossible odds and avoid death. Overall, nearly 3,000 died as a result of the attacks.

For the following days and weeks, the true “8th wonders of the world” were those who assisted however they could, making it possible for around 33,000 survivors to be safely evacuated. The rest of us came together as a country, grieving together and acknowledging the important role of witnessing history unfold.

As this issue of *Bar News* went to press, nearly 20 years have passed since that fateful day. Despite the passage of time, we can readily access our “flashbulb memories” – our highly vivid and accurate “snapshot” recollections — of the event. The tragedies have literally become part of us.

Back in 2001, as we struggled to process the reality unfolding around us, those closest to the tragedy wrestled with the fact that they might have been a victim but for seemingly insignificant occurrences that day. (“If I hadn’t missed the train. If the waiter hadn’t taken so long. If I hadn’t stopped for coffee. If I wasn’t on vacation. If my business trip had been a week earlier.”) We recognized how little separated us from the thousands who perished and the families they left behind. This realiza-

tion connected us to those who had lost so much more than us.

In time, we ventured forth again, into a world markedly different from the one preceding it. An environment where we wouldn’t take our safety so much for granted. And more hopefully, a community where we would more readily reach out to those in other unsafe situations: domestic violence victims, the homeless, targets of hate crime, and more.

The first of those not yet born in 2001 are now entering young adulthood. A different experience defines their generation: an ongoing virus that has impacted their education and forced them to reassess their goals and aspirations. Weeks of unknowing and uncertainty stretched into months, then years. We worked to stay connected while being instructed to stay six feet apart. As the pandemic continues, the world again measures our “degree of togetherness” to those who perished and those they left behind. And we’re again redefining what “safety” means going forward.

Just like 2001, there are no easy answers to today’s lingering questions. We again mourn and grieve. We lean into each other for support and hope. And we move forward, waiting for that moment where we can once again reach for the sky and stars.

### Other notables:

- Last month, the NHBA welcomed and honored members of our Leadership Academy’s Class of 2022 at an after-hours live reception. Watch future issues of *Bar News* for updates on their progress as they complete the rigorous nine-month curriculum. As an alumna of the Class of 2015, I encourage new attorneys to plan ahead and consider applying for the Class of 2024.
- After our Pro Bono staff migrated to 603 Legal Aid this past June, the NHBA’s Lawyer Referral Service was transferred to my department. Since then, there have been a number of strategic hires. We’ve also been hard at work streamlining the application and referral processes. I encourage you to send me your comments and feedback: as always, our mission is to serve our members the best we can.

*Lynne Sabean is the NHBA’s director of marketing, communications and member outreach. She is also a 2015 graduate of Leadership Academy.*



Members of the New Hampshire Bar Association’s Leadership Academy, Class of 2022, working on an icebreaker exercise, “something you probably don’t know about me,” at a welcome reception held on Thursday, August 12, 2021 at the Grappone Conference Center in Concord, NH.

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EDITOR  
Scott Merrill  
603-715-3234  
smerrill@nhbar.org

ADVERTISING AND SPONSORSHIP  
SALES COORDINATOR  
Donna J. Parker  
(603) 715-3263  
dparker@nhbar.org

BAR PRESIDENT  
Richard Guerriero, Esq.

EXECUTIVE DIRECTOR  
George R. Moore, Esq.

DIRECTOR OF MARKETING,  
COMMUNICATIONS & MEMBER OUTREACH  
Lynne G. Sabean, Esq.  
(603) 715-3227  
lsabean@nhbar.org

MEMBER SERVICES COORDINATOR  
Misty Griffith, Esq.  
(603) 715-3227  
mgriffith@nhbar.org

MARKETING AND DESIGN COORDINATOR  
Anne Breault  
(603) 715-3261  
abreault@nhbar.org

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CONTACT US:  
[news@nhbar.org](mailto:news@nhbar.org)  
2 Pillsbury Street, Suite 300  
Concord, New Hampshire 03301  
(603) 224-6942  
Fax (603) 224-2910  
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# Finding the Time to Move During the Workday

By Crystal Reynolds

Spinal health? Yes, it's a thing. Maybe you have heard of it, but I am guessing most of you ignored it. In the simplest of terms, the spine is intended to move in six directions; flexion (forward bend), extension (backwards bend), lateral flexion (think side to side), and rotation (twisting left and right). In an ideal world, we would try to spend as much time in one direction as we would in the opposing direction. For example, if we were doing an activity that required us to do a repetitive twist to the right, we would want to try to spend approximately the same amount of time twisting left to maintain muscular balance. Sounds logical. Sounds like it would be relatively easy to do. So why are so many people suffering from potentially preventable issues?

Consider your typical workday. Sitting at your desk, sitting in the driver's seat, sitting on the couch, sleeping in the fetal position...we ask our body to live in a perpetual state of forward flexion (with virtually no back extension). In addition to being grossly uncomfortable, sitting for extended periods of time is the predecessor to a litany of health conditions.

Dr. James Levine, a professor of medicine at the Mayo Clinic coined the phrase "sitting is the new smoking." He further



explains, "Sitting is more dangerous than smoking, kills more people than HIV, and is more treacherous than parachuting. Research shows that you can reduce your chances of cancer, type 2 diabetes, cardiovascular disease, and back pain, all with one simple lifestyle change: reduce the time you spend sitting."

What exactly is so dangerous about sitting? These repetitive extensive bouts

of time spent sitting alters the body's reactions on the cellular level. Gavin Bradley, director of Active Working explains, "Metabolism slows down 90% after 30 minutes of sitting. The enzymes that move the bad fat from your arteries to your muscles, where it can get burned off, slow down. The muscles in your lower body are turned off. And after two hours, good cholesterol drops 20%. Just getting up for five minutes is going to get things going again."

They are not the only people to share this sentiment. Toni Yancey, a professor of health services at UCLA's Fielding School of Public Health, puts it in perspective:

"Sitting shuts down electrical activity in the legs. It makes the body less sensitive to insulin, causes calorie-burning to plummet, and slows the breakdown of dangerous blood fats, lowering 'good' HDL cholesterol."

"Dr. James Levine, a professor of medicine at the Mayo Clinic coined the phrase, "sitting is the new smoking." He further explains, "Sitting is more dangerous than smoking, kills more people than HIV, and is more treacherous than parachuting."

If your plan is to out-exercise your sedentary job, you'll be disappointed to hear that excessive exercise won't negate the effects of a deskbound job. Professor Marc Hamilton, Ph.D., from the Pennington Biomedical Research Center, tells Men's Health.

"We see it in people who smoke and people who don't. We see it in people who are regular exercisers and those who aren't. Sitting is an independent risk factor," he says. "The cure for too much sitting isn't more exercise. Exercise is good, of course, but the average person could never do enough to counteract the effect of hours

WELLNESS continued on page 19

## New Staff at the Bar Center

Jennifer Greenwald is the new NHBA LRS Coordinator. Born and raised in Derry, N.H., she has eighteen years of experience in the legal field, working as a paralegal, legal assistant and an administrator. Currently, Jennifer is



Greenwald



Winiarz



Van De Water

completing her Juris Doctorate. She enjoys spending time with her five children, photography, kayaking and books.

Anna Winiarz, is the new NHBA LRS call-intake specialist. Anna is a 2016 graduate of UNH with a major in English. She has more than five years of experience in customer service in a variety of industries

including two years at a call center.

Arielle Van De Water is the new NHBA Database Coordinator. Arielle is pursuing a Bachelor of Science in Data Analytics online at Southern New Hampshire University and has worked with databases throughout her career.

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# Capitol Riots Denialism May Benefit Victims of Sexual Assault

By Erin Fitzgerald

Improved relations between law enforcement and victims of sexual assault may be an unintended benefit of attempts to re-define and deny the events at the Capitol on January 6, 2021.

On July 27, the House Select Committee held its first public hearing in the inquiry into the events of Jan. 6. During the hearing, four police officers — Daniel Hodges, Michael Fanone, Harry Dunn, and Aquilino Gonell — recounted their experiences that day. They testified that rioters dragged, crushed, beat, tased, threatened, and sprayed them with chemicals. They explained that they were scared and believed the rioters were going to kill them. They testified that the trauma of that day will be forever etched in their minds.

Officer Fanone of the Washington Metropolitan Police Department testified: “What makes the struggle harder and more painful is to know so many of my fellow citizens, including so many of the people I put my life

at risk to defend, are downplaying or outright denying what happened. I feel like I went to hell and back to protect them and the people in this room, but too many are now telling me that hell doesn’t exist or that hell actually wasn’t that bad. The indifference shown to my colleagues is disgraceful.” He ended this statement by slamming his hand on the desk in front of him.

Officer Fanone’s frustration at widespread efforts by the former President and current members of Congress, not to mention commentators on social media, to deny what happened to him and fellow officers on January 6 is eerily reminiscent of the frustration victims often convey after reporting incidents of sexual assault to law enforcement.

It is not uncommon for victims of sexual assault to feel that their reports are met with skepticism, disbelief, and dismissiveness. They feel that officers often blame them for the assault and that officers attempt to explain or minimize the conduct of the accused. It is no surprise that these demoralizing en-

counters lead victims of sexual assault to lose hope for any semblance of justice.

Maybe, however, the frustration expressed by Officer Fanone, and very likely many law enforcement officers, at attempts to re-define and deny not just an attack on the Capitol, but an attack on law enforcement, will serve as the impetus for law enforcement officials to better understand the challenges victims of sexual assault face. These officers have now walked in the shoes that victims of sexual assault so often wear as they exit police departments — they have experienced what it is like to know something happened, but to be told that it did not. And, as Officer Fanone showed when he slammed his hand in front of Congress and the nation, it is infuriating.

Advocates now have a new tool in their toolbox — a powerful shared experience between law enforcement officers and sexual assault victims. Those advocating for law enforcement to treat victims of sexual assault as they would the victims of any other crime

would be well advised to remind officers how they feel when they hear people re-define and deny the events of Jan. 6, despite the countless videos and other evidence of police officers being dragged, crushed, beaten, and sprayed with chemicals by rioters. Explaining that victims likewise feel frustrated when law enforcement officials dismiss or disbelieve reports of sexual assault may help officers to understand the impact on these crime victims when investigations start from a place of skepticism, blame, and disbelief.

In the end, analogizing these experiences may just persuade officers of the importance of approaching victims of sexual assault with understanding, compassion, patience, an open mind — and, perhaps most of all, belief.

*Erin Fitzgerald is a faculty fellow at New England Law | Boston and a former prosecutor in New Hampshire.*

## Letter to the Editor

I want to say a word in response to Robert Fryer’s cogently written and well-argued opinion piece, “Critical Race Theory and Its Fallacy,” that appeared in the Aug. 18 edition of the *Bar News*. I don’t mean to dispute his facts, all of which are carefully researched, presented, and even (on one occasion) foot-

noted. Nor do I even mean to refute his argument, as far as he takes it. My only question is whether theories such as the one he addresses (here, CRT) are even necessarily concerned with history as he presents it in the first place.

My little book on Literary Theory: A

Very Short Introduction, by Jonathan Culler, presents a wonderful scenario in which someone is asked why a couple broke up and then offers his or her “theory” as to the reason. Culler explains that, in common parlance, the resulting theory (of the breakup) would not be something obvious or easily proven (such as an affair), but rather “an explanation whose truth or falsity might be hard to demonstrate.” He goes on to write that a “theory must be more than a hypothesis: it can’t be obvious; it involves complex relations of a systematic kind among a number of factors; and it is not easily confirmed or disproved.”

If I do not take him wrongly, Mr. Fryer seems to be asserting that CRT can be easily denied or disproved through the assertion of a number of (once again, well-researched and persuasive) historical facts. He seems also to be saying that the ultimate goal is “full integration of all races” in America. I don’t think any of us in our right minds would fault him for that.

But look again at his definition of CRT, taken from the *Encyclopedia Britannica* (and here I rely on the accuracy of his quoted excerpt). What CRT is offering is not just a historical explanation, but rather a mechanism by which to understand the very nature of race. Moreover, this latter is prof-

ferred as a type of “category.” Well, that’s all fine and dandy as far as theory goes (no pun intended), but what’s the takeaway? While I do not claim to be any expert myself in CRT, I think a logical gap exists here between the nature of a theory and the content it is trying to explain. I am not denying that racism exists, that slavery existed—or that white people have (on the whole) played a positive role in helping to reverse or address the evils thereof. What I am saying is that Mr. Fryer’s argument is like trying to explain a divorce by pointing out that one spouse was cheating. He seems to be saying, if we stick with the analogy, that if there was no cheating—or if the cheating was not nefarious in any way—or that if one party later did a great deal to mediate the cheating—then the divorce doesn’t exist either. But people have broken up for far less. In my own experience, you can break up simply by moving somewhere else. And that’s the fallacy of Mr. Fryer’s argument: he’s moving us somewhere else. If we wanted to address the real problem of race in this country—if we wanted to get at the heart of Culler’s metaphorical divorce—we would each need to own up to our role in it. So start theorizing, folks, because the truth

LETTER continued on page 5



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# Legal Innovations In New Hampshire's Farm Viability

By Amy Manzelli and Julia Nosel

You already know the Granite State enjoys some of the most delicious maple syrup, apples, fresh ice cream, and more. But did you also know that Granite State farmers face some of the most expensive farmland in the entire country, surpassed by only five other states (CA, NJ, RI, CT, and MA)? Farmland in New Hampshire can cost as much as \$8,000 per acre. Think about the cost of an apple and think about the cost of that acre. Enter legal innovations to increase the accessibility to farmland and farm viability. Here are two recent examples: one that puts ownership of land into the community and one that uses streamlined site planning and cooperatives.

## New Hampshire Agrarian Commons

New Hampshire Agrarian Commons is innovating farming in New Hampshire to keep food production regenerative, ecologically sustainable, and diversified for community benefit, forever, as part of a national initiative. The New Hampshire Agrarian

Commons is one of about a dozen similar organizations formed nationwide in May of 2020 by the Agrarian Land Trust.

Across the country, including in New Hampshire, farmland is being commodified, consolidated, and transferred out of the hands of small-scale farmers, giving way to more industrial-scale operations that pollute rivers, erode the soil, degrade ecosystems, emit greenhouse gasses, and contribute to exploitative labor conditions, and income inequality. The "Commons" model is designed to address this problem by transferring fee ownership to the community via the locally governed organization, in this case, the New Hampshire Agrarian Commons. The New Hampshire Agrarian Commons is a New Hampshire Nonprofit Corporation with its application for 501(c)(2) exempt status pending. As part of the Commons model, the New Hampshire Agrarian Commons becomes the long-term owner of the fee interest of farmland.

As part of the transfer, the farmer's debt is paid off, financed largely by philanthropy from individual donors and foundation grants. In return, farmers receive affordable and long-term equitable access to the land structured in a way that ensures community ownership and governance of land and shared agroecological stewardship. In more legal terms, farmers receive a long-term lease whose terms blend concepts from conservation easements, affirmative agriculture covenants, options to purchase at agricultural value, and other advanced tools.

The New Hampshire Agrarian Commons board is comprised of three different types of board members: those from the community, those with professional and technical expertise in the subject matter of farming, law, nonprofit governance, etc., and those who are also board members of the national Agrarian Land Trust. In that way, the New Hampshire Agrarian Commons board is designed to always keep the governance of the farmland connected to the community in which the farmland is located, while also providing for sufficient capacity to maintain forward progress and momentum of the initiative.

Three founding farms make up the initial work of the New Hampshire Agrarian Commons: Brookford Farm in Canterbury, Normanton Farms in Litchfield, and Vernon Family Farm in Newfields. The Normanton Farms transfer was first, closing in July of 2021! Normanton Farms has been stewarding 63 acres of land with a holistic farming system since 2009 where cattle are the foun-

ation of the system that mimics nature to build soil fertility, treats the animals humanely, and produces healthy food. Normanton Farms now holds a 98-year lease.

## Crows' Feat Farm

Crows' Feat Farm in Kensington, New Hampshire is another amazing, modern farm that has innovated what it means to work in agriculture today, specifically when it comes to the approval process at the municipal level. The 100-acre, cooperatively-managed farm cultivates community through a collaborative commitment to regenerative agriculture. By virtue of its integrated nature, regenerative agriculture requires a high degree of cooperation among farmers with diverse areas of expertise, as well as a long-term outlook. Such cooperation builds trust and connection, reinforcing the commitment to the land and to one another.

Getting this cooperative-based farm approved in Kensington saw an innovative approach to the municipal process. Crows' Feat Farm worked with the Planning Board to streamline the process and address issues before they arose. After the initial conceptual meeting, Crows' Feat Farm requested the Planning Board both accept and conditionally approve the plan at the first and only meeting on the Site Plan application. From the conceptual meeting to the approval of the Farm, the municipal process took three months.

This streamlined approach is exactly what New Hampshire law contemplates. Ag-

ricultural projects are sometimes subject to site plan review, as this project was, and other planning and zoning processes. However, it is often the case that agricultural projects are relieved from providing the same level of detail that other commercial projects would be required to provide. The key is working with the land use boards to educate them about how the state law requires them to accept less than a typical commercial applicant, while at the same time, educating the agricultural operator that, indeed, they may be subject to some municipal regulation.

Thanks to this proactive, streamlined approach to municipal approval, Crows' Feat Farm was able to begin its exciting food production much more quickly than normal, earlier this year.

Because agriculture and farming are such important resources to New Hampshire and the environment, using innovative legal strategies like these can cultivate not only farms, but local communities, economies, and health too.

*Amy Manzelli is an attorney known for getting results in matters both large and complex and simple and small. Attorney and part owner of BCM Environmental & Land Law, PLLC, Amy practices environmental, conservation, and land law throughout New Hampshire.*

*Julia Nosel is a paralegal/administrative assistant working with Amy Manzelli at BCM Environmental & Land Law, PLLC.*

## Letter from page 4

is going to be in your heart (not on paper), and it's not going to be an easy set of facts to master, either.

Ultimately, regardless of any disagreements Mr. Fryer and I might have over the merits of Western civilization or capitalism in general, I think my own realization is that we should worry about creating a civil society first. And if civil society is predicated on civil discourse, I can only hope to be in the same conversation with him.

Paul Reynolds

## Opinions in Bar News

Unless otherwise indicated, opinions expressed in letters or commentaries published in *Bar News* are solely those of the authors, and do not necessarily reflect the policies of the New Hampshire Bar Association Board of Governors, the NHBA Editorial Advisory Board or the NHBA staff.

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# Data Protection Impact Assessments for Lawyers

By John F. Weaver

In the summer of 2020, the Court of Justice of the European Union (CJEU) struck down the 2016 data-sharing agreement between the United States and the European Union, which permitted personal data to be transferred from the EU to the United States consistent with European law, including the General Data Protection Regulation (GDPR). In doing so, the CJEU terminated the EU-U.S. Privacy Shield, the mechanism that many American companies had relied on to import European data to their facilities in the United States. This has significant implications for lawyers and their clients that receive data from the EU, as their European counterparts may begin to request greater due diligence review of their data privacy and security operations.

Data protection impact assessments (DPIAs) are one of the primary due diligence tools used by European organizations that send data to non-EU partners, including the United States. DPIAs are a formal review required by the GDPR when data processing “is likely to result in a high risk to the rights and freedoms of natural persons.” Increasingly EU-based organizations are requesting DPIAs for personal data transferred outside the EU to confirm compliance with the GDPR by their partners.

Lawyers that receive personal information from the EU should be prepared to conduct a DPIA of their data processing. Similarly, lawyers, as trusted profession-

“Data protection impact assessments (DPIAs) are one of the primary due diligence tools used by European organizations that send data to non-EU partners, including the United States.”

als, may receive inquiries about DPIAs from their clients who need to conduct DPIAs themselves. DPIAs involve detailed analyses of an organization’s data privacy and security practices, identifying vulnerabilities, the controls implemented to reduce the risk introduced by vulnerabilities, the parties within the organization responsible for overseeing the data and vulnerabilities, the relevant jurisdictional laws affecting the privacy rights of individuals, etc.

A DPIA can be prepared in a variety of formats, but should address all of the following information in some way:

1. The need for a DPIA. Explain broadly why you have identified the need for a DPIA.
2. The details of your data processing. The description of your organization’s data processing should not be general. It should rely on specific information about data files, backup files, email usage, electronic device usage, data subject requests, etc. When providing this information, consider the questions a third party would have about your processing.
3. Consultation with third parties. In addition to explaining what your organiza-

tion does with data, you should also explain the third parties your organization relies on in its data processing.

4. Data privacy and security best practices. You should view a DPIA as an opportunity to review and explain your organization’s use of data processing best practices.
5. Identification and assessment of risks. There are two risks a DPIA should address: raw risks and controlled risks. Raw risks are the risks involved before any controls are implemented, like encrypting laptops, implementing multi-factor authentication, etc.
6. Measures that reduce risks. When discussing the controlled risks, you should also provide a detailed explanation of each control you rely on to reduce raw risk levels.
7. Analysis of Information Privacy and Security Laws. A DPIA should include an analysis of the impact the relevant jurisdictional privacy and security laws may have on the data processed, e.g., New Hampshire’s breach notification law, RSA 359-C:19-21, the federal Gramm-Leach-Bliley Act, etc.

American and European privacy practices have differed for some time, but in the last year, European organizations have become incentivized to bridge that gap. If you are prepared to conduct, and help your clients conduct, a DPIA, your firm will be well positioned to continue business with European partners.

*John Weaver is a member of McLane Middleton’s Information Privacy and Security Practice Group. The group assists businesses and private clients to improve their information privacy and security compliance, and address any security incident or breach that may arise. He can be reached at john.weaver@mclane.com.*



The Bar News has launched this regular column devoted to cybersecurity and information privacy. Contact [news@nhbar.org](mailto:news@nhbar.org) if you’d like to contribute an article on these critical issues facing the profession.

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## Never Miss a Call: Introducing Smith.ai

By Misty Griffith

Virtual receptionists are a growing alternative to the over-burdened administrative assistant struggling to answer the phone lines while juggling numerous competing demands or, on the other extreme, the lonely receptionist sitting at the front desk waiting for the phone to ring. A virtual receptionist is not an automated voice recording with prompts to dial a number and leave a message, but rather, a real person – a polite, trained professional who can perform intake for potential clients and schedule appointments to help attorneys quickly and efficiently capture leads. “Virtual” is a bit of a misnomer because these receptionists are real people whose physical location is remote.



After carefully researching the leading virtual receptionist providers for law firms, the New Hampshire Bar Association is pleased to offer Smith.ai as a new member benefit discount. Smith.ai, based in Palo Alto, California, provides 24/7 virtual receptionists and lead intake services. Their receptionists, all of whom are based in North America, capture and convert leads by phone, text, website chat, and Facebook messenger. Specialists in the legal industry which comprises over 60% of their business, the receptionists at Smith.ai provide lead screening and appointment

scheduling. Smith.ai integrates with many software applications including other member benefit discount providers Clio and LawPay.

Smith.ai charges per call with no charge for spam, telemarketers, or wrong numbers. This eliminates money wasted paying for a dedicated receptionist during quiet times when there are few calls. For a small or solo firm, this can be a particularly valuable service.

For firms of any size, Smith.ai can provide a valuable tool to extend business calling hours. The 24/7 availability of their receptionists provides for a cost-effective way to capture leads on potential new clients who call in the evenings or on weekends. Since you only pay for calls received, using their service for after-hours calling is a great way to extend hours without forwarding calls to your personal phone.

Even for firms that have a fulltime receptionist, Smith.ai can be used for overflow coverage during the day with instructions to only answer the call after a certain number of rings or during designated hours when the receptionist is unavailable. Attorneys can customize instructions. Because firms pay per answered call, this can be very cost effective.

Fewer missed calls translate into more money for firms. Studies show that 80% of callers that get a voice mail do not leave a message, costing potentially valuable client leads.

For firms struggling to find good sup-



port staff “post”-pandemic, Smith.ai offers a cost-effective solution. They offer a wide variety of customizable plans to benefit firms of any size. Pricing is a flat rate per call with no charge for spam calls, pollsters, sales calls, or wrong numbers. They offer three pricing plans: Starter Plan \$210/month for 30 calls (\$7.50/ call for overage), Basic Plan \$360/month for 60 calls (\$6.50/ call for overage), and Pro Plan \$750/month for 150 calls (\$5.50/ call for overage). Discounted plans for firms with higher volume needs are also available. All plans are live staffed 24/7 and include transfer lines and free website chatbots. NHBA members get \$100 off their first month of calls and chats with code NHBAR100, 5% off bundled services and an additional 15% off annual plans paid upfront.

Many prospective clients first visit a firm’s website. For those who have questions, Smith.ai offers a round the clock live chat answering service that responds in seconds to turn website visitors into qualified consults. They will also answer texts and Facebook messages.

Smith.ai is the number one ranked virtual receptionist company on G2 Review (#1

out of 43 companies), The Manifest Top 100 Virtual Receptionists list, and Smart Sites, a reviewer that specializes in testing and rating office solutions for small businesses.

Additionally, Smith.ai has received overwhelmingly positive reviews from numerous reviewers. Capterra (a major software review site) gives Smith.ai a perfect 5 stars. Clutch Review (a major reviewer of IT and business services) rates Smith.ai a perfect 5 stars. Crozdesk scores Smith.ai 94/100 and awarded 2021 Quality Choice, Happiest Users, and Trusted Vendor designations for 2021 for virtual receptionist services. Smith.ai received a 92% excellent rating on Trustpilot.

Currently Smith.ai is offered as a member benefit by 11 other state bar associations. Autumn Caudell, Director of Practice Management Assistance Program for Alabama State Bar writes, “I have nothing but wonderful things to say about Smith.ai. Maddy Martin is a great communicator and always helpful!”

The New Hampshire Bar Association is pleased to add Smith.ai to our growing list of member benefits. To take advantage of your member discount visit [nhbar.org/resources/member-services-benefits](http://nhbar.org/resources/member-services-benefits), link to Smith.ai, and enter code, **NHBAR100**.

To learn more about Smith.ai or other great NHBA member benefits visit [nhbar.org](http://nhbar.org) or contact Member Services Coordinator Misty Griffith for more details. Email [mg-riffith@nhbar.org](mailto:mg-riffith@nhbar.org) or call (603) 715-3279.



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## “F--- You” — Student Free Speech on Social Media

By Jon Meyer

Can a public secondary school punish a student for inappropriate expression about school activities on the student’s social media? That is the issue the United States Supreme Court addressed in the case of *Mahanoy Area School District v. B.L.* The questions before the Court were whether public schools have any authority to regulate off-campus speech, in particular on social media, and how the substantial disruption test which the Court has used for in-school speech applies to off-campus expression. In deciding, 8-1, in favor of the student, the Court placed more emphasis upon the weighing of individual circumstances than pronouncing a general rule.



The plaintiff, who had completed her first year of high school, vented on social media in response to her non-selection to the varsity cheerleading team. The first image was of her and a friend with middle fingers extended bearing the caption: “F--- school, f--- softball, f--- cheer, f--- everything.” The second image stated: “Love how me and [another student] get told we need a year of JV before we make varsity, but that doesn’t matter to anyone else?” As a result of this expression, she was suspended from JV cheer for one year.

more recent years, the Court has made exceptions to this principle in the contexts of speech that could reasonably be perceived as being made on behalf of the school, such as articles in the student newspaper, speech made at a student assembly or a banner displayed at a school-sponsored event. This is the first case since *Tinker* to favor the student.



It is striking that the Court did not discount the constitutional protection based on the questionable nature of the expression, the young age of the speaker, her use of profanity or the relatively modest punishment imposed. To the contrary, it noted that because the posts were critical of authority they would, if uttered by an adult, be entitled to “strong protection.”

In the Court’s landmark 1969 decision regarding student free speech in public schools, *Tinker v. Des Moines Independent Community School District*, which involved a student in a school hallway wearing an arm band protesting the Vietnam War, the Court held that in-school speech could only be sanctioned if it caused substantial disruption. In

more recent years, the Court has made exceptions to this principle in the contexts of speech that could reasonably be perceived as being made on behalf of the school, such as articles in the student newspaper, speech made at a student assembly or a banner displayed at a school-sponsored event. This is the first case since *Tinker* to favor the student.

The broad questions presented by the case were whether the substantial disruption *Tinker* standard applied to student speech occurring off campus and whether, as the Third Circuit had held, the school district had no authority over speech off campus regardless of its disruptive effect. And assuming *Tinker* does not apply, but schools retain some authority over off-campus speech, what level of

constitutional protection should apply where the speech is related to school activities or personnel? Finally, how can on- and off-campus speech be delineated in the context of social media?

“The broad questions presented by the case were whether the substantial disruption *Tinker* standard applied to student speech occurring off campus and whether, as the Third Circuit had held, the school district had no authority over speech off campus regardless of its disruptive effect.”

The Court rejected the Third Circuit’s position and affirmed that a “school’s regulating interests remain significant in some off-campus circumstances.” Rather than attempting to articulate a generally applicable legal standard, it held that even if the *Tinker* standard were applicable, the school district

SPEECH continued on page 23



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# The Whiteness of Wealth: How the Tax System Impoverishes Black Americans – and How We Can Fix It

By Dorothy A. Brown  
Crown (Random House) (2021)  
Hardcover, 265 pages  
Reviewed by **Barbara Heggie**

“I became a tax lawyer to get away from race,” begins Attorney Dorothy A. Brown in her new book, “The Whiteness of Wealth: How the Tax System Impoverishes Black Americans – and How We Can Fix It.” The opening line disarmingly serves to draw in the skeptical reader and provides the roadmap for the rest of this readable and persuasive work of scholarship. Brown had decided to pursue tax law because of its presumed racial neutrality: “I learned early on that people might look at me and see black, but as far as tax law was concerned, the only color that mattered was green.”

The kernel for Brown’s book was a mystery about her parents’ tax returns. Why did she, a single person, pay less in federal tax than her parents did? Together, her parents earned about the same as she did alone. This mystery gnawed at her until 1991, when she read a law review article on black legal scholarship by one of her mentors, Duke Law Professor Jerome Culp. In the article, Culp raised the idea that racism had distorted our tax laws, and for the author, “pieces of the puzzle started to fall in place.” She called him and promised to “figure out whether our tax laws had a disparate impact based on race.” Thirty

years of research later, she has kept that promise.

Brown’s first chapter, “Married While Black,” delves into the initial question that had plagued her. She discovered there was nothing akin to a joint U.S. tax return until 1927, when a wealthy, single-earner white couple concocted a scheme to avoid paying their regular tax bill. Rather than file one tax return for the breadwinner-husband and none for the wife, as the law then required, each spouse filed a return, splitting the husband’s income and the married person’s exemption between the two.

As Brown writes, the couple “might have been charged with tax fraud, but their ‘ingenuity’ was rewarded.” After an audit, they paid the tax assessed – and then paid a distinguished law firm to represent them in a federal district court refund suit. Many billable hours later, the case went to the Supreme Court, where the couple won based on their residency in a community property state. The consequence of this was a tidal wave of states eager to join the community property club. But this was considered such a “distinct advantage for women” that Congress stepped in and created the joint tax return as an option for married couples.

How could this new, facially race-neutral law disadvantage black Americans? The answer lies in its impact, which itself derives from the consequences of racism. Many white couples over the past century have been able to survive comfortably on

one income, whereas wage discrimination has made this a much scarcer reality for black couples. The consequence is more tax paid by the average black couple, plus higher childcare costs and other expenses accrued when both spouses are working full time.

Brown provides numerous examples of this phenomenon in other contexts, from housing to employment to generational wealth transfer. In each case, the tax law is facially race-neutral, but the impact is not, thanks in large part to the consequences of racism. Throughout, Brown carefully lays out the math behind the conclusions, and she personalizes each point, describing black families impacted by our current system.

The running theme is the racially-disparate impact of our current tax laws. Impact alone, of course, isn’t enough to render a law unconstitutionally discriminatory, and Brown does not see a conscious, anti-black intent behind these laws. For this reason, Brown’s proposed remedies require Congressional action. Her ideas run from what is standard procedure in many other industrialized nations (no joint tax return, no deductions or exemptions) to innovative (a wealth-based refundable tax credit).

Brown’s book is a thought-provoking and fascinating trip through the history, mechanics, and racial consequences of American tax policy.

*Barbara Heggie is a staff attorney at 603 Legal Aid, where she is the coordinator of the Low-Income Taxpayer Project.*





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| Birth injury settlement              | \$7,500,000.00  |
| Surgical error settlement            | \$5,100,000.00  |
| Surgical error settlement            | \$5,000,000.00  |
| Post-surgical infection settlement   | \$4,000,000.00  |
| Wrongful death verdict               | \$3,750,000.00  |
| Neurological birth injury settlement | \$3,500,000.00  |

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## Justice Grant Helps NHPR Document the Challenges of Parolees

New Hampshire Public Radio's Supervision podcast, which was funded in part by a NH Bar Foundation Justice Grant, tells the deeply personal story of a New Hampshire man who tries to get his life back on track after a stint in a state correctional facility. First released in May 2019, the four-episode podcast delved into the sometimes challenging journey that follows incarceration, as former inmates try to navigate new lives, find housing and work, and re-set personal relationships. New information around the original story prompted the Supervision editorial team to take another look at the story. A new episode was released on April 13 that expanded upon some details of the original reporting and reveals further insights about the subject of post-incarceration life and how one man's journey ultimately turned out.

Former NHPR Reporter Emily Corwin, now a Nieman Foundation fellow at Harvard University, began work on this story in the spring of 2017. She interviewed Josh Lavenets while he was still incarcerated at the Northern New Hampshire Correctional Facility in Berlin – speaking with him about his life in prison, and his hopes for life after release. Through five



months of immersive reporting with Josh, his family and his friends, she witnessed his attempts to find a job and decide where to live. She saw him face a sudden medical emergency. Ultimately, she also bore witness to how things would turn out for him in unexpected ways.

With the release of the four initial

episodes in 2019, Emily and the program's producers thought the reporting was finished, only to find two years later that there was more to discover. A listener led Emily to new information which she had not had access to previously. With these additional findings, she realized the original story was incomplete, with more to be told.

"We got access to new records, which led us to additional interviews, and it just became increasingly clear that Josh's story was about a lot more than we had initially understood," said Corwin. "We set out in 2017 to understand what it was about parole that made it so hard for men like Josh to stay out of prison. What we learned after releasing the podcast helped us see that the challenges people face as they leave prison are more complicated and more dire than we had imagined."

The new information led to a new fifth episode; it also shifted the lens of the entire series. A story that was initially about why a man would thrive or fail on parole turned into something much bigger: a story about survival, and just how hard it can be for a reporter to get to the truth. The new reporting that went into Supervision is part of the work of NHPR's Document team, which is where listeners can find long form narrative storytelling, and enterprise and investigative podcasts from NHPR.

**WHERE TO FIND SUPERVISION:** Listeners can hear the series by subscribing to Supervision on Apple Podcasts, Stitcher, Spotify, or wherever they access podcasts.

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## Community Notes

The New Hampshire Women's Bar Association will honor Attorney **Robin Melone** of Wadleigh, Starr, & Peters, P.L.L.C., with its 2021 Marilla M. Ricker Achievement Award at its annual fall reception on Oct 14. The association will also celebrate **Angel Jingwei Li**, a rising 2L at the UNH Franklin Pierce School of Law, as this year's Winnie McLaughlin

Scholarship recipient.

The New Hampshire Society of CPAs and New Hampshire Women's Bar Association is hosting a fun-filled day for connecting with women on and off the golf course at Stonebridge Country Club in Goffstown on Monday, September 20th. Visit <https://www.nhscpa.org/> to register.

## Coming and Going

The law firm of McLane Middleton is pleased to announce that **Steven Cameri-**

**no** has joined the firm as its Chief Executive Officer.

## LawLine Thank You



Left to Right, Attorney Shawna Bentley, Attorney Kathrine Lacey, Attorney Sarah Rubury, and Paralegal Dawn Scribner.

The NH Bar Association would like to thank a group of attorneys at Wescott Law for taking part on Weds., Aug. 11, in LawLine. The group fielded over 30 calls from the public on a variety of legal issues, including family law, probate, landlord/tenant, and criminal law.

We are currently seeking individuals to answer LawLine calls on December 8, 2021, from 6:00pm to 8:00pm. The Bar forwards phone calls from people who are looking for general legal advice and information. We can forward calls to up to 20 different phone numbers, as long as they

are landlines. The Bar provides a light dinner for all volunteers. For more information or to volunteer for a LawLine event in 2021, please contact NHBA LawLine Coordinator, Linda Sutton at [lsutton@nhbar.org](mailto:lsutton@nhbar.org).

When asked why the firm participates in LawLine, Kathrin Lacey said:

"Wescott Law has enjoyed volunteering with LawLine for many years and looks forward to providing this service to the New Hampshire community for many years to come."

## Volunteer Lawyers Sought for UNH Undergraduate Mock Trial Invitational

Saturday, October 16 & Sunday, October 17

The University of New Hampshire will host its 13th Annual Intercollegiate Mock Trial Invitational Tournament for undergraduates during the weekend of Oct. 16-17. Contingent upon continued governmental and institutional responses to the COVID-19 pandemic, the tournament will tentatively be held in-person at UNH's Durham Campus. The tournament needs attorneys willing to serve as judges, to preside over mock trial rounds and evaluate students' performances. Attorneys do not need to be sitting judges, active litigators, or familiar with college mock trial to participate. Judges will receive a brief training that will equip them for the task.

For each day, there will be one morning and one afternoon trial session, lasting no longer than three hours. 20 judges per round are needed to administer the tournament.

To sign up as a judge for one or more trial sessions, or should you have any questions, please contact Coach Samuel Harkinson at [sam.harkinson@hpglaw.com](mailto:sam.harkinson@hpglaw.com).

### Honorable Kenneth Francis McLaughlin

The Honorable Kenneth Francis McLaughlin, 92, of Nashua, New Hampshire and Cloghane, Ireland, died at his home Saturday morning, Aug. 28, 2021, with his family at his side.



Kenneth, or "Judge," as he was called by many, was born on September 3, 1928, the son of the late John W. McLaughlin and Alice G. Martin, both of Nashua, New Hampshire. He married the former Mary Elizabeth Barry in 1953 after meeting in the 6th grade at St. Patrick Church Sacred Heart School in Nashua. They raised a family of four children together, sharing 57 years of marriage before her death in 2010. Kenneth was educated at Sacred Heart and Nashua public schools, and graduated Nashua High School with the class of 1946.

As an undergraduate, he attended St. Anselm's College and the University of New Hampshire. He went on to receive his Juris Doctorate from Boston College Law School in 1950. At twenty-one he became the youngest person in New Hampshire admitted to the practice of law.

At twenty-nine years old, he was appointed Associate Justice of the Nashua District Court. During his tenure, he served on the Governor's Commission on Crime and Delinquency and was a steadfast advocate for young people. His belief in the promise of each individual would be a prominent

theme in court and throughout his life. He retired from the judgeship in 1973. He authored a two-volume work of legal analysis, *Color Me Justice*, exploring for general readers and students alike, the positive impact of progressive Supreme Court decisions expanding and protecting the civil rights of individuals implied in the US Constitution.

Civic distinctions include former President of the Nashua Bar Association, service as military aide to Governor Walter Peterson and as Chairman of the New Hampshire Partners for the Alliance for Progress, sponsored by President John F. Kennedy. He served as Ambassador for the Alliance from the State of New Hampshire to the State of CearÃ¡, Brazil. In 1963 he was chosen Outstanding Young Man of New Hampshire by the NH Junior Chamber of Commerce. He received the Outstanding Service Award from the International Brotherhood of Police Officers, the International Conference of Christians and Jews Brotherhood Award, and the FAA Master Pilot Award.

Kenneth is predeceased by his beloved wife Mary B. McLaughlin and brothers John H. McLaughlin and Robert M. McLaughlin.

He is survived by Lillye Ramos Spooner, beloved friend, partner, traveling companion, and later caregiver, sharing many years of life together, making his later years rich and meaningful.

He is also survived by his four children, Atty. Shane A. McLaughlin and his wife Christine, Diane M. Whittemore and former spouse David, Sara M. McGee and her husband Jack, K. Brian McLaughlin and his wife Linda; grandchildren Mary Kathleen (Katie) Whittemore and her husband Alvaro Reig,

IN MEMORIAM continued on page 14

## ARNIE ROSENBLATT

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*Welcomes Jocelyn Fenton to the firm*



**Jocelyn Fenton**  
Associate

(603) 695-8572  
[jfenton@devinemillimet.com](mailto:jfenton@devinemillimet.com)

Devine Millimet welcomes our newest Associate, Jocelyn Fenton to the firm's Manchester, New Hampshire office. As a member of Devine Millimet's corporate practice group, Jocelyn is a business-focused attorney. Her goal is to help clients avoid, manage and minimize legal risks in all aspects of their business. She helps a variety of clients, from individuals, to businesses of all sizes, to non-profits. Utilizing her previous in-house counsel experience, she can effectively assist clients in every aspect of their business from start to finish. This includes helping with business formation, assisting with strategic decisions and specific contract review needs, being involved in day-to-day legal matters, and assisting with selection and implementation of appropriate exit strategies when business owners are ready to transition out of the business.

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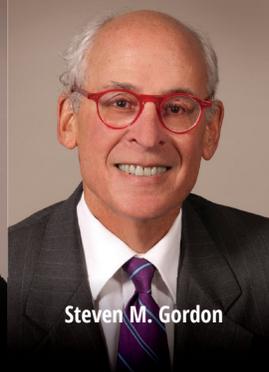
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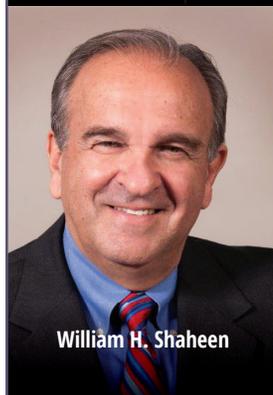


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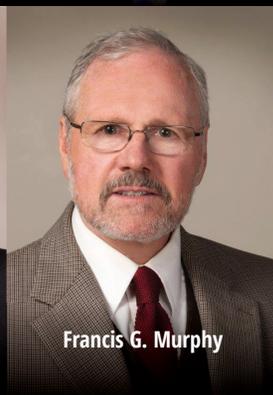
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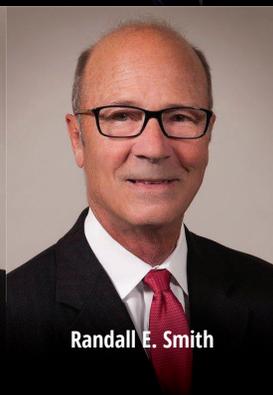
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Bailey Robbins  
Associate

Following a two year clerkship with the N.H. Superior Court, Bailey is joining the Primmer Piper Eggleston and Cramer Insurance and Litigation Practice Groups. She has an interest in insurance coverage disputes and will work on insurance contract interpretation and litigation. Our Insurance Group works with insurance carriers to provide coverage advice and litigation support in contract disputes throughout New England. She will also work with the Litigation Practice Group to defend insureds in a variety of disputes including automotive, premise liability and business disputes.



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## Olivia Bensinger Joins Shaheen & Gordon Litigation Team

Attorney Olivia Bensinger is a skilled litigator working across practice groups at Shaheen & Gordon. She will assist clients with issues related to:

- Personal Injury
- Employment
- Civil Rights
- General Commercial Litigation

Previously, Attorney Bensinger held a prestigious clerkship with the U.S. District Court, Northern District of Alabama, where she managed approximately 50 civil dockets. Bensinger also gained private practice experience with a top international law firm based out of New York City. She is proficient in Spanish.

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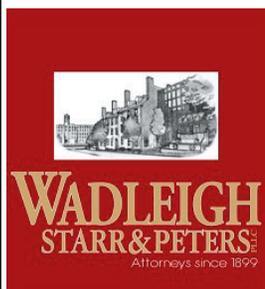
is pleased to announce that  
**Autumn H. Kish**  
has joined the firm as an associate

Autumn graduated cum laude from the University of NH Franklin Pierce School of Law in 2021. Prior to joining the firm, Autumn was a legal resident at the Merrimack Superior Court and the New Hampshire Attorney General's Office.

She is admitted in New Hampshire.



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congratulates  
**Robin D. Melone**

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## In Memoriam from page 11

Kyle D. Whittemore and his wife Alexis Hahalis, Brendan W. McGee, Jillian G. McGee, Hunter D. McLaughlin and Tanner B. McLaughlin; great grandchildren, Diego Reig-Whittemore, Silvia I. Reig-Whittemore, Dessa Mae Whittemore, sister-in-law Sheila McLaughlin; and many cousins, nieces and nephews.

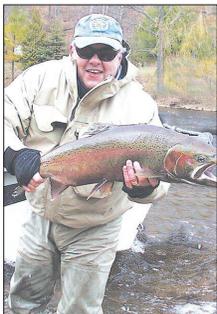
### William Rhoads Battles

Bill Battles — an active member of the Mount Washington Valley for five decades — died on Aug. 12, 2021, at Maine Medical Center, surrounded by his family. He was 71.

Born Sept. 11, 1949, in Haverhill, Mass., to Malcolm and Harriet Battles, Bill had close ties to the Granite State for most of his younger years, coming north with his family and friends to the outdoors.

Bill attended the Manter Hall School in Cambridge, Mass., before earning a psychology degree at the University of New Hampshire. After attending UNH, Battles attended Cumberland Law School in Birmingham, Alabama where he earned a law degree. He returned to New Hampshire with his family and settled in North Conway in 1974.

Bill's long-standing law practice in the Valley was well-respected and brought him close to the community in countless ways, including many years as an active member of the North Conway Rotary Club. However, Bill was most proud of his later career as a magazine publisher, which he juggled along-



side a full-time law practice. This wasn't just a job for him, but a passion, and one that he was able to share with his four children.

*Fly Fish America* magazine published its first issue in 1996 and is celebrating its 25th anniversary this September. *On Target* magazine was born in 2003, and has become a leader in the shooting-sports industry.

Bill's sons and daughter-in-law continue to publish the magazines from their offices in the Valley, where his contributions, unique wit, and great writing style will be missed by readers and family alike.

While he was lucky enough to have a job he loved, when he wasn't in a courtroom or behind a computer writing an article, Bill's hobbies and passions usually took him outdoors. He spent many winters teaching skiing at Cranmore, and volunteering at ski races for his kids.

His encyclopedic knowledge of firearms, and his love for target and trap shooting, brought him many opportunities to share those passions with his grandchildren, who knew him lovingly as Bubba.

Family has always been at the center of Bill's life. He met his wife Susan at UNH, and together they raised four children here in the Mount Washington Valley, recently celebrating their 51st anniversary.

Memories of a great-life-lived will be cherished by Susan and their family, including son Crispin Battles, wife, Cheryl, and children, Sawyer and Addison, of Bartlett, N.H.; son Benjamin Battles, wife, Angie, and children, Collin and Paige of Center Conway, N.H.; son Mackenzie Battles, wife, Shannon, and daughter Kameryn of Windham, Maine; and daughter Whitney Battles of North Conway, N.H.; and an extended family of nieces, nephews and in-laws.

Bill was predeceased by his brother Robert Battles earlier this year.

### John B. Andrews

John B. Andrews, loving husband, father and grandfather, passed away on September 2, 2021 in Rochester, New Hampshire, surrounded by those he loved.

Born in Bridgton, Maine on July 14, 1946, the son of Harold P. and Thelma M. Andrews, he grew up in Yarmouth, Maine. He made several life-long friends at Yarmouth High School, where he graduated in 1964. After a youth of mowing neighbors' lawns, washing dishes, and performing odd jobs, he proudly funded his own education to the University of Southern Maine, graduating with a Bachelor's degree in Political Science in 1968. It was there that he met his lovely wife, Sharon, whom he married in the Summer of 1969.

Upon graduation, John followed his dream of attending law school - a dream fostered by internships and work with Portland's city manager and with the firm of Bernstein, Shur, Sawyer & Nelson. He received his JD from the University of Maine School of Law in 1971.

Following law school, John began his career as a lobbyist for the Maine Municipal Association, where he drafted legislation and amendments, and served on Maine's first Public Employees Labor Relations Board, and the Maine Senatorial Redistricting Commission. In 1975, he moved to Concord, New Hampshire, where he became the Executive Director of the New Hampshire Municipal Association (NHMA) until his retirement in 2009. His career and efforts in the community were recognized in 2010 when he was presented with the Distinguished Service to the Legal Profession award by the NH Bar Association.

During his career at NHMA, he grew the organization from five employees in 1975 to over 120 before his retirement—but his true legacy is in the people he mentored, the relationships he cherished, and the family he adored. John's career touched every town and city in New Hampshire. He was an advocate for residents, brought innovative solutions to the state such as pooled, mutual insurance programs for health and property-liability, and empowered towns and cities to make changes for the betterment of their residents.

John owned several sailboats throughout his life, creating memories and teaching his children lessons on seamanship, nature, and patience. He loved to travel along the Maine coast and explore attractions big and small in New England and beyond. John always had a recommendation for diners, lobster shacks, and the most interesting, but never the fastest, route to any Maine destination. He was able to share his love of sailing and of Maine's coast with his grandchildren who were always his first topic of conversation.

John is survived by his wife of 52 years, Sharon, his daughter Betsey Andrews Parker and her husband Kelly, of Dover, NH, his son John Andrews and wife Jessica of Boxborough, MA, and his son Matthew Andrews of South Portland, ME. He is also survived by nine grandchildren, whom he loved dearly; Daniel, Lotus, Margaret, Eben, Andrew, Nathan, Sarah, Catherine, and Charles.

John believed in service to others, education, and civic engagement. In lieu of flowers, he requested donations to Community Action Partnership of Strafford County, 577 Central Ave., Suite 10, Dover, NH 03820 or a charity of your choice in his honor.



### Arthur William Hoover

Arthur William Hoover, age 81, died in Durham, New Hampshire on September 6, 2021.

Art was born in San Luis Obispo, California on April 4, 1940. He graduated from Dartmouth College in 1962 and earned a law degree from the University of Notre Dame in 1965. While at Notre Dame, he met his wife, Susan (Ellis). They settled in New Hampshire, living in Rochester until 1988 and then in New Durham. In January 2020, they moved to RiverWoods in Durham.

Art practiced law for more than 50 years, first in Rochester and then in Alton, before retiring in 2016. Two common themes characterized his personal and professional interests over the course of his life: action and community. He was in motion much of the time. He played football and baseball at Dartmouth and rugby at Notre Dame and began jogging on a daily basis in the early 1970s, continuing until just a few years before he died. One of his proudest athletic achievements was climbing Mount Kilimanjaro, the highest peak in Africa, at age 65.

Art was extensively involved in civic activities across a wide range of areas and interests in the region. His belief that athletics helped instill important values of teamwork, collaboration, responsibility, and dedication motivated him to support opportunities for young people throughout his life. They guided his work as a lawyer and his community involvements. He coached youth baseball and football in Somersworth, Rochester and New Durham for many years and was part of a core group of local residents who conceptualized and created Roger Allen Park in Rochester in the 1980s. He was inducted into the Rochester Sports Hall of Fame in 2011 as a coach and contributor.

He was a member of Kiwanis, Lions and Rotary clubs in Rochester and Alton for decades. He served on the board of directors at Frisbie Memorial Hospital and the school board at St. Thomas Aquinas High School and was the first president of Great Waters Music Festival.

Art also found relaxation and peace in his Catholic faith.

Art was a voracious reader, especially of military history and biographies. His interest in World War II led him to visit several key sites, including Pearl Harbor, the D-Day landing beaches in Normandy, France, and the Churchill War Rooms in London.

Art touched many lives and he will be greatly missed. In addition to Susan, his wife of 56 years, he is survived by four children, Jennifer Hoover of Durham; Jeffrey Hoover of New Haven, Connecticut; Matthew Hoover of Dover; and Patrick Cash-Peterson of Reykjavik, Iceland; five grandchildren and two great-grandchildren. He also leaves behind two brothers, Jack of Grover Beach, California and Harry of Pismo Beach, California and a sister, Jill, of Twin Falls, Idaho. Art was predeceased by his daughter-in-law, Karen Hoover.

Donations in Art's name can be made to the Michael J. Fox Foundation for Parkinson's Research, PO. Box 5014, Hagerstown, Maryland 21741, [www.michaeljfox.org](http://www.michaeljfox.org).

*In memory of our colleagues, the NHBA Board of Governors has made a contribution to the NH Bar Foundation.*

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## Aikens Receives Paralegal Award

The New Hampshire Bar Association honors Diane Aikens as recipient of the 2021 Paralegal Professionalism Award.



This will be presented by New Hampshire Bar Association's President, Richard Guerrero at the Paralegal Association of New Hampshire's Annual luncheon on September 17th.

## NH Bar Leaders Celebrate NHBA Leadership Academy Incoming Class

The New Hampshire Bar Association held its welcome reception for its incoming Leadership Academy Class of 2022 on Thursday, August 12, 2021 at the Grappone Conference Center in Concord, NH. Members of the judiciary, NHBA staff, and Leadership Academy alumni also attended to welcome the selected candidates.

Ten attorneys from throughout the state were selected for the Class of 2022. They are as follows:

Attorney Gar Y. Chiang (Chiang Law Firm)

Attorney Duncan A. Edgar (Hoeftle Phoenix Gormley & Roberts PLLC)

Attorney Susanne L. Gilliam (Gilliam Legal LLC)

Attorney Marta A. Hurgin (603 Legal Aid)

Attorney Jacqueline A. Leary (McLane Middleton PA)

Attorney Lissa D. Mascio (NHDOC)

Attorney Israel F. Piedra (Welts White & Fontaine PC)

Attorney Lyndsay N. Robinson (Bernazani Law)

Attorney Lise F. Solbeck (Caldwell Law Estate Planning & Settlement)



The New Hampshire Bar Association (NHBA) held its welcome reception for its incoming Leadership Academy Class of 2022 on Thursday, August 12, 2021 at the Grappone Conference Center in Concord, NH. Photo Scott Merrill

Attorney Scott J. Whitaker (Office of the Coos County Attorney)

The NHBA Leadership Academy is a yearlong program that aims to identify, inspire and train emerging leaders of the legal profession in New Hampshire. The Academy is open to NHBA members with three to ten years' legal experience and attracted a strong field of applicants.

This year's participants will begin their training with a two-day retreat in October 2021 at the Mountain Club at Loon in Lincoln, NH, with guest speaker Justice John T. Broderick, Jr. (ret.). The class will

meet on a monthly basis for the next nine months, learning skills and receiving orientation to facets of community and professional life in New Hampshire. Working in groups, the participants will also work on a legal sector community service project.

This year's program is the seventh offered by the NHBA. The curriculum is being developed by a steering group headed by attorneys Jaye L. Rancourt (Brennan Lenehan Iacopino & Hickey) and Talesha L. Saint Marc (Bernstein Shur), with the involvement of program alumni.



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We recently launched our Mentor Advice Program (MAP) and seek newer attorneys wanting assistance transitioning to the New Hampshire legal community and launching their practices. Dozens of qualified mentors are ready to help!

For additional information or to volunteer, contact Misty Griffith, our Member Services Coordinator at (603)715-3227 or [mgriffith@nhbar.org](mailto:mgriffith@nhbar.org)



## COMING NEXT MONTH



This digital commemorative booklet, to be published in October 2021, features NHBA Leadership Academy participants and alumni.

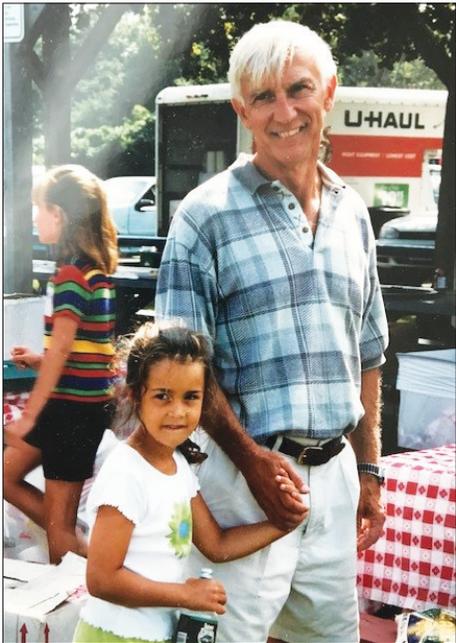
Watch *e-Bulletin* and next month's *Bar News* for details on downloading your copy.

Your advertising message in this publication demonstrates your support of the Leadership Academy program. **Proceeds from ad sales provide needed scholarships for the Class of 2022.** For more information or to place your ad, contact Donna Parker at 603-715-3263 or [dparker@nhbar.org](mailto:dparker@nhbar.org)



## Remembering from page 1

guy and always an innovator,” Kleinman said. “He’d developed software for our firm to make things more efficient back then. He was my mentor, and always had ideas when it came to handling cases.”



Ken Bouchard in 1997 with his daughter Briana, five years old at the time. Courtesy Photo

Kleinman said he isn’t sure the United We Stand campaign would be possible today given the political and cultural polarization that took place in the ensuing years.

“I wonder if something like that today would be turned around in some manner,” Kleinman said. “When we put it together though, it felt genuine. It wasn’t turned into an ‘us-versus-them’ thing.”

According to Ms. Bouchard, the cam-

paign was something that came naturally for Ken.

“He [Ken] lived the lesson his mother taught him throughout his life, whether it was through philanthropic donations, helping family, friends and neighbors with legal and other matters that were easy to resolve for him but overwhelming to them, spending the day plowing elderly neighbors’ driveways in the winter, and everything in between,” she said.



Kleinman



Ken Bouchard, (center), at an office-staff party in the early 1990’s. Paul Kleinman stands behind him. Courtesy Photo

At the time of the attacks, Kleinman and others at his firm were in their Hampton, N.H. office, and he remembers going to a local restaurant to watch the events unfold on a television.

“It was a scary time and it also brought people together. Ken felt very strongly about the cause and the idea of standing together. Everyone felt a feeling of hopelessness and the question at the time was what

can you do to help out?”

### ‘Lets go do what we do best’

New Hampshire Bar Association President at the time of the attacks, Peter Hutchins, compares what happened on Sept. 11, 2001 to other world changing events, like Pearl Harbor, the Great Depression, or the current pandemic.

Hutchins, 43 years old in 2001, was working at the Manchester firm of Hall and Stewart.

“We heard it on the radio and we actually did have a TV that got Channel 9,” he said. “What I remember is everything just shutting down,

and people were scared. You didn’t know if there were going to be more attacks.”

Hutchins says he realized quickly that he needed to address Bar members. The question, he recalls asking himself, was, ‘How does this relate to our profession?’

“It was hard to figure out what to say at the time because in those early days it was triage, with first responders working in New York and a lot of attention being paid to those who were killed,” he said. “At the time I asked myself, ‘How could a bunch of lawyers in New Hampshire respond to this?’ And I said, ‘Maybe we just carry on and do what we do.’”

Hutchins’ column in the Oct. 5 *Bar News* described his struggle to come to terms with the events of the attacks before he offers the wisdom of a phrase he’d picked up while refereeing high school basketball games.

“How should I feel? What should I do? Should I be doing anything as Bar president? Are lawyers even relevant to this, and if so, how? I’m 43 years old, smoke too much, have no military training and have been trying tort cases in New Hampshire courts for the last 18 years,” he wrote in the Oct. 5 column.

Eventually a phrase that officials would say before leaving the locker room came to him: “Let’s go do what we do best.”

Hutchins’ column reminds attorneys that what they do best is fighting for their client’s liberties and freedoms, and “striving for respect.”

“That day really brought an awareness that we could be attacked in our own country,” he said. “I think we have gained a better appreciation for first responders and veterans over the past 20 years.”

### A NH Supreme Court Case Conference Suspended

While Hutchins, Bouchard and Kleinman were watching their televisions the

morning of Sept. 11, the New Hampshire Supreme Court justices were sitting in what is now known as the Souter Room holding a case conference.

At one point, according to Justice John Broderick, the justices were notified the World Trade Center had been hit by a plane.

“It didn’t sound like a terrorist attack, and one of the justices left to get more intelligence. I think it was Dalianis. And then she came back reporting it had been a very large plane. And then the images started coming on the television which were very alarming.”

Broderick, like others that day, says he didn’t have a sense that the towers would collapse.

“We suspended the conference and a short time afterwards myself and others left for home. The television showed the towers had come down,” he said. “It was twenty years ago but it feels like a week ago. That day, those images, had the same impact on me as the Kennedy Assassination. It was one of those moments that’s imbedded.”

### Bar Staff Gathers Outside Bar Center

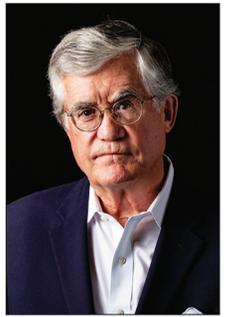
Joanne Hinnendael, the New Hampshire Bar Association’s CLE coordinator at the time, says she learned what was happening in New York while driving to work from Henniker.

“I heard Diane Sawyer on the local radio station, and I thought that was odd, until she explained that a small plane had hit the World Trade Center in N.Y. Then, all of a sudden, Sawyer says, ‘oh my God, oh my God, another plane has just hit the World Trade Center.’”

By the time she reached the Bar Center, Hinnendael said the staff were all watching events unfold on television.

“When I saw the first tower collapse, I walked away crying, knowing that those buildings hold tens of thousands of people and that many could be killed,” she said, adding that bar staff eventually gathered in front of the building that on Pleasant Street at the time.

“We formed a circle and just expressed our grief. Some prayed, others just cried. It really brought us all together and we came together as a family that day. Well, we were always a family, but that made us stronger.”



Broderick



Hinnendael

## LOTHSTEIN GUERRIERO, PLLC

### APPELLATE SPOTLIGHT

Every appellate lawyer has come up against this particular wall: An argument that seems to fit with the text of a statute, but if adopted, would lead to undesirable consequences, and therefore, will probably not be well received on appeal. In that regard, our hats are off to litigant Robert St. Onge, whose lawyer came up with a clever but ultimately-doomed argument to try to prevent a client’s eviction during a pandemic. St. Onge, one of 12 residents of a sober living program in Manchester, was discharged for violating program rules. He then sued for wrongful eviction relying on chapter 540-A, the laws governing landlords and tenants, and “Emergency Order #4,” issued by the Governor, that limited evictions during the pandemic. But on September 2, 2021, St. Onge lost his appeal. The Court, sifting through various statutory definitions, ruled that adult group homes are excluded from eviction protection under both theories.

Although the Court made a purely textual analysis and did not rely on any policy considerations to reach this outcome, this is the type of case that drives appellate courts to sometimes use the “absurd result” tenet of statutory construction. E.g., how could group homes that rely on program rules continue to function if they had to go through a lengthy court process to evict rule-breakers? This made us think: As our country becomes more and more polarized along partisan and other divides, will this drive a trend where courts strive to avoid the “absurd result” tenet for statutory construction? After all, we constantly hear loud shouting voices from each end of the political spectrum that the other side’s legislative proposals are outrageous and anti-American. Will appellate courts determine over time that they are no longer qualified to draw the line between the somewhat-sensible and the patently absurd?

Read about our 24 published appellate victories and more – at [www.nhdefender.com/new-hampshire-victories-on-appeal/](http://www.nhdefender.com/new-hampshire-victories-on-appeal/)

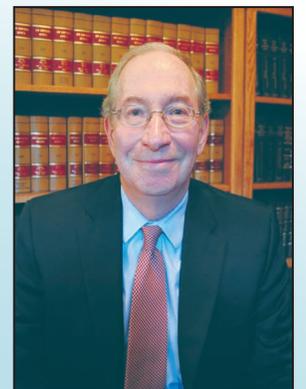
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in a different direction.

While at Dartmouth, she volunteered for People for the Ethical Treatment of Animals, and was inspired by the work of Gary Francione, then a University of Pennsylvania Law School professor, known for his work on animal rights, with whom she had the privilege of working.

“That experience inspired me to go to law school, to see what I could do to work on legal issues to advance animal welfare,” says Eber, a vegetarian since high school. She went on to graduate from Boston Law School.

While still in school, she was a summer associate at Orr & Reno, which hired her upon graduation. Starting as a generalist, she later focused more on litigation work and employment law issues. The firm’s emphasis on community engagement also allowed her to serve on the boards of several animal shelters, among them the Animal Rescue League of New Hampshire and the now-Pope Memorial SPCA Concord-Merrimack County.

“Assisting people with disabilities to find meaningful employment and receive the accommodations necessary to succeed in their jobs is important work and I hope to be able to make a real difference in my clients’ lives.”

DRC-NH Attorney Jennifer Eber

Travis the chimpanzee may have been the most unusual client to visit her Orr & Reno office. The owners of the hairy primate – later to make headlines when he mauled a friend of his owner so badly she needed a face transplant – were alleging veterinary misconduct for care their pet had received in New Hampshire. While the case was settled out of court, Eber never forgot Travis, an animal actor who had appeared on numerous television shows, doing laps around one of the firm’s conference rooms.

Orr & Reno legal assistant Mary E. McFall has known Eber since she started at the firm in 2007, and says of her friend, “It has always struck me about Jennifer that no matter what is going on in her personal and

professional life, she always takes the time to think of and care about other people. I have been blessed to have been the recipient of countless kindnesses from Jennifer and have witnessed similar kindnesses be extended to others, both personally and professionally. Whether a family member, a friend, a colleague or a client of Jennifer’s, she always finds a way to make you feel important.”

James Steiner, then a fellow attorney at Orr & Reno, chaired the Bar Association’s Law Related Education Committee at the time, and asked her to join the group. She started examining what other state bar associations were doing to educate high school seniors and led the effort to produce “Beyond High School: A Guide to Your Rights and Responsibilities,” which offers sections on employment, renting a place, living together, marriage, what to do if you’re arrested, search warrants, lemon laws, voting and other topics, with a list of resources at the back.

“It was fantastic to be involved in a project where you could see the tangible benefit to students,” says Eber, who adds the book can help adults as well as students learn about “our laws and civic engagement.” Pre-COVID, the book – recently updated and republished – was distributed to most high schools in the state and Eber expects that distribution to continue.

Eber says she is also proud of the programs offered by the Law Related Education program of the NH Bar Association, including “We the People: The Citizen and the Constitution,” an instructional curriculum culminating in a simulated congressional hearing in which students “testify” before a panel of judges. The Law Related Education program most recently created a centennial event commemorating passage of the 19th Amendment guaranteeing women the right to vote.

Eber hopes to assist Disability Rights Center – NH with its ongoing legal assistance provided to people with disabilities as they face potential barriers to securing competitive, integrated employment. She is helping in that process, working with clients who are receiving Supplemental Security

Income (SSI) or Social Security Disability Insurance (SSDI) benefits “but also addressing workplace issues that could have an impact on people who receive SSI or SSDI,”

in their jobs is important work and I hope to be able to make a real difference in my clients’ lives,” she adds.

Away from the office, Eber offers her services as a volunteer mediator with the New Hampshire Commission for Human Rights, is a board member of Volunteer NH, a member of the New Hampshire Animal Rights League, and co-chair of the Governor’s Commission on the Humane Treatment of Animals.

Jeri Zezula, the co-chair of the Governor’s Commission and a veterinarian with training in forensic veterinary medicine and animal cruelty investigation, and a retired UNH professor, says Eber’s “dedication to the Commission and her competency as a contributing member became readily apparent” after she joined the panel in 2017. “From her background and professional connections as an attorney, she brought a perspective that had been missing,” Zezula adds.

The group offers a number of resources on its website, (<https://www.humane.nh.gov/>), including the “Animal Cruelty Investigation and Prosecution: A User Manual for Law Enforcement,” and Zezula says she feels confident that “we will continue to successfully guide the Commission in working with the Governor’s Office, NH Law Enforcement, the court system, the legislature, and the citizens of the state in ensuring that laws and procedures are in place to assure that New Hampshire’s animals are treated humanely and that those who cause harm to animals are identified and justly punished.”

Eber’s love of animals extends to her homelife, where she and her 13-year-old daughter, who is also a vegetarian, take in rescue animals, now including two cats and a dog, at their Deering residence.



Attorney Jennifer Eber with her rescue dog, Max. Courtesy Photo

she says.

One current client is seeking a job as an air traffic controller through an FAA (Federal Aviation Administration) program aimed at providing “competitive, integrated employment for people with disabilities,” Eber says. She is assisting him as he works with the FAA on “reasonable accommodations” that will allow him to perform the essential functions of the job as provided by the ADA. “Assisting people with disabilities to find meaningful employment and receive the accommodations necessary to succeed



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## Why Your Demands Need to Violate Expectations A Lesson in Some Basic Psychology

By Kirk Simoneau

I was taught how to draft settlement demands by lawyers who practiced law in “the good ole days” when attorneys and adjusters, after exchanging correspondence for the file, would meet, face to face, to settle cases and, I’m told by mostly reputable sources, it wouldn’t be uncommon for these discussions to take place over a bottle of scotch. Everyone was on a first name basis. Adjusters were local. Hands were shaken. Stories were told. Kids were asked after by name. And most every case was looked at as an individual case, with its own particular pluses and minuses.



Now, insurance adjusters, who are almost never local, scan numbers into software that dictates the value of cases. Hands aren’t shaken. Stories aren’t told. We don’t know one another’s kids. Few cases are individual cases. Pluses and minuses are made in relation to national databases of verdicts or medical bills not a case’s unique factors. Put another way, as so many of us tell our clients, “to the insurance company you’re just another number.”

### Expectancy Violation Theory

This article is about how to not be just



another number, how to move cases more quickly and with better results by embracing a psychological and communication theory known in academic parlance as “expectancy violation theory” that will get adjusters to actually stop and treat your cases distinctively. In short, people, including insurance adjusters, tend to expect or predict people, including lawyers, to act a certain way during communication based upon repeatedly having those expectations met and act, themselves, accordingly, in return. It’s almost as simple as the typical “fine” in response to “how are you?” Few of us are

fine but we say it because it’s the expected response to the expected question. Think of how often you’ve tuned out someone because you already “knew” what they were going to say or how often you misread a sentence because you’ve already predicted the next word.

Adjusters read demands all day long. Most of them are presented in the exact same format, font and formula used since the “good ole days.” This is boring and creates a predictable read, the adjuster assumes, because he’s seen it before, what you’ll demand and what your case is about, and acts

on those assumptions regardless of what you’ve actually stated or demanded. It’s basic psychology, we give scant attention to the familiar. If you want to move more cases, you need adjusters to pay attention to you. You want them to work on your claims and you want them to treat those claims differently, so you need to violate their expectations positively.

### Positive Violations Only Please

Any deviation from the norm will be perceived either positively or negatively. If perceived positively, a person will seek to continue and prolong the interaction. If negatively, well, not so much. As a general rule, the higher the level of interpersonal content, the more positive the perception. For me, this means I don’t use form letters – ever. I write each letter each time and each is completely different and personal. I sometimes mention my kid’s horse show, a movie I just saw or even a popular meme. If I see an adjuster is located in North Carolina, I’ll mention it, ask a question or make a comment. Almost without fail, on the first call with the adjuster, she’ll mention something in one of those early letters which then gives a further chance to just chat and further change the typical dynamic.

At the outset, I’m setting a different expectancy about how the claim will proceed. This isn’t to say that I don’t sometimes become upset and have heated exchanges

DEMANDS continued on page 19



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**Wellness** from page 3

and hours of chair time.”

This phenomenon has been studied for years dating back to research on astronauts in the 1970's. There was a correlation between zero gravity and accelerated bone and muscle loss. It is thought that excessive sitting slows down the metabolism which in turn affects our ability to regulate blood sugar, blood pressure, metabolize fat and can cause weaker muscles and bones.

So what can we do to maintain a healthy lifestyle? Here are 3 simple and easy things to try.

1. Start by sitting up straight. Leaning forward and with your head down adds excess strains on neck and shoulders. Dr. Joel Goldwait, founder of the orthopedic clinic at Massachusetts General noticed that people who had poor body alignment, placed their abdominal nerves and blood vessels under tension. This poor posture reduced blood flow to organs and muscles, which resulted in a reduced supply of oxygen and nutrition.

2. Try standing or using a standing desk if possible. Dr. Joan Vernikos studied health aging during her time at NASA. She

says the key is to keep moving. Every time you stand, you're using large muscles, especially those of your legs and back, which has a positive effect on how the body uses and stores sugars and fats. She further explains, "Every time you stand up, the body initiates a shift in fluids, volume, and hormones, and causes muscles to contract. And almost every nerve in the body is stimulated."

3. Set an alert on your phone or computer reminding you to get up and out of your chair. You should try to do this every 30 minutes and move for at least 2 minutes before sitting back down. If that is not possible, try making small changes like standing or taking a small walk every time you talk on the phone.

No matter what you do, make sure you add some movement into your workday. If standing isn't a possibility, try moving your legs, tapping your feet or fidgeting with your hands to keep the body's reactions working maximally.

*Crystal Reynolds is an owner and operator of 43 Degrees North Athletic Club in Concord. If you have topics you'd like to read about she can be reached at creynolds@43northnh.com.*

**Demands** from page 18

with adjusters, I do. In fact, around the old Nixon office I was well known for having shouting matches with adjusters. Normally, later, I'd apologize. Again, this too is unexpected and changes the dynamic.

**Yeah, But What About the Demand?**

To get an adjuster's attention, you must present a demand that violates an adjuster's expectation. Psychologically speaking, they will initially pay attention to a unique demand because of the innate drive to determine if it is a threat or positive development. Your demand must be a positive development. If you create a video demand but it's boring, lawyerly and just a video version of the letter you would have sent, you'll remain in the negative category. If you make a demand that is ridiculously high because you need room to negotiate, you'll remain in the negative category. Think, for a moment, of your client's reaction to the opening offer of \$5,000 on a case that eventually settles for \$50,000. It isn't positive.

You can violate expectancy in a demand a number of ways from the simple inclusion of quality color photos used in newsletter like format, as opposed to that flat letter you've been sending with a couple pics

tossed in, to full video demands and making demands that are lower but which are presented with less wiggle room. I use 20-30 minute video demand packages. These are usually recorded PowerPoint presentations. They have audio, video, evidence and bring a claim to life for the adjuster. Such a video demand might walk an adjuster through the area where a client fell or the intersection where a crash occurred. It might have excerpts of statements from your client or witnesses. And, of course, it will have me providing what I hope is witty narration, not overbearing "we will crush you at trial" talk.

This is done in parallel with providing all the traditional data because adjusters still need to scan the numbers into their software. Adjusters have told me, such demands demonstrate an attorney who isn't "phoning it in" and will probably, therefore, be easier to work with. One adjuster said it helps in explaining to her bosses why the case needs more money to settle; if so much effort went into the demand, they reason, imagine the trial. This approach also gives a great deal more information and a feel for trial for when your case is being round tabled by the insurance company. All of which get your cases settled faster for more money.

I hope you consider positively violating some expectations and if you'd like to ask me any questions, don't hesitate to reach out to me at [kirk@redsneakerlaw.com](mailto:kirk@redsneakerlaw.com).



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**THU, SEP 16 – Noon – 1:00 p.m.**  
**Contract Drafting is Like...a Decathlon w/Lenne Espenschied**  
• Webcast; 60 min.

**THU, SEP 30 – Noon – 2:00 p.m.**  
**Contract Drafting Essentials: Tips and Techniques for Better Contracts w/Lenne Espenschied**  
• Webcast; 120 min.

### OCTOBER 2021

**FRI, OCT 1 – 9:00 a.m. – 4:00 p.m.**  
**Planning and Zoning 101**  
• Webcast; 360 min.

**TUE, OCT 5 – Noon – 1:00 p.m.**  
**Juror Investigation Using Social Media (Ethics Opinion 2019-20/03)**  
• Webcast; 60 ethics/prof. min.

**WED, OCT 6 – Noon – 1:00 p.m.**  
**Collaborative Law**  
• Webcast; 60 min.

**THU, OCT 7 – Noon – 1:00 p.m.**  
**Don't Flub the Math! w/Lenne Espenschied**  
• Webcast; 60 min.

**THU, OCT 14 – 9:00 a.m. – 4:00 p.m.**  
**20th Annual Labor & Employment Law Update**  
• Webcast; 360 min., incl. 90 ethics/prof. min.

**THU, OCT 21 – Noon – 1:00 p.m.**  
**20/20 Ethics: Clear Vision for Transactional Lawyers w/Lenne Espenschied**  
• Webcast; 60 ethics/prof. min.

**TUE, OCT 26 – Noon – 1:00 p.m.**  
**Legal Issues Associated with Commercial Websites**  
• Webcast; 60 min.

**THU, OCT 28 – 9:00 a.m. – 4:00 p.m.**  
**Developments in the Law 2021**  
• Webcast; 360 min., incl. 60 ethics/prof. min.

### NOVEMBER 2021

**WED, NOV 3 – Noon – 1:00 p.m.**  
**Border Law & Confidential Client Information (Ethics Opinion 2018-19/01)**  
• Webcast; 60 ethics/prof. min.

**FRI, NOV 5 – 9:00 a.m. – 4:15 p.m.**  
**Nuts & Bolts of Family Law**  
• Webcast; 360 min., incl. 60 ethics/prof. min.

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*with Lenne Espenschied*

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**20/20 Ethics: Clear Vision for Transactional Lawyers**  
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## Learn@Lunch Programs Coming Up

### Collaborative Law

WED, October 6 – Noon – 1:00 p.m.  
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### Legal Issues Associated with Commercial Websites

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**FRI, OCTOBER 1, 2021**

9:00 a.m. – 4:00 p.m. • Webcast Only • 360 minutes



Zoning and planning law is the bread and butter of the land use practitioner. Whether you're new to the practice or are an experienced attorney looking to refresh your knowledge of the subject area, this entry level CLE is for you!

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- Board makeups
- Substance of both board's essential duties *and more!*
- Procedures

### Who Should Attend?

Practitioners looking to expand their knowledge of the planning and zoning basics, land use non-lawyer professionals and town staff.

### Faculty

- **Laura Spector-Morgan**, Program Chair/CLE Committee Member, Mitchell Municipal Group, PA, Laconia
- **Kevin K. Baum**, Hoefle Phoenix Gormley & Roberts, PLLC, Portsmouth
- **Natch Greyes**, New Hampshire Municipal Association, Concord
- **James W. Kennedy, III**, City of Concord, Concord
- **Gregory E. Michael**, Bernstein, Shur, Sawyer & Nelson, PA, Manchester



## 20th Annual Labor & Employment Law Update

**THU, OCTOBER 14, 2021**

9:00 a.m. – 4:00 p.m. • Webcast Only • 360 min., incl. 90 ethics/prof.

THIS FAST-PACED ADVANCED FULL DAY SEMINAR will address cutting edge developments in employment law over the past year focusing on changes in the new administration and COVID's impact on the workplace. This year's program will address the latest developments in the law including return to a mixed vaccine workplace, ethical considerations for lawyers working remotely, rollbacks and changes in the USDOL regulations in the new administration, recent immigration developments impacting the talent war, as well as tips for litigating virtually with a discussion of recent state agency and court decisions. The program also will address legislation, regulations and cases on the horizon and key recent US Supreme Court decisions impacting the workplace, as well as discrimination issues, diversity, equity and inclusion, and impact of sexual harassment and the media's coverage of investigations in the workplace. All faculty members have extensive practical and teaching experience in the labor, employment and benefits law fields and are members of the New Hampshire Bar. The program will include a discussion of the ethics considerations for the remote law office.

### Faculty

- **Debra Dyleski-Najjar**, Program Chair/CLE Committee Member, Najjar Employment Law Group, PC, North Andover, MA
- **Brooke Lovett Shilo**, Upton & Hatfield, LLP, Concord
- **Jennifer Shea Moeckel**, Cook, Little, Rosenblatt & Manson, pllc, Manchester
- **Julie A. Moore**, Employment Practices Group, Wellesley, MA
- **Brian R. Moushegian**, NH Supreme Court Attorney Discipline Office, Concord
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## DEVELOPMENTS IN THE LAW 2021

**THU, OCTOBER 28, 2021**

9:00 a.m. – 4:00 p.m. • Webcast Only • 360 min., incl. 60 ethics/prof min.

This popular annual CLE seminar is a must for all practicing New Hampshire attorneys. In a convenient one-day format, this program offers a complete survey of important legal developments affecting NH practice.

Learn from those in the know about significant legislative, rule, case law and procedural changes in major practice areas.

### Faculty

- **Corey M. Belobrow**, Program Chair/CLE Committee Member, Of Counsel, Friedman Feeney, PLLC, Concord, NH
- **Christine S. Anderson**, Ansell & Anderson, PA, Bedford
- **Thomas M. Closson**, Jackson Lewis, PC, Portsmouth
- **Tracey G. Cote**, Shaheen & Gordon, PA, Concord
- **Timothy A. Gudas**, NH Supreme Court, Concord
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- **Laura Spector-Morgan**, Mitchell Municipal Group, PA, Laconia
- **Roy W. Tilsley**, Bernstein, Shur, Sawyer & Nelson, PA, Manchester



## NUTS & BOLTS OF FAMILY LAW

**FRI, NOVEMBER 5, 2021**

9:00 a.m. – 4:15 p.m. • Webcast Only • 360 minutes, incl. 60 ethics/prof. min.

This full-day program will consist of presentations on the major topics of a typical family law case. Topics to be discussed include: starting a divorce case/procedures; discovery techniques; parenting rights/GALs; financial affidavits; child support/alimony; property division; tips from a circuit court judge; and domestic violence.

### Who Should Attend?

Anyone considering getting into the practice of family law, newer family-law practitioners, and current practitioners who are looking for a refresher.

### Faculty

- **Sara B. Crisp**, Program Chair/CLE Committee Member, The Crisp Law Firm, PLLC, Concord
- **Tracey G. Cote**, Shaheen & Gordon, PA, Concord
- **Nicole A. Forbes**, Sheehan, Phinney, Bass & Green, PA, Manchester
- **Heather E. Krans**, Pastori/Krans, PLLC, Concord
- **Patricia M. Lafrance**, The Black Law Group, LLC, Nashua
- **Hon. Jennifer A. Lemire**, 10th Circuit – Family Division, Brentwood
- **Crystal M. Maldonado**, Devine, Millimet & Branch, PA, Manchester
- **Katherine J. Morneau**, Morneau Law, Nashua
- **Catherine E. Shanelaris**, Shanelaris & Schirch, PLLC, Nashua
- **Kimberly A. Weibrecht**, Weibrecht & Ecker, PLLC, Dover



For more information or to register, visit [nhbar.org/nhbacle](http://nhbar.org/nhbacle)

# Back to School: COVID-19 Policies at Higher Education Institutions and Legal Challenges

By Travis Bennett

Starting as a 1L at UNH Franklin Pierce School of Law, during August orientation one thing is abundantly clear: the COVID-19 pandemic is not over. Yet, there were some marked differences from the complete shutdowns of schools and universities stretching back to the initial outbreak. For instance, orientation was held in person—complete with the almost electric sensation of a new school year beginning—and classes are also being held in person. Masks are still required indoors at UNH Law, “in classes, offices and other indoor spaces where people will be close together for a few minutes, highly congested spaces and events, and elevators when riding with other people,” according to the school’s website. They are also “strongly encouraged in places like the library and Jury Box (cafe).” Regular testing will also be required and students have been given self-testing kits to help streamline the process.



Vaccinations are encouraged at UNH, however, as per the recent so-called “Medical Freedom” HB 220, signed into law by Governor Chris Sununu, “no person may be compelled to receive an immunization for COVID-19 in order to secure, receive, or access any public facility, any public benefit, or any public service from the state of New Hampshire, or any political subdivision thereof, including but not limited to counties, cities, towns, precincts, water districts, school districts, school administrative units, or quasi-public entities.” Therefore, as a public university, UNH Law and all University System of New Hampshire institutions cannot require students or faculty to get a COVID-19 vaccine. However, students at UNH Law who do provide proof of vaccination against COVID-19 will be tested less frequently than those who have not received a vaccine.

Comparatively, at the larger private universities around New Hampshire, which are also resuming in-person classes, there is a consensus regarding requirements for COVID-19 vaccinations. Dartmouth College lists a COVID-19 vaccination on its



University of New Hampshire Franklin Pierce School of Law students at orientation in August. Courtesy Photo

required immunization form for undergraduate students, found on its website. Additionally, true to Dartmouth’s form as a global leader in health-care education, the college’s website lists extensive statistics regarding vaccination rates, testing, confirmed cases, and other metrics. The on-campus Dartmouth community is currently 93 percent vaccinated, with the total community 84 percent vaccinated. Precautions for both vaccinated and unvaccinated students are also to be found on the Dartmouth website, so some exemptions are likely to have been made.

Similarly, Saint Anselm College also reports on its website that 93 percent of students are vaccinated: “The College requires all students enrolled in on-campus classes, whether they live on campus or off, be fully vaccinated against COVID-19. Those requesting an exemption for medical or religious reasons were given the opportunity to petition the College in summer 2021.”

Southern New Hampshire University reports on its website that it will be requiring all campus-based students to be vaccinated, “in order to start classes and/or physically be on the Manchester campus for the fall 2021 semester.” Employees, also, will have to be “fully vaccinated for COVID-19 to work onsite at any SNHU location, attend on-site meetings or events, or travel on SNHU business, no later than September 30, 2021.”

While those who do not wish to receive vaccinations are not a protected class under federal discrimination law, several challenges are being made throughout the U.S. against both public and private entities that are requiring vaccines. Rutgers University, New Jersey’s leading public research institution, is facing a lawsuit against its vaccine mandate. Meanwhile, in Connecticut, a federal judge for the U.S. District Court of Connecticut, Jeffrey Meyer, dismissed a lawsuit brought by two students and the parent of a third against the University of Connecticut. Two of the students sought and received exemptions, allowing them to not be required to receive a COVID-19 vaccine in order to attend the university, leading Judge Meyer to rule their claim moot. The third plaintiff did not request an exemption, leading Judge Meyer to rule that she lacked standing to bring the case forward.

In his ruling, Judge Meyer notes, “The plaintiffs raise important constitutional questions. Why and when should the government have the right to condition access to public education on a student’s sacrifice of his or her right against unwanted medical treatment in the form of a highly invasive injection of a yet-to-be fully approved vaccine?” However, his ruling does not appear to be tied to those questions. Judge Meyer goes on to write in his opinion that the case brings questions regarding, “constitutional limits on power entrusted to federal courts.

As a threshold matter of jurisdiction, a federal court may resolve a plaintiff’s claim that the government is violating the Constitution only if it is clear that a plaintiff has an actual or imminent injury that is fairly traceable to the government’s action and is redressable by a court order of relief.” And in this instance, he concludes, “That is not this case.”

It is unclear whether or not the students at the University of Connecticut will file an appeal. However, a group of students at Indiana University, who filed a similar lawsuit, were denied a request for an emergency injunction by U.S. Supreme Court Justice Amy Coney Barrett after Indiana’s lower courts ruled in favor of upholding the universities’ vaccine mandate. Justice Barrett did not provide any reasoning relative to her decision, nor did she refer the matter to the full court.

While New Hampshire’s public universities are unlikely to face any legal challenges to their COVID-19 policies, perhaps due in part to the recent passage of the state’s “Medical Freedom” bill, it seems both public and private universities are otherwise within the bounds of the Constitution to mandate COVID-19 vaccines for students, provided



certain exemptions are allowed. Despite the recent judicial rulings affirming those rights of public universities, it is clear that the contentious issue of vaccine mandates, as well as subsequent privacy issues and requirements to access public facilities, will not be resolved any time soon. No doubt, over the next several years, these legal questions will arise in my classroom discussions at UNH Law, as well as in courtrooms, legislative chambers, and around dining room tables across the U.S., and indeed the world.

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# Law Remains on the Side of Employers when it Comes to Vaccine Mandates

By Annmarie Timmins

It's a short conversation when workers call employment attorney Jon Meyer asking if their employer can require a COVID-19 vaccination and fire them if they refuse. With very few exceptions, the answer is yes – regardless of arguments that doing so is illegal until the vaccines get final approval from the Food and Drug Administration.

"Whether the FDA approval is emergency or final is completely irrelevant," said Meyer of Backus, Meyer, and Branch in Manchester. "The fact that you have a right not to take a vaccine would not be a reason why a private employer could not fire you."

More New Hampshire employers are considering mandating COVID-19 vaccines as immunizations lag and the Delta variant pushes COVID-19 cases, hospitalizations, and deaths up. Dartmouth-Hitchcock announced this week it's mandating vaccinations for its 13,000 employees by the end of September. The New Hampshire Hospital Association has asked all health care providers to do the same. Employment lawyer Jim Reidy of Sheehan Phinney, who works with employers, heard from four clients on Thursday alone asking about the legalities of mandates.

The restrictions on employers who want to mandate COVID-19 vaccinations are few.

Most common are requirements that employers provide "reasonable" accommodations for certain medical conditions and "sincerely held" religious beliefs. For the latter, it isn't enough to say your faith relies on the Holy Spirit for healing or cite a Bible passage suggesting the vaccine is poison, something employment lawyer Beth Deragon at



Pastori Krans has seen.

Reidy and Deragon said to qualify for a religious exemption, the person must belong to the congregation and cite an opposition that is part of the church's doctrine. And those who ask for a religious accommodation must sign an affidavit that their claims are true.

There is one additional restriction in New Hampshire. A new state law prohibits state, county, or local governments from requiring employees to be vaccinated, except at the state hospital, county nursing homes, or other government-run medical facilities.

The state Department of Health and Human Services, which runs the state hospital and Glencliff Home for the Elderly, is not currently mandating vaccines for its health care workers. Asked if that would change, spokeswoman Laura Montenegro said in an email, "We are reviewing our current vaccination level at our facilities and that information will inform our decision making."

Since COVID-19, there has been a third

exemption requested.

The "emergency use authorization" given to the Pfizer, Moderna, and Johnson and Johnson vaccines requires recipients to be informed they have "a right to accept or refuse the vaccine." Federal authorities have interpreted that to mean employees can refuse the vaccine, as in it won't be forced upon them, but can still be fired if they refuse.

The U.S. Justice Department issued an 18-page brief last month detailing the history of the emergency use authorization (it was first proposed by President George W. Bush) and analyzing Congress's intent in passing it as part of a package called Project BioShield. The department concluded the "accept or refuse" language is a requirement to inform recipients of their rights, not a prohibition against firing them if they refuse and don't qualify for an exemption.

The U.S. Justice Department brief cites a 2021 court decision in which a judge came to the same conclusion, ruling a vaccine mandate is not coercive because it provides

employees who refuse a vaccine another option. "She will simply need to work somewhere else," the judge wrote.

Reidy said judges who've presided over other vaccine mandate challenges have ruled similarly.

Like Reidy, Deragon has heard this objection raised.

"It seems to me that there is a group of people who say this emergency authorization means that you can't mandate the vaccine," Deragon said. "I don't quite see that given federal guidance regarding vaccination." Among that guidance is the U.S. Equal Employment Opportunity Commission affirmation of the right to mandate a COVID-19 vaccine.

Meyer put his legal analysis this way: "These are arguments that sound good on social media," he said, but don't have any legal merit.

The lawyers said the challenge for employers is not issuing a mandate but enforcing it legally.

"If employers say everyone must be vaccinated without providing those accommodations, that's a big problem," Deragon said. Meyer said employers with unionized employees may not be able to mandate a vaccination without making it part of contract negotiations. And Reidy said employers must treat all employees the same and not, for example, bend the rules for valuable employees who say they'll stay if they can be excused from the vaccine mandate.

*This article was shared by the Granite State News Collaborative.*

## Speech from page 8

had failed to establish that the student's posts caused substantial disruption, and therefore the district had no authority to punish her speech.

Despite rejecting the Third Circuit's position, the Court gave three reasons why public schools have less authority over off-campus speech:

1. It is generally within the realm of parental authority, not that of the school;
2. Controlling off-campus speech would leave little space for any student free speech;
3. Schools have an educational interest in protecting critical student expression as part of the encouragement of independent thinking.

The Court noted that the social media posts were prepared outside the school premises and hours, did not identify the school or target any individual member of the school community, and were transmitted through the student's personal cell phone to her private circle of friends. Moreover, the Court distinguished between the posts' vulgarity, which falls within the realm of protected free speech, and the unprotected category of obscenity as it has been defined in previous decisions. Vulgarity outside of school, even when resulting in hurt feelings on the part of members of the school community, is not enough to overcome the First Amendment interest.

An important question arising out of the Court's decision is how the delineation between on- and off-site speech applies in other contexts such as public employment. Under

*Garcetti*, the governing public employee free speech standards have been:

1. Whether the speaker is acting as a citizen, in which case the speech is potentially protected, or as an employee, in which case the speech is subject to employer sanction.
2. If expressed as a citizen, whether the First Amendment value of the speech outweighs its disruptiveness in the workplace.

The *Mahanoy* decision may be used by public employees to argue that their speech outside the workplace, although related to work issues, should be entitled to greater protection than accorded by *Garcetti*, which involved memos prepared at work.

Another unanswered question is to what extent these free speech principles apply to the growing number of charter and other schools which have public funding but are under private or quasi-private control. And finally, particularly with younger students, there is a fundamental question whether the right belongs to the student, the parents, or a combination of the two. In this case, the Court gave more consideration to the doctrine of *in loco parentis* - that the school stands in the place of parents and derives its authority from that of the parents - than in its previous student free speech opinions.

In its concluding paragraph, the Court stated:

"It might be tempting to dismiss B.L.'s words as unworthy of the robust First Amendment protections discussed herein. But sometimes it is necessary to protect the superfluous in order to preserve the necessary."

This decision is an important reminder that this Court will protect expression far removed from the classic marketplace of ideas.

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- As an attorney who switched firms over the past year, I found that section especially applicable.
- To be honest, *Hampstead School Board v. SAU 55* wasn't on my radar, so I'm grateful that its implications were discussed in detail.
- As an attorney for a state agency, the discussion on the recent right to know Supreme Court decision was particularly instructive and helpful.
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# THE AFGHAN WAR IS OVER

## For many Afghans, a New Life in the U.S. is just beginning

By George Bruno

After 20 years, the intervention of four United States Presidents, 170,000 lives lost, and billions of dollars spent, the “endless war” in Afghanistan is over, followed by chaos, panic and collapse. It all happened so suddenly.



Afghanistan is a country of 38 million people. Its U.S. trained and equipped 350,000 Afghan Army (less 50,000 estimated to be on paper only) just melted away as the end approached without U.S. and NATO support. President Ashraf Ghani fled the country in planes reportedly filled with U.S. cash, prized personal possessions, luxury vehicles, and his entourage.

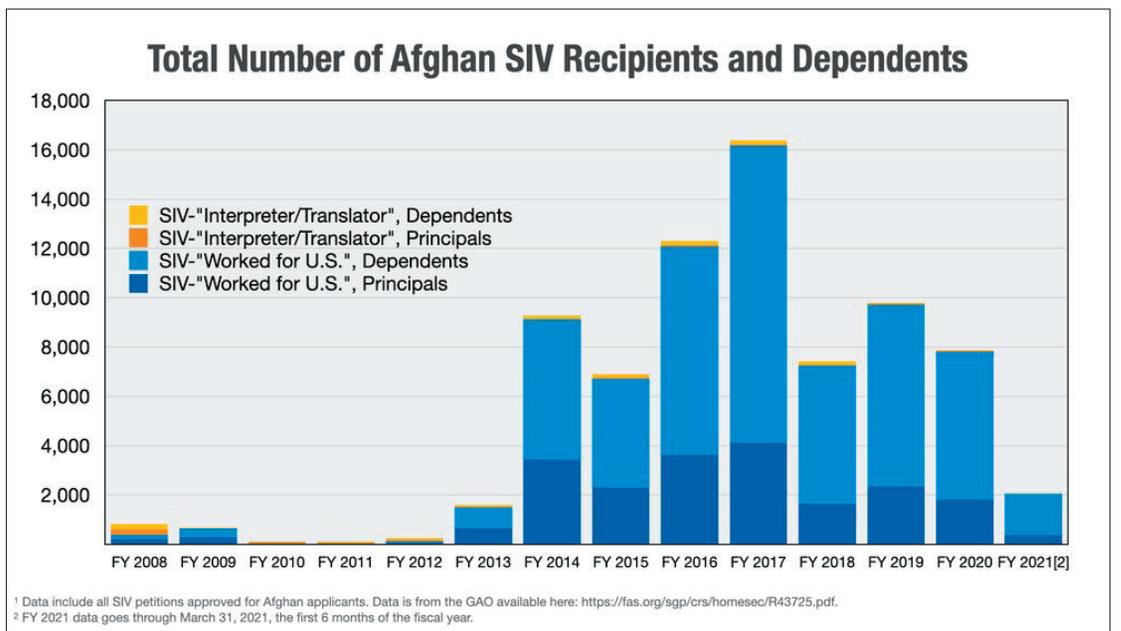
The purpose of this article is to review some of the legal framework surrounding the recent withdrawal of U.S. military from Afghanistan and the entry of Afghan evacuees into the United States.

In the days following the unilateral U.S. decision to withdraw, the U.S. and NATO allies evacuated over 124,000 persons, including 6,000 U.S. citizens and legal permanent residents (aka green card holders). It was a time constrained, pressure

filled, herculean effort reminiscent of the 1950s Berlin airlift to exit Afghanistan by August 31st. This date was the extended deadline originally agreed upon between President Donald Trump and the Taliban months prior to the end of his term. In a rush to vet and provide travel documents, the emergency flights carried evacuees to military base staging areas in Doha, Qatar, 1000 miles from Kabul, and other bases throughout Europe. The U.S. embassy in Kabul, the largest in the world with over 1,500 personnel, closed and is now operating in makeshift quarters in Qatar.

For the U.S., the war phase has ended. Now a new phase has begun: where and how to relocate the more than 100,000 persons airlifted out of Afghanistan, and under what authority. By Executive Order 256, issued April 14, 2021, President Biden directed Homeland Security Secretary Alejandro Mayorkas and his Department to lead and coordinate ongoing efforts across the federal government to resettle vulnerable Afghans, including those who worked for the U.S.

A quickly designated Unified Coordination Group now reports to Secretary



<sup>1</sup> Data include all SIV petitions approved for Afghan applicants. Data is from the GAO available here: <https://fas.org/sgp/crs/homesecc/R43725.pdf>.  
<sup>2</sup> FY 2021 data goes through March 31, 2021, the first 6 months of the fiscal year.

Mayorkas, offering a broad range of services, from initial immigration processing, COVID-19 testing with isolation of COVID-positive individuals, to resettlement support at U.S. military bases prior to being resettled into communities.

Close to home, the International Institute of New England, with offices in Boston, Lowell and Manchester, NH expects to relocate several hundred evacuees. According to agency CEO and President, Jeff Thielman, because of the reduced availability of housing in N.H., relocation efforts will largely focus on Lowell, MA, where housing is more available. N.H. will get some evacuees.

ment of State’s authority to issue SIVs to Afghan nationals under section 602 (b) of the Afghan Allies Protection Act of 2009, as amended, continues until all visa numbers allocated under the Act are issued. Without question, given the sudden flood of evacuees, Congress will need to authorize additional SIVs. N.H. Senator Jeanne Shaheen is an outspoken leader in this effort.

Typically, those eligible for an SIV are persons who worked alongside U.S. forces as interpreters, guides, intel support, drivers and other critical jobs. Written recommendations by way of detailed letters and affidavits and other supporting documentation by their U.S. handlers or supervisors is crucial to obtaining one of these visas. Their entry, and resettlement, in the U.S. is managed by the Unified Coordination Group, discussed above.

**3. Humanitarian Parole.** Not often

### Paths for Entry to the United States

To begin their new life, there are four basic paths for legal entry to the U.S. for the evacuees: (1) possession of a U.S. passport or green card, (2) possession of a Special Immigrant Visa, (3) being granted Afghan humanitarian parole, or (4) designation of refugee status. All four paths have their particular elements of difficulty.

**1. U.S. citizens and legal permanent residents.** This is the easy one. Anyone holding a U.S. passport or valid green card may immediately enter the U.S. with no questions asked. These could be diplomats, military, other government officials, NGO aid workers, contractors and U.S. support staff. Welcome home.

**2. Special Immigrant Visa (SIV) holders.** The Emergency Security Supplemental Appropriations Act, as enacted on July 30, 2021, authorized 8,000 additional Special Immigrant Visas (SIVs) for Afghan applicants, for a total of 34,500 visas beginning December 19, 2014. The Department

**Afghan Related Information**  
 په افغانانو پوري مربوط معلومات  
 معلومات مربوط به افغانها

U.S. Citizenship and Immigration Services

A special website, <https://www.dhs.gov/allieswelcome> has been set up by U.S. immigration for those qualifying and wishing to escape Afghanistan.

invoked, humanitarian Parole is a quick way to facilitate entry to the U.S. Tailor fit for emergencies, it provides temporary authorization pursuant to INA 212(d)(5) to enter the U.S. It can be granted by the Department of Homeland Security (DHS) or the Department of Justice based on humanitarian or significant public benefit considerations. On August 26, 2021, the U.S. Citizenship and Customs Service (USCIS), an agency within DHS published guidance at 8 CFR 212.5 for Afghan nationals seeking parole into the U.S.

To play off its tree theme, we named our newest publication

# EXPERIENCE TAKES ROOT

(But we’re fairly certain that you’ll soon be calling it “The Book of Wisdom.”)

EXPERIENCE TAKES ROOT  
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We wanted to do something a little special this year for those who are celebrating 50 years of NHBA membership. This digital booklet, published in June 2021, includes some of their most useful advice, valuable insights, and yes, moments of wisdom. We hope you’ll download it to your favorite electronic devices and refer to it again and again. Download it today at [nhbar.org](http://nhbar.org).

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Parolees are persons who may not immediately qualify for an SIV, but include U.S. media support workers, teachers, medical personnel, local suppliers to the U.S. and, perhaps the largest category, high profile and vulnerable women. The latter could be teachers, nurses, media figures or village leaders.

Under a program called Operation Allies Welcome, parolees, similar to that of refugees, may apply for and receive work authorization, may attend K-12 public education, have the right to remain silent if approached by a law enforcement officer, i.e., ICE or police, must comply with the conditions of their parole. While on temporary parole, a parolee may seek an adjustment of status, typically based on a qualifying family relationship, seek asylum, or apply for SIV status.

Relocation support, both for parolees and refugees, includes airport reception (Dulles International being the major initial port of entry), safe housing, food, clothing, pocket money, health services, school enrollment assistance for minors, cultural orientation, and legal assistance to access adjustment to a more permanent status. Again, their entry, and resettlement, in the U.S. is managed by the Unified Coordination Group.

**4. Refugee Admission.** In addition to Operation Allies Welcome, the State Department is making referrals to the U.S. Refugee Admissions Program for Afghans who assisted or were associated with the United States in Afghanistan. This would allow them to be processed for U.S. resettlement from a third country if they have already left or seek to leave Afghanistan.

A refugee is a person who has (a) fled his or her country of origin because of (b) past persecution or a fear of future persecution (c) based upon race, religion, nationality, political opinion, or membership in a particular social group, and (d) is not able to safely return to that country. The applicant must be both outside of his/her home country and the U.S. Alternatively, if the person is already in the U.S., he or she may apply for asylum. The criteria for refugee/asylum status are the same, highly technical, and must meet all four prongs of the UN treaty definition and U.S. law, as described above. The 1951 UN Convention on Refugees and its 1967 Protocol are the key legal documents that form the basis of the relative modern day universal status, adopted by the U.S. in 1954, to which 149 other nations are parties.

Refugees entering the U.S. are being broken into two categories, Priority 1 and 2, the latter being an expanded definition created especially for fleeing Afghans. First, under the traditional definition, Afghans can be P1-eligible if the United Nations High Commission for Refugees (UNHCR), a U.S. embassy, or NGO refers an applicant to USRAP. Secondly, those who do not qualify for an SIV can become P2-eligible if they worked for contractors (and/or the broader Mission Resolute Support), a U.S. government funded program, or a U.S. based media or NGO organization. According to the estimates, Afghans that qualify for either of these program priorities number in the tens of thousands.

A refugee does not include a person who has left his or her home only to seek a more prosperous life, also known as an economic migrant. People fleeing civil wars and natural disasters may not be eligible for resettlement under U.S. law. However, they may fall within the protection of a program called Temporary Protective Status (TPS) and are allowed to remain in the U.S. so long as the danger persists in their home country. The most recent TPS example would be those Haitians in the U.S. follow-

ing the recent earthquake in Haiti.

Recent reports suggest that the U.S. may be willing to take 50,000 refugee this year, a sizable leap for the ceiling of 18,000 established by President Trump, but less than the 80,000 authorized under President Obama. Meanwhile, according to an Aug. 30, 2021 report in the *NY Times*, 98 countries spanning four continents, have stepped up to assist or take their share of refugees.

#### A Case of too Little, too Late?

Some critics say the U.S. did not have to leave Afghanistan under a cloud of panic and chaos. Others felt that 20 years in Afghanistan was not enough; they believed that the U.S. military should have stayed in place. Others believed that more U.S. lives would be inevitably lost and more money spent that could be used to repair deteriorating U.S. infrastructure. Three presidents tried to leave Afghanistan and President Biden completed the U.S. departure; history will judge whether he was right or wrong. The military and the State Department could have done a better job exiting, but under any circumstances, it was going to be messy.

Beginning in 2014, Congress authorized SIVs for Afghans subject to heightened risk and persecution who worked alongside U.S. forces. This special relief program never lived up to its potential, and year after year the bureaucracy moved more slowly and the hoops to jump through got bigger.

Several things were happening at the State Department that contributed to this: (1) as time proceeded the department was being hollowed out. Over the last five years, experienced diplomats were departing, many because of policy disagreements and lack of leadership support; and (2) lack of support meant that consular officers were becoming more risk averse. None wanted to be the one who admitted the next terrorist to the U.S. So, approvals stalled.

To the lasting disgrace of the U.S., in the face of ongoing threats, persecution and even death, many deserving SIV applicants found themselves waiting as long as four or more years for their visa to be approved. As the U.S. departed Afghanistan, many SIV applications still remained on the table languishing.

But in the arcane world of immigration, the problem is much larger. Often compared to the IRS in its complexity, the U.S. immigration system is woefully outdated and painful. Particularly, with the passage of the penalty bound Illegal Immigration Reform and Immigrant Responsibility Act of 1996 and the security focused U.S. Patriot Act following 9/11, the proliferation of layers of decision makers in the processing of a single visa, including USCIS, State, DHS, DOL, FBI, CBP and others, has the whole system tied up in knots. Simple procedures that used to take days, or mere weeks, now take months or years. Consider: a year to approve a fiancé visa, six months to replace a lost green card, six months for a travel document, nine months for a work visa, 18 months to extend or change status. Meanwhile, applicant's lives are often upended while waiting to get married, obtain a driver's license or get a job.

Surely, we can do better, for Afghan immigrants and for immigration reform as a whole.

*George Bruno is a former U.S. Ambassador, and practices global immigration law, of counsel, in Manchester, NH, with Mesa Law, LLC. He is also a principal in the consulting firm, International Resource Group, LLC, in Meredith, NH, with Attorney Robert McDaniel.*



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## Considerations for Developers of Solar Projects: Site Evaluation Committee or Municipal Planning Boards

By Amy Manzelli  
& Julia Nosel



Manzelli

As solar energy grows in popularity in New Hampshire, the process for approving solar projects has been refined to ensure its safety and benefits. But how is it best to bring this valuable renewable energy through New Hampshire's two major site approval paths: the statewide Site Evaluation Committee or municipal planning boards?

### Who Approves Sites for Renewable Energy Facilities?

The site approval paths are categorized by the maximum amount of electricity a solar facility could theoretically make, measured in megawatts. (A megawatt is a unit of energy equal to 1,000 kilowatts.) The categories are as follows:

1. **More than 30 megawatts** – Must go through site approval process with the SEC. RSA 162-H:2, XII. These are generally considered to be more large-scale projects;
2. **Between five and 30 megawatts** – May go through site approval process with the SEC because the SEC has discretionary jurisdiction. The SEC can decide



“The important takeaway is that for mid-size projects, those that are at least five megawatts but less than thirty megawatts, developers of solar facilities have some choice in directing their projects towards permitting by the SEC or by the municipal Planning Board.”

on its own to exercise its discretionary jurisdiction; the developer can ask SEC to exercise its discretionary jurisdiction; or certain municipalities or community

members can ask SEC to exercise its discretionary jurisdiction. RSA 162-H:2, XII.; and

3. **Less than five megawatts** – Must go

through municipal site plan approval (unless the facility would be so small that municipal site plan would not even be triggered, which can be the case with single installations of residential rooftop solar). RSA 162-H:2, XII.

The important takeaway is that for mid-size projects, those that are at least five megawatts but less than thirty megawatts, developers of solar facilities have some choice in directing their projects towards permitting by the SEC or by the municipal planning board. This, of course, begs the question of which one to choose.

### Who Peer Reviews Renewable Energy Facilities?

Regardless of whether permitting through the SEC or a municipal planning board, the applicant should be prepared to pay for governmental peer review. The process at the SEC involves a specialized role called Counsel for the Public. The SEC is authorized to, and routinely does, approve CFP requests to retain consultants at the applicant's cost. RSA 162-H:10, V. (The SEC is authorized to retain its own consultants at the applicant's cost, separate from CFP, but rarely does. *Id.*) For projects going through municipal permitting, planning boards are authorized to, and routinely do, retain their own consultants at the applicant's cost.

PROJECTS *continued on page 31*

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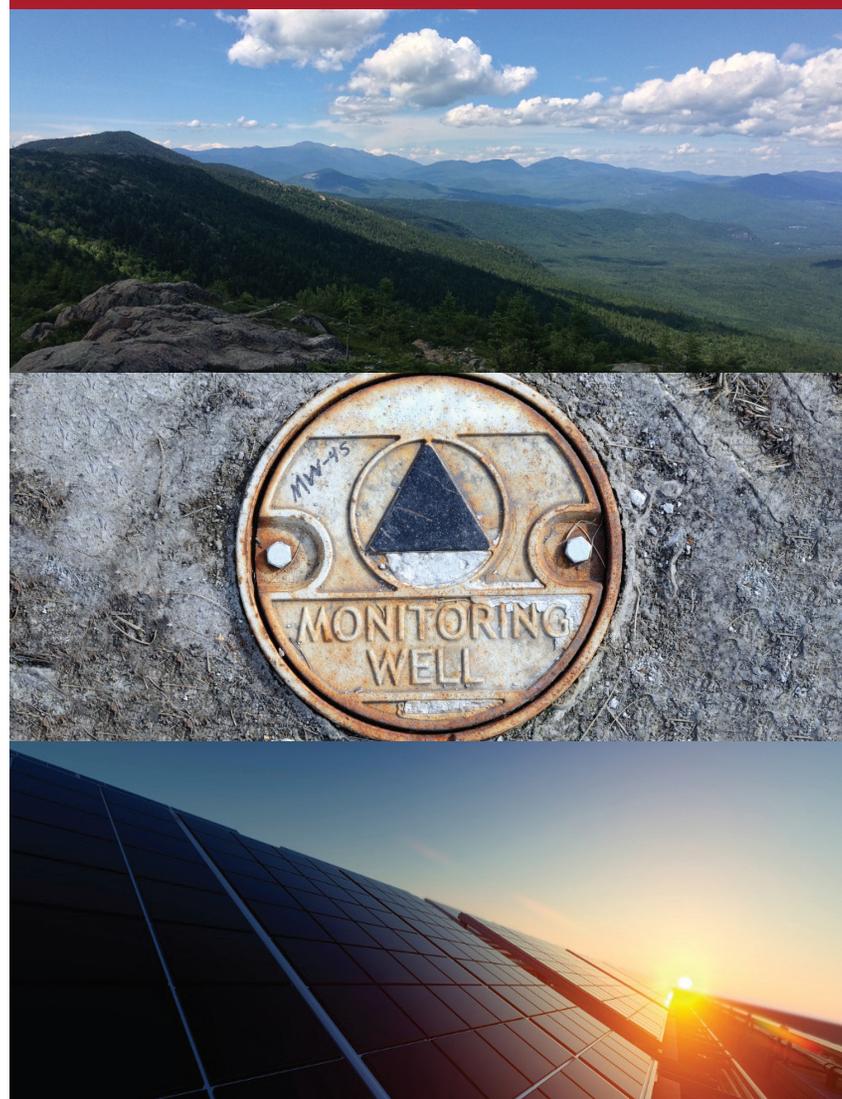
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## Creation of Department of Energy Changes How State Makes Energy Policy

By Thomas B. Getz

By creating the Department of Energy as part of House Bill 2, the so-called budget trailer bill, the New Hampshire Legislature and Governor Sununu fundamentally changed the way in which New Hampshire regulates public utilities. The stated purpose for the change was “to improve the administration of state government by providing unified direction of policies, programs, and personnel in the field of energy and utilities.”



The reorganization focuses the Public Utilities Commission solely on its traditional role as an adjudicative body — calling balls and strikes on the facts of the cases presented to it. Enforcement, investigation, and other administrative roles — which had previously fallen to the PUC—were transferred to the DOE. Importantly, the DOE will be able to play an active policy-making role, which the PUC was not designed to do.

For some background, New Hampshire was an early mover in regulating natural monopolies. In 1838, it became the first State to attempt to regulate railroads and, in 1848, it created a State Board of Railroad Commissioners. In

1903, in response to the growth of large business trusts, it amended the state constitution to provide that: “Free and fair competition in the trades and industries is an inherent and essential right of the people and should be protected against all monopolies and conspiracies which tend to hinder or destroy it.”

In 1911, under the administration of Republican Gov. Robert Perkins Bass, the Legislature created the Public Service Commission to ensure that customers of

regulated utilities receive safe, adequate and reliable service at just and reasonable rates. In 1951, the Legislature comprehensively revised the utility statutes and renamed the PSC the Public Utilities Commission. In 1996, following decades of deregulation nationwide in various industries, including trucking, airlines, and telecommunications, New Hampshire passed legislation restructuring the electric industry.

As explained by the governor’s bud-

get director, the goals for creating the DOE were to (1) remove perceived conflicts of interest tied to the PUC structure, (2) add accountability by requiring governor and executive council approval of all leadership positions, and (3) unify energy policy efforts statewide by combining departments with similar missions. To accomplish these goals, the Legislature allocated the various roles of the PUC between the PUC and the DOE in a way similar to the Vermont regulatory model. Hence, the PUC retained its adjudicative role, while the DOE assumed the remaining roles. In addition, positions from the Office of Strategic Initiatives and the Department of Business and Economic Affairs were transferred to the DOE.

Conceptually, the reorganization of the PUC is a positive step forward, but not necessarily for the reasons identified. The PUC, as it existed for more than a century, was an executive branch agency that used judicial procedures to exercise the ratemaking authority delegated to it by the Legislature. Over time, the PUC’s roles grew from conducting hearings and issuing orders setting rates and otherwise regulating public utilities, to include assisting customers through its Consumer Affairs Division in resolving complaints and understanding their rights and responsibilities; filling a number of emergency response and security roles through its Safety Division, as well as monitoring

ENERGY continued on page 30

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## Infrastructure Bill Could Mean Real Money and Big Projects for New Hampshire

By Tom Burack and Lynn Preston



Burack



Preston



As a result of the recent legislation anticipated to become federal law this Fall, the Biden Administration may soon, through investments totaling roughly \$1 trillion in infrastructure improvements, begin delivering substantial funding to achieve its stated goals of addressing climate change and creating well-paying new jobs. As currently drafted, it has been estimated that over the bill's five-year funding cycle, New Hampshire's share of these funds will likely be in excess of \$2 billion, bringing new infrastructure projects that could provide environmental and economic benefits to the state's regions, communities and businesses. Both of New Hampshire's US Senators, Maggie Hassan and Jeanne Shaheen, helped to shape the bill, and this article highlights some of the provisions that may be especially meaningful to New Hampshire.

"The 2,740 page bill includes annual funding for highway programs, as well as funds for rail, public transit, electric vehicle charging infrastructure, energy system improvements, and broadband, among other purposes."

The Infrastructure Investment and Jobs Act of 2021, was passed by the US

Senate on August 10, 2021 in a bipartisan vote of 69-30, and is formally titled, "An act to authorize funds for federal-aid highways, highway safety programs, and transit programs, and for other purposes." The 2,740 page bill includes annual funding for highway programs, as well as funds for rail, public transit, electric vehicle charging infrastructure, energy system improvements, and broadband, among other purposes. Here are some highlights:

1. EV charging infrastructure grants and policy: To help spur the rapid and

well-distributed installation of electric vehicle charging stations in publicly-accessible locations, the bill authorizes \$7.5 billion in competitive grants to state and local governments to cover up to 80% of the cost of designing, purchasing charging equipment for, and constructing EV charging stations. Half of the grant money is for projects conducted by private parties under contract to a governmental grant recipient, while the other half is intended for "community grants" which are likely to be for smaller projects located primarily on public property, with priority given to rural areas, low- and moderate-income neighborhoods, and places where there are fewer parking spaces relative to the number of households, or many multi-units dwellings relative to single family homes. A complementary provision, Section 40431, amends the Public Utility Regulatory Policy Act (PURPA) to require state public utility commissions to determine within two years whether to establish electric rates that will promote greater electrification of the transportation sector.

2. New funding and grants program for resiliency of coastal infrastructure: Appropriations language negotiated by Sen. Hassan will provide nearly \$1 billion for the National Coastal Resiliency Fund and the Community-Based Restoration Project, both of which are overseen by the National Oceanic and

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Atmospheric Administration (NOAA) and focus variously on making coastal communities more resilient to flooding and inundation through the restoration or expansion of natural habitats, and undertaking shoreline buffering to reduce erosion and flooding. The bill also creates the "PROTECT program", for "Promoting Resilient Operations for Transformative, Efficient, and Cost-saving Transportation," whose \$7.3 billion in formula funding and \$1.4 billion in competitive grants will help states and municipalities to make roads, bridges, culverts and other transportation infrastructure more resilient in the face of larger and more severe coastal storms.

3. Energy efficiency and building infrastructure: The nation's residential and commercial buildings account for 40% of total U.S. energy consumption, and provisions drawn from legislation previously co-authored by Sen. Shaheen and Sen. Rob Portman (R-OH) will make a down payment on efforts to increase the energy efficiency of the nation's building stock. The bill includes \$45 million in grants annually over a 5 year period to support the implementation of cost effective building codes for efficiency and resilience (Section 40511). There is also funding for centers that help manufacturing and industrial facilities to optimize their energy efficiency, as well as support for career training programs for students to become certified in installing energy efficient technologies for buildings.
4. Drinking water programs: In addition

to authorizing an additional 5 years of funding for the Drinking Water State revolving loan funds (Section 50102), the bill creates two new competitive grant programs by authorizing \$50 million for each of 5 years to each of two categories of public drinking water systems: small systems may compete for 90 to 100% grants to help make their operations more sustainable through leak detection, correction and prevention programs (Section 50106); midsize and large systems may compete for funds to create resilience and sustainability programs to enable greater capacity to provide services during and after severe storm events and to develop enhanced cybersecurity capabilities (Section 50107). Section 50112, authored by Sen. Hassan, provides \$50 million over 5 years for 90 to 100% grants to communities with populations under 100,000 to assist with installation of treatment systems to address PFAS contamination.

5. Clean water programs: In addition to authorizing an additional 5 years of funding for the Clean Water State revolving loan funds (Section 50210), the bill creates several new competitive grant programs: Section 50205 authorizes \$25 million for each of 5 years for grants to help public wastewater treatment systems become more resilient to natural hazards (such as extreme weather events, extreme drought, or sea-level rise); Section 50207 provides grants to small (under 10,000 population) publicly owned treatment works to install energy and water efficiency upgrades;

and, Section 50208 provides grants to nonprofit organizations to assist low-income individual homeowners with the cost of installing on-site wastewater treatment units (i.e., septic systems).

6. Broadband expansion and digital equity grants: New Hampshire will receive at least \$100 million over 5 years to support the build-out of high-speed internet to every home in the state not yet connected. Broadband technology expansions are anticipated to provide much needed access to communities for things like remote schooling and tele-health and environmental enhancements such as climate data gathering and resiliency

preparation improvements.

As of this writing, the bill is pending in the U.S. House of Representatives, which is expected to take it up within the next few months. If enacted, the bill will shape the future of infrastructure investments for years to come.

*Attorney Lynn Preston is the Chair of the Environmental and Energy Practice Group at Sheehan Phinney.*

*Attorney Tom Burack is a Partner in the Environmental and Energy Practice Group at Sheehan Phinney.*

**TFMoran is pleased to announce that  
Michael Dahlberg  
has joined the firm.**

Mr. Dahlberg was recently hired as an Assistant Vice President and Survey Department Manager in the Bedford office. He has nearly 40 years of surveying experience including ALTA Surveys, Utility/Roadway Route Surveys, As-Built Surveys, Boundary Surveys, and Conservation Easements.



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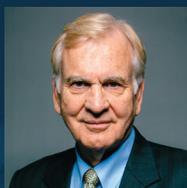


**Michael Dahlberg** LLS, RPLS, PLS  
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Survey Department Manager  
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**Energy** from page 27

and inspecting construction practices; advocating for the State of New Hampshire on regional and national energy issues; administering various renewable energy and greenhouse gas related programs and funds; and, advising the Legislature and the governor on energy issues.

It is the last of these roles that may supply the most pertinent rationale for creating the DOE. Partitioning the PUC and focusing it on its adjudicative role will permit the new DOE to do what was not in the traditional nature of the PUC: taking specific positions advocating for

policy goals. Historically, the PUC operated as the arbiter between the interests of customers and the regulated utilities, acting in a quasi-judicial capacity consistent with the Administrative Procedure Act. In that capacity, the PUC implemented policies set by the Legislature, but did not make policy in the first instance.

Over time, the world in which the PUC operated changed drastically. Technological advances and deregulatory efforts evolved hand-in-hand over the last half-century to move utility regulation beyond the core function of traditional ratemaking and expanded the types of proceedings that came before the PUC. In reaction to those forces, the Legisla-

ture assigned new responsibilities to the PUC that required consideration of issues not well suited to the quasi-judicial regulatory paradigm. Examples of those responsibilities are setting the systems benefits charge for energy efficiency and establishing net metering requirements, which have become political hot button issues, and implementing electric grid modernization, which has made little real progress in the six years since the Legislature directed the PUC to open a docket.

One potential reason for delegating broader policy-related tasks to the DOE may be found in the structure of the New Hampshire Legislature. The relevant House and Senate committees do not have the full-time professional subject matter staff that is prepared to analyze and draft detailed legislation in the way that their federal or larger state counterparts are. The PUC has been the one entity in state government with the necessary subject matter expertise. With the reorganization, the new DOE can provide the resources and expertise needed at a time when energy issues are at the forefront of public policy making.

States apply variations on the same basic scheme for regulating public utilities, and New Hampshire adopted an approach that permitted PUC staff to act in advisory and/or advocacy roles as the circumstances required. It may be arguable whether, in order to regulate public utilities effectively, it was necessary to create the DOE to address perceived conflicts, or achieve greater accountability in

leadership positions, but it can advance policy-making.

Cabining off the PUC as a solely adjudicative body is a workable construct. Execution is the challenge, as is so often the case in a reorganization, with the critical issues being staffing the DOE and the PUC with the right people in the right positions, and clearly drawing the jurisdictional lines between the DOE and PUC to avoid gaps and/or overlaps in responsibilities. A recent article in the New Hampshire Bulletin, headlined “Everything is in a State of Flux” reports that some issues have surfaced in the transition.

Making energy policy is a prospective undertaking better suited to legislative and executive processes, not to retrospective adjudicative processes. The DOE will be able to work more directly with the Legislature and governor, actively pursue policy goals, and implement legislation in a manner similar to other agencies, as well as take advocacy positions before the PUC. As a matter of process, this is an organizational achievement. From a substantive viewpoint, there are sure to be disagreements over the policies pursued in the future, depending on who it is making the policy decisions from time to time, as is the nature of democracy.

*Tom Getz is an of counsel attorney in McLane Middleton's Administrative Law Department. He can be reached at (603) 230-4403 or thomas.getz@mclane.com.*

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**AVAILABLE On-Demand in the NHBA•CLE Catalog:**

**Renewable Energy Facility Siting**

4/30/2021 – 60 NHMCLE min.

This program provides a general overview of state and local requirements for siting renewable energy facilities in New Hampshire and demonstrates permitting paths through case studies of recently approved solar energy projects.

**Climate Change & the Voiceless: Protecting Future Generations, Wildlife & Natural Resources**

2/25/2021 – 90 NHMCLE min.

This program identifies the common vulnerabilities of the voiceless in the Anthropocene era and demonstrates how the law, by incorporating principles of sustainable development, can evolve to protect their interests more effectively. *(from the Arizona Bar Association)*

**Recent Developments in Oil and Gas Law**

1/14/2021 – 90 NHMCLE min.

The panel discusses 2020 case law, regulatory, and other legal developments in oil and gas in the United States. *(from the Rocky Mountain Mineral Law Foundation)*

**OSHA & Environmental Compliance Inspections – Now & Later**

5/8/2020 – 60 NHMCLE min.

This program provides general guidance and practice tips on minimizing employer liability as it relates to health, safety and environmental compliance resulting from government inspections, along with relevant regulatory updates on COVID-19.

**When Land Use & Environmental Law Collide**

3/19/2019 – 60 NHMCLE min.

This program focuses on common intersections of land use and environmental law, with particular attention to the recent New Hampshire Supreme Court case, *Trustees of Dartmouth College v. Town of Hanover*.



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**Projects** from page 26

RSA 674:44, V. In both cases, the process typically involves the applicant having some amount of participation in developing the peer reviewing consultant's scope of work.

For applications going through the SEC process, the municipality may be involved. This can range from merely providing public comment all the way to being fully involved with party status as an intervenor. Municipal involvement may include the municipal planning board. However, because the planning board is not vested with jurisdictional authority to decide the site approval – i.e., a planning board lacks authority to require site plan approval for an application pending before the SEC – the Planning Board also has no authority to require the applicant to pay for any consultants the municipality may wish to retain. Despite the absence of a legal requirement to do so, savvy developers may offer to voluntarily pay such municipal costs.

**Quick Word about Timing – It's not Quick**

No matter the size of a project, timing is always important. However, timing does not necessarily guide the decision between SEC or municipal planning board site approval. Both the SEC and planning boards vary from the statutory deadlines that would otherwise govern their processes. RSA 676:4, I(c)(1) establishes a 65-day "clock" by which planning boards must take certain actions. Yet, in practice, that often turns into the applicant requesting a continuance because the applicant has received a strong signal that without doing so the application will be denied. Similarly, though RSA 162-H:7 sets forward deadlines for the SEC, RSA 162-H:14 authorizes the SEC to extend the time frame established under that statute.

**Considerations to Choose between the SEC or Municipal Planning Boards**

- 1. Permitted Use?** – Is solar permitted by right, permitted by special exception or conditional use permit, or not permitted at all? If it is permitted in any way, is it subject to any performance standards or additional regulations?
- 2. Host Communities** – Have similar proposals been considered in or near the host communities and if so, how did they turn out? Does a community harbor any feeling of having been burned by prior projects and/or developers? Is a community generally more concerned with preservation versus revenue?
- 3. Subject Matter Expertise** – Does the project require any special expertise by the decision-makers? Planning Board members are volunteers while members of the SEC are employees of various state agencies.
- 4. State Permits** – Does the project require many state permits? The SEC process acts as a hub or clearinghouse of sorts, with nearly all state permits running concurrently through the SEC process such that once the SEC process concludes nearly all state permitting is also concluded.
- 5. Pre-Application Process** – the SEC process requires public information meetings in the host county before the application is filed with an expectation that the applicant will have adjusted the application to reflect input received from the public during that process.

**Case Study**

In conclusion, the chart to the right tells the story of two different projects. Of course, it is not the case that all projects that go through the SEC process are approved and all that go through the municipal process end in being withdrawn without approval. But it is interesting to see the actual details from actual projects.

| Town                             | Fitzwilliam   | Sanbornton  |
|----------------------------------|---|---|
| Site Existing Use                | Unimproved working forest   | Unimproved forest   |
| Acres                            | 513   | 162.94  |
| Town Zoning District/s           | Rural   | Forest Conservation, General Agriculture, Historical Preservation |
| Renewable Type                   | Solar   | Solar   |
| Capacity (in megawatts)          | 30  | 6 (down from conceptual 25)                                       |
| Developer/Applicant              | Chinook Solar, LLC (indirect, wholly owned subsidiary of NextEra Energy Resources, LLC (NEER), in turn, NEER's parent co. is NextEra Energy, Inc. | New England Solar Garden  |
| Site Permitting Authority        | SEC   | Sanbornton Planning Board   |
| Quantity of Lots                 | 7   | 4   |
| Quantity of Non-Applicant Owners | 5   | 2   |
| Acres for Project                | 288 (of that, 159 for panels)   | 66  |
| New Transmission Lines           | No  | No  |
| Purchase or Lease                | Both, mostly purchase   | Lease   |
| Applicant's Primary Engineers    | TRC (and others)  | Nobis Group   |
| Primary Reviewing Engineers      | Arrowood Environmental (and others)   | Northpoint Engineering, LLC                                       |
| Interconnecting Utility          | National Grid   | Eversource  |
| Distance to Interconnection      | 2/10 mile (abutting lot)  | Approx. 1 mile  |
| Application Date                 | Oct 2019  | Dec 2018  |
| Site Permitting Duration         | 14 months until conditional approval  | 30 months then withdrawn  |
| Notice                           | in newspaper before required pre-application public meeting; later to affected municipalities (Selectboard or City Council)                       | to abutters prior to first meeting for public hearing             |

*BCM Environmental & Land Law, PLLC is honored to serve as counsel in projects leading to decarbonization of energy generation.*

*Amy Manzelli is an attorney known for getting results in matters both large and complex and simple and small. Attorney and*

*part owner of BCM Environmental & Land Law, PLLC, Amy practices environmental, conservation, and land law throughout New Hampshire.*

*Julia Nosel is a paralegal/administrative assistant at BCM Environmental & Land Law, PLLC.*

# Contribute to Bar News

## PRACTICE AREA SECTIONS

NH Bar News features a special content section each month dedicated to specific areas of the law, and welcomes member and non-member article submissions.

|          |  |
|----------|--|
| October  | Alternative Dispute Resolution                         |
| November | Family Law & Children's Law                            |
| December | Business Law & Business Litigation                     |
| January  | Criminal Law & Health Law                              |
| February | Tax Law & Insurance Law                                |
| March    | Trust & Estate Law                                     |
| April    | Labor & Employment Law                                 |
| May      | Real Property Law                                      |
| June     | Municipal & Government Law & Intellectual Property Law |
| July     | Federal Practice & Bankruptcy & International Law      |



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## Pandemic Silver Linings: Technological Innovations bring the Cloud to the Courts

When New Hampshire courts rose to meet the challenges posed by the pandemic, they put into motion high-tech solutions both to bridge the gaps created and to meet emergency needs. More innovations are in the works that will continue to transform court operations in the year ahead.

### Videoconferencing in the Courts Becomes Mainstream

The pandemic forced a rapid transformation of the New Hampshire Judicial Branch's operations to a more remote model to minimize disruption to the courts. This led to the rapid installation of WebEx mobile units and the adoption of remote hearings in many case types. Webex mobile units have since been installed in 72 Superior and Circuit courtrooms to allow participants to join hearings remotely by videoconference where appropriate. An additional 47 units will be installed in additional court locations during the next couple of months. This is a permanent transition that reflects recent administrative orders in the Circuit and Superior Courts to allow for Webex use for remote hearings in uncontested proceedings. This change will not only improve access, but also increase efficient operations.

Webex is web based, and only an internet connection is required. Attorneys can use

the Webex app on both a laptop and a mobile phone or tablet, or access hearings via Webex through a compatible web browser.

### Evidence Goes Digital with CaseLines in the Superior Courts

After the e-filing system debuted, Superior Courts heard from attorneys that something vital was missing: the ability to file and share evidence digitally. This fall, that changes with the rollout county by county of the new digital evidence management system called CaseLines. Following the first webinar training held on Aug. 23, Rockingham County attorneys began piloting the new technology in early September. Benefits of CaseLines for attorneys include:

- All evidence/exhibits are easily accessible online
- Sharing exhibits with practice administrators, opposing counsel, and the court is easy
- Free exhibit management tools-free service from NHJB
- Mobile access: Easily obtain smartphone exhibits from clients

The court also benefits because CaseLines provides secure storage for digital evidence, eliminates expenses for storing



evidence, is cloud hosted and will not require expansion of IT infrastructure, and eliminates the risk of obsolete storage technology.

Although the Judicial Branch has been implementing e-filing and related technologies since 2014, this CaseLines implementation is like no other. Learning to present digital evidence in the courtroom is a new skill that attorneys cannot delegate to staff. The Superior Court is fully prepared to support them by offering extensive training, including hands-on workshops and video webinars. Extensive training resources are also available online. To ease into digital evidence management, the court will pilot the program and gradually require its use over time rather than institute a typical e-Court "all at once" approach.

CaseLines is also important for the Judicial Branch because the project includes integration with the Odyssey Case Management System. The IT team worked with vendors to automatically send Odyssey case information to CaseLines, eliminating redundant and manual case creation in CaseLines. This work further expands NHJB's "court component model" — a technology

platform recommended by the National Center for State Courts.

### New Audio Recording Systems Debut this Winter

Starting late this fall and through the winter into early spring, the audio recording systems in all of the NHJB courtrooms will be replaced.

The new electronic system will allow the courts to transition from analog to digital recordings, create cloud storage of recordings, and provide the ability for transcription services to retrieve recordings from the cloud storage. No longer will the courts need to manually upload a local recording to the transcription service. The new system will make the transcriptions much faster to retrieve, and the recordings will be a lot clearer.

### For More Information

To learn more about CaseLines and Digital Evidence Management as well as Webex, see the New Hampshire Judicial Branch website: [www.courts.state.nh.us](http://www.courts.state.nh.us).

## Appeal Quandaries? Get to Know Supreme Court Rule 7-A

You lost your case in the trial court. You filed your timely notice of appeal with the New Hampshire Supreme Court. But the trial court's order is not one that is automatically stayed by the filing of an appeal. What can you do? Supreme Court Rule 7-A(1) has the answer.

You can file a motion in the Supreme Court to stay an order or judgment of the trial court — but you must first have unsuccessfully sought such relief from the trial court. Indeed, when a motion to stay is filed in the Supreme Court, it must be accompanied by a copy of a request for similar relief that was filed in the trial court, any objection filed thereto, and the trial court's order denying that request. In addition, your motion to stay must be accompanied by a copy of the order or judgment that you are seeking to have stayed.

But say this is an emergency, and you can't wait for the trial court to rule on a motion to stay? Rule 7-A(1) again has the answer.

The requirement that you first unsuccessfully seek a stay from the trial court may be waived by the Supreme Court "upon motion in extraordinary circumstances." So file a motion for waiver along with the motion to stay.

*Emergency behind you, the case continues along in the Supreme Court. Then, out of the blue, something unexpected comes up. An issue needs to*

### Appeal Quandaries?



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*be considered in the trial court — but it no longer has jurisdiction. Your appeal vested exclusive jurisdiction in the Supreme Court over all matters arising out of, and directly related to, the issues presented in the appeal. What can you do now? Enter Rule 7-A(2).*

Rule 7-A(2) offers the ability to file a motion for remand or partial remand with the Supreme Court. Be sure to accompany the motion with a copy of the pleading that you intend to file with the trial court, should the motion for remand or partial remand be granted. If the Supreme Court grants the motion, then file your pleading with the trial court, which will now have jurisdiction to address it. And, unless the Supreme Court orders otherwise, the grant of a partial remand will not stay the proceedings in the Supreme Court, so processing will not be delayed, and you can carry on with preparations for your appeal.

## Digital Exhibit in CaseLines



Judge Daniel St. Hilaire looks on as Rockingham Deputy County Attorney Melissa Fales shares a digital exhibit in CaseLines.

*Chad Short and Kelly Short v. John LaPlante and Lori LaPlante, As Trustees of The LaPlante Family Revocable Trust, No. 2020-0113*

August 27, 2021  
Affirmed

**Contract Dispute**

- Whether the trial court erred in denying prospective homebuyers’ claims for breach of contract, breach of implied covenant of good faith and fair dealing, specific performance, and attorney’s fees following a bench trial.

John and Lori LaPlante, as trustees of the LaPlante Family Revocable Trust (“Sellers”), listed their Concord, New Hampshire home for sale because Mrs. LaPlante suffered from debilitating allergies caused by birch and oak trees on the property. At the same time, Sellers searched for a new home with limited exposure to birch and oak trees and with a large garage. By the end of May 2018, Sellers looked at more than 100 homes online and visited 15–17 homes in person. Chad and Kelly Short (“Buyers”) submitted an offer to purchase Sellers’ home on May 24, 2018. On June 3, 2018, Sellers submitted an offer to purchase a new home located in Stratham, New Hampshire. Sellers’ purchase of the Stratham home was contingent upon Sellers’ review of any restrictive covenants. That same day, Sellers and Buyers executed a purchase and sale agreement (“P&S”) for Sellers’ home that included the following disputed provision: “This agreement is subject to Sellers finding

**At-a-Glance Contributor**



**Jonathan P. Killeen**

Shareholder at Boyle | Shaughnessy Law PC in Manchester, NH

suitable housing no later than July 14, 2018” (“Disputed Provision”). On June 4, 2018, Sellers obtained the restrictive covenants for the Stratham property, which possibly precluded Sellers from building a large garage at the property. Sellers withdrew their offer on the Stratham property and felt that they had exhausted their search for suitable housing. On June 5, 2018, Sellers instructed their realtor to exercise the Disputed Provision because they no longer needed to move, as Mrs. LaPlante no longer had allergy symptoms, and Sellers were not confident they would find suitable housing by the July 14, 2018 deadline contained in the Disputed Provision because nearly every house they looked at had covenants of some sort that would prevent building a large garage. Buyers then filed suit.

Following a bench trial, the trial court found that the P&S was not binding and enforceable because there was no meeting of the minds regarding the Disputed Provision. Accordingly, the trial court denied Buyers’

AT-A-GLANCE continued on page 34

**LD-2021-0004, In the Matter of Joseph B. Piper, Esquire**

On June 15, 2021, the Professional Conduct Committee (PCC) filed a petition recommending the disbarment of Attorney Joseph B. Piper. The PCC also filed a record of its proceedings with this court. In accordance with Rule 37(16), the court provided notice to Attorney Piper of the PCC’s disbarment recommendation and ordered him to file a response on or before July 19, 2021, identifying any legal or factual issues relating to the PCC’s recommendation that he wished the court to review. Attorney Piper did not file a response.

The court has reviewed the PCC’s recommendation for disbarment and the PCC record. The PCC adopted a hearing panel report, which concerned three docketed matters and which found, among other misconduct, that Attorney Piper failed to protect clients’ interests in matters before the U.S. Patent and Trademark Office (PTO), failed to keep the clients apprised of developments in the PTO matters, failed to communicate with the clients, failed to take reasonable steps to protect the clients’ interests after effectively having terminated representation of them, failed to provide the Attorney Discipline Office (ADO) with information that it had requested during its investigation, and otherwise failed to cooperate with the ADO during its investigation. Those facts were undisputed because Attorney Piper did not respond to the ADO’s notices of charges, see Rule 37 A(III) (b)(3)(A), and did not participate in the hearing before the panel. The PCC determined that Attorney Piper had violated the following Rules of Professional Conduct:

Rule 1.1 (requiring competence); Rule 1.2(a) (requiring a lawyer to abide by the client’s decisions concerning the objectives of representation and to consult with the client as to the means by which they are to be pursued); Rule 1.3 (requiring diligence); Rule 1.4 (requiring adequate communications with clients); Rule 1.16(d) (requiring a lawyer to protect the client’s interests when withdrawing or terminating representation); Rule 8.1 (prohibiting non-compliance with ADO demands for information and with ADO hearing notices); and Rule 8.4(a) (making it misconduct to violate any of the rules). The PCC further adopted the hearing panel’s conclusion that a lesser sanction was unwarranted, given the seriousness of Attorney Piper’s misconduct, the injury that it caused to his clients, and the harm that it caused to the legal system and to the reputation and standing of the legal profession.

In light of the seriousness of Attorney Piper’s misconduct, which includes violations of Rules of Professional Conduct 1.1, 1.2(a), 1.3, 1.4, 1.16(d), 8.1, and 8.4(a), the court concludes that disbarment is the appropriate sanction.

THEREFORE, the court orders that Joseph B. Piper be disbarred from the practice of law in New Hampshire. He is hereby assessed all costs and expenses incurred by the attorney discipline system in the investigation and prosecution of the matters.

MacDonald, C.J., and Bassett, Hantz Marconi, and Donovan, JJ., concurred.

DATE: August 17, 2021  
Timotfiy A. Gudas, Clerk

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August 2021

\* Published

## EVIDENCE; EXPERT WITNESSES; MOTIONS IN LIMINE

8/12/21 *Kevin Rogers v. Town of New Hampton, et al.*  
Case No. 19-cv-118-JL, Opinion No. 2021 DNH 127\*

In advance of trial on the plaintiff's § 1983 claim for deliberately indifferent medical care, the court granted the defendant's three motions in limine in part and denied them in part. It first ruled that certain alleged hearsay statements were not hearsay if admitted for purposes other than to prove the truth of the matter asserted therein. It next ruled that the plaintiff's medical records and bills could not be introduced into evidence to prove a causal

connection between the defendant's actions and the plaintiff's allegedly resulting injuries, absent expert opinion testimony drawing the causal link. Finally, it ruled that the plaintiff would be permitted to testify about his attempts to obtain a video of the incident in question and the absence of that video, but the court declined to provide an adverse inference instruction against the defendant relating to the deletion of the video recording. 11 pages. Judge Joseph N. Laplante.

## FOURTH AMENDMENT; SUPPRESSION

8/31/21 *USA v. Francis Harrington*  
Case No. 19-cr-241-01-JL, Opinion No. 2021 DNH 138\*

Defendant moved to suppress suspected drugs seized from his person as well as an inculpatory statement allegedly obtained in violation of the Fourth and Fifth Amendments. After two evidentiary hearings and further oral argument, the court denied the motion. The police officer had ample reasonable suspicion that the defendant was engaged in criminal activity to justify his initial investigatory detention of the defendant. As the situation unfolded, the officer had continued suspicion of criminal activity to extend the detention and reasonable suspicion that the defendant may have been armed and dangerous to justify ordering him out of the vehicle and patting him down. Finally, the inculpatory statement would not be suppressed because it was not obtained as a result of a custodial interrogation. 20 pages. Judge Joseph N. Laplante.

## INSURANCE COVERAGE; SUMMARY JUDGMENT

8/19/21 *Nautilus Insurance Company v. Ferreira, et al.*  
Case No. 20-cv-1053-JL, Opinion No. 2021 DNH 130

In an insurance coverage declaratory judgment action, the court granted summary judgment to the insurer and declared that the insurer was no longer obligated to defend or insure its insured in an underlying tort suit pending in New Hampshire Superior Court. The court held that at least one, and possibly both, endorsements to the policy excluded coverage for the underlying plaintiff's claims based on the factual allegations in the underlying lawsuit, as opposed to the labels placed on the claims. 17 pages. Judge Joseph N. Laplante.

## PATENT INFRINGEMENT; PATENT INVALIDITY; INFRINGEMENT

8/12/21 *Ocado Innovation Ltd. v. AutoStore AS, et al.*  
Case No. 21-cv-41-JL, Opinion No. 2021 DNH 129\*

In a patent infringement suit between global competitors, the defendants moved to dismiss parts of the plaintiffs' complaint for failure to state a claim upon which relief could be granted. Specifically, the defendants moved to dismiss the plaintiffs' infringement claim under one patent on the grounds that the patent was directed to ineligible subject matter. They also moved to dismiss the plaintiffs' claims for induced infringement and will-

## At-a-Glance from page 33

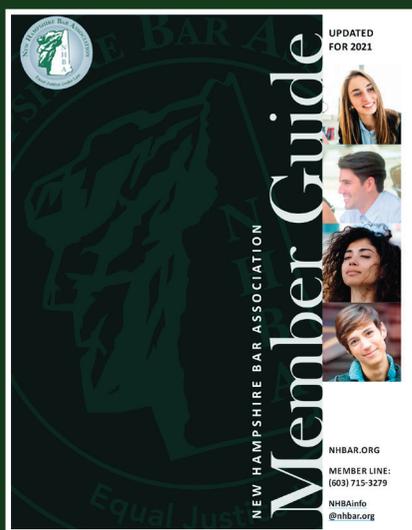
claims for breach of contract, breach of good faith and fair dealing, and request for attorney's fees.

On appeal, the Supreme Court affirmed the trial court's ruling. In doing so, it assumed without deciding that Sellers and Buyers did have a meeting of the minds regarding the Disputed Provision. Nevertheless, the Supreme Court concluded that the Disputed Provision was not ambiguous and that "finding suitable housing" was a condition precedent to Sellers' obligation to sell their home to Buyers. As a result, the P&S agreement became unenforceable as a matter of law upon the non-occurrence of the contingency and Sellers had no duty to sell their home. The Supreme Court also concluded that Sellers did not breach the P&S by "prematurely ending their search for suitable housing" because the record supported that Sellers were justified in

concluding that there was no reasonable likelihood that they would find suitable housing by the July 14, 2018 deadline in light of Sellers' particular needs. The Supreme Court next concluded that Sellers did not breach the implied covenant of good faith and fair dealing by terminating their search for suitable housing on June 5, before the deadline, because their exercise of discretion was not unreasonable and they were justified in concluding that they were unlikely to find suitable housing. Finally, the Supreme Court affirmed the trial court's order denying Buyers' request for attorney's fees because Sellers' conduct did not warrant such an award.

*Dickinson & Silverman, PLLC, of Concord (Gregory L. Silverman on the brief and orally), for the plaintiffs. Cook, Little, Rosenblatt & Manson, p.l.l.c., of Manchester (Kathleen M. Mahan on the brief and orally), for the defendants.*

# You're Not the Only One Who's Reinventing Yourself in 2021

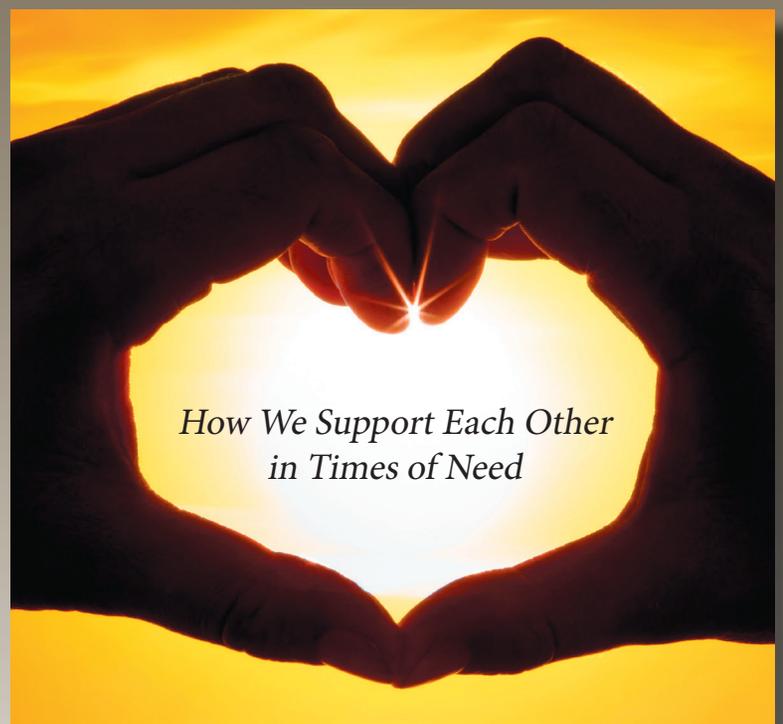


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Details and submission form at [nhbar.org/solace/](http://nhbar.org/solace/)



ful infringement due to allegedly insufficient factual support. The court denied the motion. It first ruled that at this stage in the case, where the court had to accept the plaintiffs' factual allegations as true and consider the patent claims as a whole in addition to the detailed specification, it could not deem the patent invalid under either element of the Alice test. The court further found that the plaintiffs had plead just enough circumstantial proof of the defendants' pre-suit knowledge of the patents-in-suit to support the induced and willful infringement claims, and plead sufficient conduct by the defendants to satisfy the other elements of these claims. 38 pages. Judge Joseph N. Laplante.

#### RECONSIDERATION; VOLUNTARY DISMISSAL

8/10/21 *Rubygold Main Holdings v. Brian Gardner Carpentry*  
Case No. 20-cv-1006-JL, Opinion No. 2021 DNH 121

Plaintiff moved for voluntary dismissal without prejudice as a consequence of its filing a similar lawsuit against the defendant in New Hampshire Superior Court. The court granted the motion and dismissed the suit without prejudice, except for the Plaintiff's claim for violation of the New Hampshire Consumer Protection Act, which it dismissed with prejudice. The court had previously granted summary judgment to the defendant on Plaintiff's CPA claim. The court found that voluntarily dismissing the remainder of the case without prejudice would cause minimal, if any, prejudice to the defendant. 7 pages. Judge Joseph N. Laplante.

#### PRELIMINARY INJUNCTION; PRISONER CIVIL RIGHTS; MOOT- NESS

8/25/21 *Gibbs et al. v. N.H. Dep't of Corr. Comm'r, et al.*  
Case No. 20-cv-1113-LM, Opinion No. 2021 DNH 133 P

Pro se inmates Peter Gibbs and Brett (Brooke) Sonia moved for preliminary injunctive relief on their federal civil rights claims against N.H. prison officials, challenging the prison conditions in Washington State, where they had been transferred to serve part of their New Hampshire sentences. The court denied plaintiffs' motion for a preliminary injunction, without prejudice to Sonia's ability to file a new motion concerning the current conditions of her confinement, upon finding that Gibbs's return to the N.H. State Prison in 2021 had mooted all of Gibbs's claims for injunctive relief, and that plaintiffs had failed to demonstrate a likelihood of success on the merits of their claims regarding their access to the courts, alleged due process violations, alleged equal protection violations, First Amendment interference with mail claims, and First Amendment retaliation claims. The court then took its preliminary review of plaintiffs' claims under advisement, pending their compliance with the court's prior order regarding the filing fee. 15 pages. Judge Landya B. McCafferty.

## Classifieds

#### POSITIONS AVAILABLE

**LITIGATION ATTORNEY** – Getman, Schulthess, Steere & Poulin, P.A., seeks a full time attorney with preferably 2 years of litigation experience, and insurance defense familiarity helpful. Must be admitted to the NH Bar with admission to the Maine, Massachusetts or Vermont Bar a plus. Please e-mail cover letter, writing sample, resume and references to Administrator at [law@gssp-lawyers.com](mailto:law@gssp-lawyers.com). All inquiries held in strict confidence.

**LITIGATION ATTORNEY** – Getman, Schulthess, Steere & Poulin, P.A., seeks a part time attorney with preferably 2 years of litigation experience, and insurance defense familiarity helpful. Must be admitted to the NH Bar with admission to the Maine, Massachusetts or Vermont Bar a plus. Please e-mail cover letter, writing sample, resume and references to Administrator at [law@gssp-lawyers.com](mailto:law@gssp-lawyers.com). All inquiries held in strict confidence.

**ASSOCIATE** – Manchester law firm seeks energetic associate to join our team. Candidates must be a member in good standing of the NH bar and have 3-5 years of experience in real estate, land use and development and corporate and transactional law. Competitive salary and benefits package offered. Please direct resumes to [manchesterattorney02@gmail.com](mailto:manchesterattorney02@gmail.com) for confidential consideration.

**EXECUTIVE DIRECTOR AND CHIEF EXECUTIVE OFFICER** – For over 40 years, New Hampshire Housing Finance Authority (New Hampshire Housing) has administered rental and homeownership programs designed to assist low- and moderate-income persons with obtaining affordable housing. New Hampshire Housing seeks a visionary, entrepreneurial individual who brings passion, skill and readiness for a high-caliber and high-impact leadership role. The ideal candidate will be a self-starter with excellent interpersonal skills, a thirst for challenge, and a heart for the needs of underserved communities. To apply, please submit a current resume and letter of introduction to Kittleman & Associates, LLC at <https://bit.ly/2W4sCPK>.

CLASSIFIEDS continued on page 36-39

#### LEGAL ASSISTANT

Cleveland, Waters and Bass, P.A. is seeking a full-time legal assistant to work in our downtown Concord office. Strong technical skills are required along with the ability to prioritize and apply independent judgment. The successful candidate will also be proficient with Microsoft Office Suite, knowledge of maintaining electronic files, be detail-oriented along with the ability to work under deadlines. Cleveland, Waters and Bass offers a competitive salary and benefits package, to include medical, life, 401(k), vacation and holidays.

Please submit a cover letter and resume to Lisa Tillotson, Office Administrator at [tillotson@cwbp.com](mailto:tillotson@cwbp.com).

#### MERRITT & MERRITT – VT Corporate Paralegal

Merritt & Merritt seeks an experienced & intelligent individual to fill full-time paralegal position. Tasks include organization of bus. entities, maintaining corp. records, related filings, patent, trademark & copyright filings/calendaring, and generally assisting the Firm's lawyers with their transactions. Candidates for this position preferably have a 4-year degree & prior work experience. Successful candidates must have a strong work ethic, be well organized, detail oriented, and possess excellent oral/written communication skills. Prior paralegal experience is a plus but not required. Candidates must be proficient with Microsoft products.

Please send resume & references to [ldissing@merritt-merritt.com](mailto:ldissing@merritt-merritt.com).

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FEBRUARY 2022

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[receptionist@nhbar.org](mailto:receptionist@nhbar.org)

\*Meeting rooms available on first-come, first-serve basis.



#### Pro Bono Manager

We seek an individual to manage our firm's pro bono program initiatives based in Concord, NH. Work closely with the Executive and Deputy Directors and other staff to develop and support program implementation, including pro bono matter intake, database management, reports and statistic requests, web publishing, event management and other special projects. Candidates shall be licensed to practice law in New Hampshire, qualified to be admitted by waiver or able to take the next NH Bar exam. Will have at least 6-8 years professional relevant experience as a practicing attorney or administrator at a law firm or non-profit legal service provider. Ability to communicate effectively both orally and in writing. Current technology skills. Ability to speak Spanish or another language in addition to English a plus. Salary DOE, expected to be approximately \$80,000 to \$100,000 per year, plus benefits. We are committed to diversity, equity, and inclusion.

For more information go to [www.603legalaid.org](http://www.603legalaid.org). To apply send a cover letter and resume to: [careers@603legalaid.org](mailto:careers@603legalaid.org)

## Attorney - Corporate Practice Group

Do you like working with entrepreneurs? Are you interested in joining a collaborative and innovative legal practice? Cook, Little, Rosenblatt & Manson, p.l.l.c. is a highly-regarded boutique business law firm with an opening in its corporate practice group. Our ideal candidate has strong academic credentials and 2-4 years of sophisticated corporate experience. We offer competitive compensation, as well as a platform for you to develop client relationships, become involved with local organizations, work with high-growth businesses, and build your practice in a supportive and collegial environment.

To learn more about the firm, visit our website at [www.clrm.com](http://www.clrm.com). To apply, please send your resume to Lisa Roy, Hiring Coordinator, at [l.roy@clrm.com](mailto:l.roy@clrm.com).



## Your Bar Association is Looking for Some Key Support Staff!



### NH Minimum Continuing Legal Education (NHMCLE) Coordinator

The NHMCLE Coordinator is a key member of our Business Operations department. They support the NHMCLE Court Board in administering NH Supreme Court Rule 53. They are the primary contact between the NHMCLE Board and attorneys practicing in the State of New Hampshire. Strong technical abilities to manage the Attorney Reporting Tool and database along with preparing documents for audit of education credits and assisting NH attorneys with Rule 53 compliance.

### NHBA Website Coordinator

The Website Coordinator is a key member of NHBA's Marketing, Communications and Member Outreach Department. They have primary responsibility for the architecture and content of NHBA website, including ongoing changes and updates. They are also responsible for website - related aspects of NHBA's virtual events.

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## Classifieds

### Classifieds from page 35

**REAL ESTATE ASSOCIATE ATTORNEY** – Concord firm seeking lawyer with 5+ years' experience handling closings, purchase and sale agreements, leases, financings, and title matters. Flexible arrangement available (of-counsel, associate, remote work). Health insurance and 401(k) available for full-time employees. Please contact Paul Alfano at [paul@alfanolawoffice.com](mailto:paul@alfanolawoffice.com), 4 Park Street, Concord, NH 03301 or 226-1188.

**LATERAL ASSOCIATE ATTORNEY.** Boutique Bedford Trust and Estate Law Firm is searching for a lateral hire with 3-5+ years of sophisticated estate planning and trust and estate administration experience to join the firm. Our ideal candidate is someone who is committed to excellence and who wants the work/life balance that is found working in a small firm in New Hampshire. We are fortunate to have a mature practice. Candidates must have strong credentials and meticulous attention to detail. Please submit cover letter and resume to Christine Anderson at [canderson@ansellpa.com](mailto:canderson@ansellpa.com).

**ASSOCIATE ATTORNEY WANTED.** Hayes, Windish & Badgewick is seeking an associate attorney to join our team. Preference is given to those with 3-5 years' experience in civil litigation, but those just starting with strong work ethic and motivation will be considered too. We are a small general practice firm with an emphasis on civil litigation, insurance defense, and workers' compensation matters. We seek a candidate who is interested has high ethical standards, strong skills in research and writing, along with the patience and desire to learn the profession. Competitive pay and benefits offered. Position to remain open until filled. Please send your resume and cover letter electronically to: Penny Webster, Office Manager, HAYES, WINDISH & BADGEWICK, [pwebster@woodstockvtlaw.com](mailto:pwebster@woodstockvtlaw.com).

**STAFF ATTORNEY:** New Hampshire Public Defender is seeking an experienced criminal defense attorney. Applicants must have a demonstrated commitment to indigent criminal defense and extensive practical experience. Applicants must be admitted to the New Hampshire Bar or be eligible for immediate admission by waiver. Interested attorneys should submit a resume, cover letter, and a law school transcript (unofficial acceptable) to our Recruiting Coordinator through the Employment section on our website, [www.nhpd.org](http://www.nhpd.org).

**FAMILY LAW ATTORNEY** – Small, downtown Manchester law firm seeking an experienced (1-5 years) Family Law attorney to join our law firm. Competitive salary and benefits. Interested applicants can submit their resume to [ods@lawyer.com](mailto:ods@lawyer.com).

**PARALEGAL** – Stebbins, Lazos & Van Der Beken PLLC, in Manchester, NH, has an immediate full-time opening for an experienced commercial real estate/corporate paralegal. Our firm works primarily in the areas of commercial real estate, banking, commercial construction and corporate law. We are seeking an individual with a broad base of corporate experience and at least five years of experience in commercial real estate, including a strong emphasis on titles. The ideal candidate will have excellent organizational skills and attention to detail, proficiency in handling a number of projects simultaneously, and ability to work well under pressure of deadlines. We offer competitive salary and benefits. Please send cover letter and resume to [jgrant@slvlaw.com](mailto:jgrant@slvlaw.com).

**PARALEGAL/LEGAL ASSISTANT** – Hoeffle Phoenix Gormley & Roberts, PLLC is seeking a Paralegal/Legal Assistant with substantial experience in litigation and corporate. The successful candidate will be a member of the support staff team and provide general assistance to 3 attorneys along with maintaining annual corporate records and filings. Must have a strong work ethic, great computer skills (proficient with Microsoft), excellent communication skills, organized and detail oriented. This is a full-time, Monday- Friday 8-5, non-remote position. The firm offers competitive wages and benefits commensurate with qualifications. Submit your cover letter and resume with salary requirements to [cthomas@hpgglaw.com](mailto:cthomas@hpgglaw.com).

**PARALEGAL/LEGAL SECRETARY** - Claremont law firm seeks a full-time Paralegal/ Legal Administrator. Strong organizational, computer, administrative and interpersonal skills are required. Experience in the legal field is preferred but not essential. Please submit your resume to: PO Box 829, Claremont, NH 03743.

**PART-TIME PARALEGAL/LEGAL ASSISTANT** – Wanted for small, busy law firm. Responsibilities include assistance in real estate, estate planning, probate, interacting with clients, document drafting and general office duties. Applicants should be self-motivated and willing to assume responsibilities. Competitive salary with benefits. Please send cover letter, resume and references to: [janed@northconwaylawyers.com](mailto:janed@northconwaylawyers.com).

## LITIGATION ASSOCIATE

Manchester law firm has an immediate opening for an experienced litigation associate to join our team. The successful candidate will have 3-5 years of experience in personal injury and be a member in good standing of the NH Bar. Experience in NH workers' compensation is a plus but not required. We are looking for a results-oriented self-starter with the ability to work independently and collaboratively with our team.

We offer a competitive salary and benefits package including health insurance, flexible spending account, generous paid time off, and 401(k) with employer match. For confidential consideration, please direct resumes to [nhassociateatty@gmail.com](mailto:nhassociateatty@gmail.com).

## Municipal Services Counsel (Attorney)

The New Hampshire Municipal Association (NHMA), a nonprofit, nonpartisan, membership organization, is looking for a dynamic, highly motivated attorney with an interest in local government to fill the position of Municipal Services Counsel.

The Municipal Services Counsel's primary role is providing legal advice and training to local officials in New Hampshire's cities and towns as part of NHMA's Legal Services team, but the position also serves an ancillary role to the Government Affairs team.

This position presents a unique opportunity to engage with and support local officials, while following the state legislative process and its impact on local government. Prior experience with municipal law is a plus, but is not required.

NHMA offers an excellent benefits package. The position reports directly to the Executive Director. This is a salaried, exempt position.

Visit [www.nhmunicipal.org](http://www.nhmunicipal.org) to learn more about the services the New Hampshire Municipal Association provides.

### PROFESSIONAL QUALIFICATIONS

- Juris Doctorate degree.
- Member of the New Hampshire bar in good standing. (Must be licensed in the State of New Hampshire prior to date of hire.)
- 1 – 5 years of experience as an attorney required.
- Strong public speaking ability required.
- Ability to represent NHMA to members and legislators and other stakeholders.
- Strong interpersonal/communication skills and an ability to work both independently and in teams. NHMA is a small, 9-person organization, and staff collaborate continuously.
- Strong motivation and an inquisitive mind.
- Strong organizational skills.
- Prior work with local government, either in a professional or volunteer capacity, is a plus.

For the full job description and information on how to apply, please go to <https://www.nhmunicipal.org/classified/municipal-services-counsel-attorney>.



## Administrative Prosecutor

The State of New Hampshire Office of Professional Licensure and Certification, Division of Enforcement seeks a full-time Administrative Prosecutor responsible for analyzing and interpreting state statutes and regulations and to determine procedures for resolving disciplinary actions pending before the occupational licensing boards within the Office of Professional Licensure and Certification. The Prosecutor, among other things, prepares cases, negotiates potential settlements, prosecutes disciplinary cases, oversee the investigations by legal staff, supervises the evaluation of initial complaints, and responds to legal inquiries concerning occupational licensing disciplinary actions from the public, legal professionals, advocacy groups, and state and federal officials. The ideal candidate will have a Juris Doctorate degree from a recognized college or university and at least two years' experience in law, public administration or public policy. Candidate must be an active member of the New Hampshire Bar Association and in Good Standing. Please send cover letter and resume to Office of Professional Licensure and Certification, 7 Eagle Square, Concord NH 03301, Attn: Judy Shevlin, Human Resources or via email at [judith.a.shevlin@opl.nh.gov](mailto:judith.a.shevlin@opl.nh.gov). For a full job description, please visit the State of NH's job postings and search for Job ID # 21653, <http://das.nh.gov/jobsearch/employment.aspx>

## MERRITT & MERRITT – VT/NH Corporate/Securities Associate

Boutique B-Corp corporate law firm located on the waterfront in Burlington, VT seeks an experienced corporate/securities associate to join our team.

The ideal candidate has 3+ years of hands-on general corporate and private and public securities law experience, including drafting public company filings, structuring mergers, acquisitions and other sophisticated corporate transactions, and commercial contract negotiation and drafting. Must be able independently to advise clients and their financial and accounting advisors on strategic transactions. The right candidate will possess a genuine interest in business and economic activity demonstrated through participation in multiple business-related organizations and/or legislative initiatives on behalf of clients. Must be exceptionally client-focused and thrive in a face-paced, entrepreneurial environment. The right candidate will find this position an exceptional opportunity for growth. Ability to waive in or take the Vermont bar exam preferred, but will consider candidates working remotely.

If you are interested in expanding your career in a beautiful city and state with outstanding cultural and recreational activities, please contact Linda Dissinger with a cover letter and a resume at: [ldissinger@merritt-merritt.com](mailto:ldissinger@merritt-merritt.com).

## TRUST & ESTATE PARALEGAL

Sulloway & Hollis, PLLC seeks a full-time experienced Trust & Estate Paralegal to support our Tax, Trust and Estates Practice Group. Paralegal training and a background in Trust and Estate Administration is required.

The ideal candidate will have a strong working knowledge of probate and trust administration, as well as state and federal filings and a familiarity with trust accounting, a professional manner, excellent communication skills, be well-organized and able to work independently, and will contribute to the continued growth of a very active practice group.

To qualify, you must possess a strong working knowledge of Microsoft Word and accounting software. Applicants will have a degree from an accredited college or university. We offer competitive salaries commensurate with experience, an excellent benefits package, and a cohesive team atmosphere. Qualified applicants should submit resume and cover letter to:

Jennifer L. Iacopino, Human Resources Manager  
[jiacopino@sulloway.com](mailto:jiacopino@sulloway.com)



New Hampshire | Maine | Massachusetts | Rhode Island | Vermont  
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## BUSINESS ATTORNEY

Seeking experienced Business Attorney to join thriving Corporate and Commercial practice with a mid-sized, 100-year-old, firm located in the heart of the Lakes Region in New Hampshire. Ideal candidate will have a minimum of 3-5 years corporate experience and an interest in building a long-term career in the Lakes Region. Commercial and/or residential Real Estate experience a plus.

Candidate must be extremely organized, able to work independently and have strong written and oral communication skills. We look forward to welcoming an attorney who is committed to excellence in his or her practice and dedicated to client service. This is an outstanding opportunity for an experienced lawyer to grow his or her career and practice in a friendly, supportive environment with experienced attorneys and an established corporate client base.

Please forward resume and letter of interest to:

Normandin, Cheney & O'Neil, PLLC  
P.O. Box 575, Laconia, NH 03247-0575  
or email to Atty. Kaitlin O'Neil, at [koneil@nco-law.com](mailto:koneil@nco-law.com)

## ATTORNEY OPENINGS

Sulloway & Hollis, PLLC, continues to grow our regional practice, with opportunities for talented associates with three to five years' experience to join our Trust and Estate, Labor and Employment and Medical Malpractice practice areas. We offer a dynamic and so-phisticated practice, a collegial and flexible working environment, and support to our attorneys with mentoring and business development, together with a competitive compensation package and excellent benefits. Current openings include:

### Trusts & Estates

At our Firm, we assist clients with the important decisions involved in protecting their families and preparing for the future. We are seeking Associate Attorney level candidates for our Concord, NH location. Our attorneys handle all aspects of estate planning and trust and estate administration, as well as the federal estate and gift taxation issues that go along with these areas.

### Labor & Employment

Employment relationships are subject to a complex web of changing state and federal regulations, and navigating this critical area of law requires an experienced, proactive approach. Sulloway's Labor and Employment Practice Group provides comprehensive counseling and litigation services to employers across New England. We are seeking Associate Attorney level candidates for our Concord, NH location. Candidates should have exceptional research and writing skills, and a passion for advocacy.

### Medical Malpractice

For more than a half-century, our Firm has been a leader in medical malpractice defense, hospital and physician advocacy, and health care litigation. Our lead attorneys in this area have decades of experience representing hospitals, physicians, professional practice groups and other health care providers and medical institutions across New England. We are seeking Associate Attorney level candidates to join our team in our Concord, NH location.

Qualified applicants should submit resume and cover letter to: Jennifer L. Iacopino, Human Resources Manager, [jiacopino@sulloway.com](mailto:jiacopino@sulloway.com)



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Since 1908, Upton & Hatfield has provided legal services to New Hampshire people, businesses, and municipalities. Our firm serves the state from offices in Concord, Portsmouth, Hillsborough, and Peterborough. We are growing and seeking candidates for the following positions:

**ATTORNEY** with 3+ years' experience for its Peterborough office to focus on estate planning, probate and trust administration, business transactions, and real estate, and to become involved in the communities in the Monadnock Region.

**ATTORNEY** with 3+ years' experience for its Concord office to focus on business and real estate transactions and to become part of the Concord business community.

**PROBATE PARALEGALS** with 5+ years' experience to assist with trust/probate administration, probate filings, and trust and estate account administration, including statement reconciliations, financial reporting, and preparation of tax information for outside tax preparers. Bookkeeping experience is a plus.

Upton & Hatfield offers a competitive compensation and benefit package. Please forward a cover letter and resume to Pamela Woodworth, Administrator, Upton & Hatfield, PO Box 1090, Concord, NH 03302-1090, or via email to [hr@uptonhatfield.com](mailto:hr@uptonhatfield.com). All inquiries will be held in strict confidence.



## Business Law Attorney

Shaheen & Gordon, P.A. has an immediate opening for an attorney with 7-12 years of experience to join our Business Practice Group. We are looking for a person with experience, motivation, sense of humor and a willingness to take on a leadership role. As a firm, we place a high value on teamwork, collaboration, intellectual openness, and the robust exchange of views.

We seek an energetic person with broad experience and a cooperative spirit. Ideal candidates will have experience in transactional law including general corporate representation, mergers and acquisitions, employment, securities law, real estate, municipal representation, and health care law. Our goal is to find someone who is willing to support our varied business client needs while building a practice in the areas that excite them.

## Business Law Associate Attorney

Shaheen & Gordon, P.A. has an immediate opening for an associate attorney with 0-3 years of experience in the Business Practice Group. We welcome lawyers with diverse backgrounds looking to launch and build their careers in an entrepreneurial environment. We are looking for exceptional candidates with energy, curiosity, humor, integrity and the motivation to succeed. As a firm, we place a high value on teamwork, collaboration, intellectual openness and the robust exchange of views.

Associates will have the opportunity to work on a variety of cases and issues in a sophisticated business law practice, including business litigation, general corporate representation, mergers and acquisitions, real estate, municipal representation and health care law. In addition to research and writing, new lawyers are encouraged to work directly with clients, develop practical skills under the tutelage of experienced and expert lawyers in the firm, and cultivate their own particular areas of interest and focus.

## Family Law Associate Attorney

Shaheen & Gordon, P.A. has an immediate opening for an associate attorney with 0-3 years of experience in the Family Law Department in our Concord, New Hampshire office. We welcome lawyers with diverse backgrounds looking to launch and build their careers in an entrepreneurial environment. We are looking for exceptional candidates with energy, curiosity, humor, integrity, and the motivation to succeed. As a firm, we place a high value on teamwork, collaboration, hard work, intellectual openness, and respectful communication.

Associates will have the opportunity to work on a variety of cases and issues in a sophisticated family law practice, including divorce cases for middle income to high-net-worth clients, Collaborative Divorce cases, the identification and distribution of trust interests in divorce, valuation and division of business interests, interstate and international jurisdictional issues, child support and alimony, unwed parenting cases, and guardianships. Our clients include women, men, fathers, and mothers; cisgender, transgender, and non-binary individuals; and individuals in same-sex and opposite-sex marriages.

In addition to research and writing, new lawyers are encouraged to work directly with clients, develop practical skills under the tutelage of experienced and expert lawyers in the firm, and cultivate their own areas of interest and focus.

Shaheen & Gordon is committed to creating a diverse environment and is proud to be an equal opportunity employer. We do not discriminate on the basis of race, color, religion, sex (including pregnancy), gender identity or expression, national origin, citizenship, veteran status, age, physical or mental disability, genetic information, marital status, sexual orientation, or any other consideration made unlawful by applicable federal, state or local laws in any aspect of employment, including but not limited to recruitment, hiring, training, evaluation, transfer, promotion, discipline, compensation, termination, and layoff. Shaheen & Gordon is also a non-smoking workplace.

We offer a competitive salary and a generous benefits package including health insurance, flexible spending account, health reimbursement, long term disability, paid time off, paid parental leave, life insurance and 401(k) with employer match. Although we value the opportunities for collaboration and learning that come with in-person contact, we are open to discussing flexible work arrangements.

Interested applicants please forward your resume, a cover letter, and a writing sample to [recruiting@shaheengordon.com](mailto:recruiting@shaheengordon.com).



## Clerical Assistant - Dover

Shaheen & Gordon, P.A., Attorneys at Law, is seeking a full-time Clerical Assistant to work with their personal injury staff in the Dover, NH office. To be successful in this role the candidate must demonstrate the ability to work as a member of a team, in addition to working independently.

### Responsibilities

- Requesting medical records and bills
- Organization of medical records and bills
- Assist legal assistants/paralegals with personal injury files

### Required Skills/Abilities

- Must have excellent phone skills
- Must have excellent interpersonal and organization skills
- Must have excellent typing skills
- Must have computer skills using Microsoft Word/Outlook, Excel
- Must have strong attention to detail and be able to multi-task
- Must be able to meet deadlines
- Have a professional and friendly attitude

### Education/Experience

- High School diploma or equivalent required
- Have at least 1 year experience in an office environment

Shaheen & Gordon is an Equal Opportunity employer and does not discriminate on the basis of race, color, religion, sex (including pregnancy), gender identity or expression, national origin, citizenship, veteran status, age, physical or mental disability, genetic information, marital status, sexual orientation, or any other consideration made unlawful by applicable federal, state or local laws in all aspects of employment, including but not limited to recruitment, hiring, training, evaluation, transfer, promotion, discipline, compensation, termination, and layoff.

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No phone calls or agencies please.

EOE



## Clerical Assistant - Manchester

Shaheen & Gordon, P.A., Attorneys at Law, is seeking a full-time Clerical Assistant to work with their personal injury staff in the Manchester, NH office. To be successful in this role the candidate must demonstrate the ability to work as a member of a team, in addition to working independently.

### Responsibilities

- Requesting medical records and bills
- Organization of medical records and bills
- Assist legal assistants/paralegals with personal injury files

### Required Skills/Abilities

- Must have excellent phone skills
- Must have excellent interpersonal and organization skills
- Must have excellent typing skills
- Must have computer skills using Microsoft Word/Outlook, Excel
- Must have strong attention to detail and be able to multi-task
- Must be able to meet deadlines
- Have a professional and friendly attitude

### Education/Experience

- High School diploma or equivalent required
- Have at least 1 year experience in an office environment

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EOE

DEPARTMENT OF REVENUE ADMINISTRATION  
**TAX POLICY COUNSEL**

\$72,748 - \$101,322

The New Hampshire Department of Revenue Administration seeks an experienced attorney to serve in the role of Tax Policy Counsel. The successful candidate will act as the Department's liaison with the New Hampshire General Court by communicating agency objectives and initiatives to the legislative body as well as responding to legislative inquiry on matters relating to tax law, tax policy, tax administration, fiscal impact, revenues, and budgeting. The candidate will analyze and interpret state and federal laws and legislative proposals in order to advise the Department on the impact to agency operations and to advise the Commissioner of agency changes required. The candidate will also manage the agency's administrative rulemaking process and will serve as the agency's public information officer by coordinating communications from the agency and responding to press inquiries. A more detailed description of job duties can be

found here: <https://www.revenue.nh.gov/career/documents/TaxPolicyCounselLongAd.pdf>

**Minimum Qualifications:**

**EDUCATION:** Juris Doctorate from a recognized college or university.

**EXPERIENCE:** Four or more years' experience in legal practice, legal or legislative research, or hearings administration. Each additional year of approved work experience may be substituted for one year of required formal education at the graduate level only.

Interested candidates can submit letter of interest and resume to: Assistant Commissioner Carollynn J. Lear, NH DRA, 109 Pleasant Street, PO Box 457, Concord, NH 03302 or by e-mail to [Carollynn.J.Lear@dra.nh.gov](mailto:Carollynn.J.Lear@dra.nh.gov).



**Rockingham County**

## ASSISTANT COUNTY ATTORNEY

**SCOPE OF POSITION:**  
Seeks justice with professionalism, excellence and pride, consistent with the New Hampshire Rules of Professional Conduct, American Bar Association and National District Attorney's Association guidelines, as a criminal prosecutor with a concentration in Superior Court.

**ESSENTIAL JOB FUNCTIONS:**

- Acts as counsel for the State of New Hampshire in criminal matters.
- Works closely with Victim/Witness Coordinators to ensure that all witnesses/victims are properly informed, prepared and supported throughout the prosecution process.
- Presents investigations and cases to the Grand Jury

**REQUIRED EDUCATION AND EXPERIENCE:**

- Juris Doctor from accredited law school.
- 3 years of experience in criminal prosecution, preferred.
- Must be admitted into the New Hampshire Bar Association.

**SALARY RANGE:** \$67,077 – \$85,259 Dependent upon experience  
**STATUS:** Full Time / Exempt  
**SUBMISSION REQUIREMENTS:**  
Employment application and resume required.  
Apply online: [Careers@co.rockingham.nh.us](mailto:Careers@co.rockingham.nh.us)  
Walk-in / Mail Applications: 111 North Rd, Brentwood, NH 03833  
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- Prefer to work in a collaborative, multidisciplinary team toward a common goal

**Successful candidates will:**

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- Evaluate complex coverage and liability issues that impact the litigation
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  - Develop claim specific skills and knowledge
  - Understand and evaluate complex coverage issues
  - Implement and integrate those skills to impact the course of litigation

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| Dec. 15, 2021  | Nov. 29, 2021           | Dec. 6, 2021      |
| Jan. 19, 2022  | Jan. 3, 2022            | Jan. 10, 2022     |
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