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Kenneth Feinberg Reflects on his Role as Special Master for the 9/11 Victims Compensation Fund

Interview by Scott Merrill

In “What is Life Worth” you speak about the impossible job of determining the value of a life that has been lost. Can you describe the criteria that you used in determining the amounts that families received for the Victims Compensation Fund. And also, how did Sen. Kennedy’s advice, that you mention in the book, that “15 percent of the claimants shouldn’t get 85 percent” of the grants, factor into the amounts people received?

Good questions. First of all, calculating the value of lives is not rocket science. People sometimes think that it must be—that you have to have a divinity degree to consider such aspects as character, loyalty and dignity, love and courage, but this is not so. Every day, in every court in the United States, in every court in New Hampshire, judges and juries do this all the time. What is a life worth? We don’t consider, directly at least, honor, dignity, loyalty and love. We think about and calculate, what a victim would have earned over a lifetime, but for the tragedy. A stockbroker, a banker, they receive more compensation from judges and juries than the waiter, the busboy, the soldier, the fireman or the policeman. They earned more in a work life and they get more. That’s the American legal system. Add to that some amount of pain and suffering, emotional distress, and there is a calculated award. In the 911 fund the statute passed by congress ordered the special master, the administrator, Feinberg, to do exactly that. Figure out an award tied to economic loss and add pain and suffering. Basically, those were the pillars for determining compensation. The law also conferred on me wide discretion to vary the formula in an individual case. And that’s where your inquiry about Ted Kennedy comes into play. He said to me,

The hard part, the debilitating part was the emotional overhang, dealing with families in grief who in a matter of weeks had lost a loved one. We managed as best we could.



‘Ken, this is all public taxpayer money, coming from the U.S. treasury, there’s no contribution from the airlines, WTC, Massport. It’s all public money. I have some advice for you in exercising your discretion: Make sure 85 percent of taxpayer money doesn’t go to the well healed 15 percent above the victims. Make sure you exercise your discretion in a more politically sensitive way to make sure the money is wisely spent. You have that authority under the statute.’ And that’s what I did.

What were the potential legal and social consequences of not having a fund?

Congress was concerned that without a fund that there would be 1000s of lawsuits filed against the airlines for negligence for letting the terrorists on board. There would be lawsuits against WTC for not protecting WTC occupants with greater care. Mass Port and the Port authority would be sued, and there was a real concern in congress that the airlines might go out of business and maybe the entire economy would be adversely affected by constant newspaper stories every day about these lawsuits. So,

congress decided to establish this fund as a voluntary alternative to litigation. You don’t have to come in. You can go ahead and litigate if you want. There were barriers to that, but you could. Congress also decided, as an act of patriotism, to make the 911 awards very very generous, to entice people not to sue. And it worked.

Did you need a certain number of people signed up for the VCF before it would be released as the film Worth seemed to suggest?

No. The movie Worth makes it appear, taking some dramatic license, as movie producers and directors are apt to do, the movie made it appear that without 85 percent of the eligible pool coming into the fund, the fund would be viewed as a defeat or a disaster. There was no such thing. Turns out of course, 97 percent of all eligible families that lost a loved one came into the fund voluntarily. Only 94 people. 3 percent, decided to litigate and they settled about five years later. There was never a trial over domestic responsibility for 911.

Did your team consult with academics, such as ethicists, psychologists, or social scientists, to address the process of how to decide how to create a fair distribution. Or were you personally reaching out to academics?

We concluded that the statute itself delineated the confines of the program. We saw very little reason to reach out to academics to give us their views on how to design the program. Congress pretty much laid out the skeleton and we filled out the in between. It was rather, a pretty clear blueprint established by congress. There were two areas where congress neglected, maybe by design, to give us any guidance. First, no where in the enabling legislation was there any requirement of due process. That is, there was no requirement that we hold hearings or invite individual claimants to request an audience with special master. Secondly, there was nothing in the legislation that talked about how to allocate an award among conflicting family members. Those two areas, due process and allocation, were left to the discretion of the special master and we filled in those vacuums by permitting a voluntary hearing and by stating in our regulations that the money would be distributed according to the will left by the victim and if there were no will according to the intestacy laws in the states of the victims domicile. And in that way we had a clear cut objective path for allocating the funds.

Were the cultural differences challenging when speaking with families?

The cultural differences In the 50 states weren’t the problem on the subject of compensation. The 911 fund also compensated foreign victims. Soldiers from another country who happened to be visiting the pentagon...and in some of those cases it did become a little bit difficult. We had to exercise our discretion. One middle eastern country, Saudi Arabi, did not

provide in its estate law for a woman to receive part of the estate through the death of her husband or father. We exercised our discretion and decided it’s tax payer money we better be a little bit more sensitive and understanding about the need to recognize women, gay partners, divorced spouses...and it was a challenge but that’s where our discretion came into play.

How did you stay focused emotionally at that time day to day?

Hour by hour, not day by day. The hard part...staying focused. You had an assignment, we were asked by the attorney general, the president of the united states, to design and implement the program. The hard part, the debilitating part was the emotional overhang, dealing with families in grief who in a matter of weeks had lost a loved one. We managed as best we could. When we were holding these hearings I’d take a break, go outside, walk around the park and see little kids playing on the playground, buy an ice cream cone. And at night, the height of civilization, opera, orchestral concerts, string quartets, trying to balance what I learned during the day, and the horror of the day, with the uplifting message at night, especially musically. And I had a very supporting family. And a very interesting thing about this program: the country rallied around the program. It’s not like today. One of the lasting and most important impacts of the movie, Worth, is to demonstrate to people who weren’t around or who don’t remember the 911 fund, just how apolitical it was. How, there were no liberal, conservative, red state, blue state, democrat, republican, everyone rallied around the program. And if there’s one message from the movie that’s it. That in times of crisis the American people were one community and I think that’s a wonderful lesson to pass on to current citizens.

On some level do you find parallels between the work you did administering the VCF and other funds since then, and the time you spent on stage years ago in the theater?

Well, you’ve touched on it. On some level, you’re a professional, and you’ve been asked by the president of the united states to take on this assignment and you’re not acting but you have to maintain your persona. You can’t fall apart. You may fall apart and weep in private, but in public you have to be an individual administering

a program, meeting with victim’s grief, to provide them an anchor, something that is certain and solid that they can hang on to. In that sense you are masking someone. The horror and the sorrow that you’re trying not to present and the empathy that you show is also important. I learned the hard way. If you want to demonstrate empathy, the less you say the better. Every day you make mistakes. I remember

one day, an elderly gentleman, I think he was about 82, lost his son at the pentagon. And he came to see me, weeping, and he said, ‘Mr. Feinberg, I lost my son at the pentagon on 911.’ When the plane hit the building he managed to escape safely. But he thought his sister who also worked there was trapped. He ran back in to the burning building to look for her but she had escaped through a side door and he died looking for her. And this old man said, ‘Mr. Feinberg, my life is over. A father should never have to bury his son. I’ll never be the same, my life is over.’ And I looked at him and I said, ‘this is terrible. I know how you feel.’ Well, This man put his hand on my shoulder and said, ‘Mr Feinberg, you have a tough job, I don’t envy what you have to do but don’t ever tell someone like me you know how I feel. You have no idea how

The horror and the sorrow that you’re trying not to present and the empathy that you show is also important. I learned the hard way. If you want to demonstrate empathy, the less you say the better. Every day you make mistakes.

Schedule for Midyear Meeting 2022 February 18, 2022 | Virtual

Exhibitor Showcase

Exhibitor pages available throughout the Midyear Meeting

Programming

255 NHCLE min. including 75 NHCLE ethics/prof.

8:00-8:30	Exhibitor Showcase, Pre-roll of upcoming events, announcements, etc.
8:30-8:40	Welcome, Bar President Richard Guerriero In Memoriam
8:40-8:55	Remarks, Chief Justice Gordon J. MacDonald, New Hampshire Supreme Court
9:00-10:00	Thinking of Accepting Bitcoin as Payment? What Lawyers Need to Know (CLE) Speaker: Lisa Bragança (60 NHCLE General Minutes)
10:05-10:40	President’s Awards and Outstanding Service in Public Sector/Public Interest Law Award; Philip S. Hollman Award for Gender Equality
10:45-11:45	The Past, Present, and Future of Qualified Immunity (CLE) Speaker: Patrick Jaicomo (60 NHCLE General Minutes)
11:45-12:15	Pro Bono Awards
12:15-12:45	Lunch Break, Exhibitor Showcase
12:45-1:45	Gray Area Thinking (CLE) Speaker: Ellen (Ellie) Krug (60 NHCLE General Minutes)
2:00-3:15	Unconventional Responses to Unique Catastrophes: Tailoring the Law to Meet the Challenges (CLE) Speaker: Kenneth R. Feinberg (75 NHCLE Ethics Minutes)
3:20-3:40	Closing Remarks, Executive Director George Moore
3:40-3:50	President’s Closing Remarks, Announcement of gift prize winners
4:00-5:00	Tea and Chocolate Pairing, NLC Social, After-Event (additional fee, space limited)

The Debate about Qualified Immunity Continues

By Scott Merrill

The doctrine of qualified immunity that protects federal, state, and local government officials—including police—from civil lawsuits is being scrutinized and criticized by legal scholars, politicians and civil rights advocates in New Hampshire and around the country.

Despite the criticism and increased public awareness of the doctrine—especially in light of recent police violence—immunity protections for government officials continue to grow.

This is happening on a federal level, says Patrick Jaicomo, an attorney at the Institute for Justice in Arlington, VA, because of the Supreme Court’s “increasing hostility” towards the ability to sue federal officials of any type through something called a Bivens cause of action.

Qualified immunity also applies to state and local officials, and UNH Franklin Pierce School of Law Professor, John Greabe, calls the doctrine “a legal fiction.”

To understand these criticisms, and to unearth some of the reasons why a wide-reaching legal doctrine—seemingly arbitrary and fictitious to leading legal minds and those calling for police reform—persists, requires an understanding of the doctrine’s evolution.

Qualified Immunity

Qualified immunity is a common law doctrine which provides a defense to civil liability for police officers and other government officials, even if they have violated the Constitution, so long as they have not violated “clearly established” law. Its proponents often say that it is intended to protect officials who “make reasonable but mistaken judgments about open legal questions.”

“If qualified immunity applies, money damages aren’t available even if a constitutional violation has occurred,” Greabe says. “If qualified immunity doesn’t apply, while the government employee or official technically is responsible for money damages, the government entity virtually always pays.”

Qualified immunity is a form of “sovereign immunity” less strict than [absolute] immunity, which provides complete immunity for government officials from civil lawsuits.

“The fictions of sovereign immunity are ridiculous,” Greabe says. “Take police officers, for instance, because they’re the most commonly sued defendants in these cases. The reality is that the cities and towns for which they work are all insured. So, this whole idea of sovereign immunity is a fiction.”

A major problem with the current doctrine of qualified immunity, Jaicomo says, is that the qualifications are of such a narrow nature that’s it’s very close to absolute immunity.

“The way that it actually works, the doctrine we have today, is that if you’re a plaintiff in a civil rights case, you have to be able to point to an earlier case where essentially the exact same thing happened—where the court said it was unconstitutional—and if you can’t point to that case then the officer of the government is entitled to immunity,” he says. “So, any person who hears that might think, ‘the crazier an official behaves the more likely they are to receive immunity,’ and that’s true, unfortunately.”

The Evolution of Qualified Immunity State and Local versus Federal Lawsuits

In 1982, the Supreme Court adopted the current test for the doctrine of qualified immunity which says it is generally available if the law a government official violated isn’t “clearly established.”

But the seeds of the qualified immunity doctrine as it is used today were planted in the 19th century.

Following the civil war, Congress established a statute intended to protect freed people. The concern in Congress at the time, Professor Greabe says, was that states weren’t observing federal rights that had been granted.

42 U.S.C. section 1983, referred to colloquially as “1983,” was created in 1871. This statute provided the ability for individuals to sue state and local officials for constitutional violations.

Institute for Justice Patrick Jaicomo

Patrick Jaicomo, an attorney at the Institute for Justice in Arlington, Virginia, says he has found a sense of purpose holding government employees—including police—accountable for their crimes, and dismantling the current doctrine known as qualified immunity.

Jaicomo, whose background includes a clerkship on the Michigan Supreme Court and six years spent practicing civil litigation for a mid-sized law firm, is one of the leaders on the Institute for Justice’s Project on Immunity and Accountability.

In his two years at the IJ, Jaicomo has litigated accountability issues—including qualified immunity and the restriction of constitutional claims against federal workers—across the country and at every level of the federal court system.

His story, he says, is a common one for many attorneys.

While his decision to go to law school was largely driven by concerns about gov-



ernment overreach and the importance of enforcing the constitution, these passions and ideals were placed on hold in the pursuit of making money.

“But you lose site of the things that inspired you to go to law school in the first place,” he says. “One day, I realized that working at a law firm—it was fine—but I didn’t have a sense of purpose that was being provided by my profession.”

While at that firm Jaicomo maintained his connections to the civil rights issues he felt passionately about through a side practice and he eventually made these his purpose.

“The only thing I was really focused on was making money as a lawyer and I decided I would rather find purpose in the work I was doing as a lawyer,” he says. “That’s ultimately why I joined the Institute for Justice. Every single day now I’m doing exactly what I hoped I’d be doing when I went to law school.”

The services provided by the IJ are done pro bono and litigation involves identifying constitutional violations and remedying them.

“The last two years have been like a shot,” Jaicomo says. “We’ve gone from zero to 60 on this project with a case in the Supreme Court, and others across the country we’re litigating.”

“This case illustrates the lack of accountability that takes place when a police officer and an F.B.I agent violate someone’s constitutional rights,” Jaicomo says. “One of the main ways the government avoids accountability for violating the constitution is through qualified immunity.”

Qualified Immunity In New Hampshire

In 2021, House Bill 111 was tabled. The bill would have waived the state’s sovereign immunity for government officials in cases involving alleged constitutional violations.

One of the sponsors of that bill, Paul Berch, worked as an attorney for the Vermont Public Defender’s Office in Windham County, for 34 years until 2009. During his time in Vermont, Berch says he began noticing issues that would come up about disclosure of evidence involving police misconduct as well as overall transparency involving government officials.

After joining the legislature, his interest grew.

“In New Hampshire we have a triple whammy against transparency in terms of government misconduct,” Berch says, explaining that the more he looked into the statutes and issues, including the state’s exculpatory evidence schedule or “Laurie List,” he found that reporters were being prevented from speaking with victims of government misconduct because of non-disclosure agreements they had signed regarding their cases.

The three impediments for the public’s access to information about public employees that Berch identified include the Laurie List problem, the inability to sue, and the non disclosure agreements that people sign.

“First, if a police officer does something wrong and it’s substantiated, there’s difficulty in accessing that information. Secondly, if you think you’ve been harmed by a government employee you may find out you can’t sue the government for government misconduct. Third, if you manage to reach a settlement in a lawsuit the state can insist on a condition of settlement that you not disclose the details. Put these three things together and you wonder how can you find out what’s going on.”

In May, 2021, the New Hampshire Municipal Association referred to HB 111 as a “dangerous” bill and took aim at support made for the amendment by Ben and Jerry’s Ice Cream founders, Ben Cohen and Jerry Greenfield, saying in a

May 14, 2021 newsletter:

“We are not sure why the legal analysis of an out-of-state ice cream vendor should carry any weight in the New Hampshire legislature. Everything Mr. Cohen said is incorrect. Qualified immunity does not say that ‘cops are above the law.’”

HB 111 remains tabled and likely won’t be revisited as it stands but Berch says a new version, leaving out municipal workers, but including law enforcement and other officials responsible for custody of individuals at a state institutions, will be revisited.

“I think a lot of the opposition last time that came from municipal authorities was misplaced concern but nonetheless it seems simpler to not go that route again,” Berch says. “The whole concept of qualified immunity is fairly recent if you think 1982 [*Harlow v. Fitzgerald*] is recent. And the skies didn’t collapse without qualified immunity. So, the sky isn’t going to fall in with a million lawsuits, which is a claim that was made.”

ACLU Smart Justice Campaign Manager, Joseph Lascaze, says qualified immunity provides blanket protections to officers who are there for the wrong reasons. He pointed to the New Hampshire case of Richard Simone, who led police on a high-speed chase through Massachusetts into New Hampshire in 2016 and was then attacked by police after appearing in a helicopter video to be surrendering on the ground.

“When you look at that case, one police officer plead guilty, knew what they did was wrong, and took the sanctions. But the Massachusetts trooper didn’t want to lose their pension and they were able to keep it. That is wrong,” Lascaze says. You can’t have two officers who did the same exact thing and one ends up guilty and the other isn’t. From the community’s perspective qualified immunity provides blanket protection across the board for people in law enforcement who are sometimes there for the wrong reasons.”

Simone’s attempt to receive damages for injuries he claims were received from the attack--and a violation of his Fourth Amendment rights-- by police, were dismissed in U.S. District Court.

The Phenomenon of ‘Chill’

The idea behind qualified immunity, Greabe says, is to not “chill” government officials in their performance of their official duties.

“It recognizes that they encounter fluid situations and emergencies,” he says. “We don’t want them to hesitate to act out of fear of facing a lawsuit.”

Greabe makes a comparison between qualified immunity and the debate over divisive concepts bills such as the one New Hampshire passed last year that makes it a crime to discuss systemic racism in classrooms.

“It doesn’t matter whether what they’re doing is unconstitutional, teachers could be chilled by the fact that they could be sued,” he says.

Greabe believes a sensible reform would treat lawsuits involving civil rights like other types of lawsuits against government officials.

“There is a federal tort claims act which lays out when you can sue a government when one of its agents does something that harms an individual,” he says.

In these cases, the Federal Tort Claims Act substitutes the individual defendant for the government. And there are state tort claims acts that work the same against state and local officials, Greabe says.

“The phenomenon of ‘chill’ is very real. And I think it would be a much more sensible world if incentives were to bring lawsuits against employers even if those employers are governments. The whole idea of sovereign immunity is based on old fictions,” he says.

Stafford County Prosecutor, Thomas Velardi, says qualified immunity has an important role to play in shielding public officials, such as police and firefighters—and all government officials—from lawsuits that would make it difficult for them to do the jobs.

Velardi believes the national dialogue about qualified immunity is sometimes overblown and he uses an analogy to make his point about the realities police and other public employees face on the ground.

IMMUNITY continued on page XI

NHBA Midyear Meeting Awards

The New Hampshire Bar Association gives out several awards annually. The President chooses the recipient of two of those awards. First, the Vickie Bunnell Award for Community Service is presented to “an attorney from a small firm (four or fewer attorneys) who has exhibited dedication and devotion to community by giving of their time and talents, legal or otherwise.” This award honors the memory of Vickie M. Bunnell,



a beloved country lawyer, by singling out a lawyer whose practice and personality reflects the community spirit that is a hallmark of our profession. Second, the Distinguished Service to the Public Award goes to an attorney “who best exhibits service to the public on behalf of the administration of justice.”

I am very happy to report that I have chosen Circuit Court Prosecutor Martha Jacques to receive the Vickie Bunnell Award for Community Service. Martha does fantastic work handling misdemeanor cases for the small police departments she represents, but that is not the reason I picked her. Martha’s service to our community has not been on a big stage. It has been in circuit courts, including hallways and parking lots. Most of her cases have not been notorious. They have been routine cases that don’t put her on a big stage or on the front page. Yet, her work has been incredibly important. She served

our community by doing the right thing and seeking justice in countless small cases, day after day, year after year. Before any of us talked about “restorative justice,” she was asking “how can we help these people and prevent this from happening again.” Many of the defendants in her cases are unrepresented citizens in difficult circumstances with few resources, but she treats every person with respect and dignity and seems to have infinite patience with people who are “a little rough around the edges.” Martha has served the citizens of New Hampshire, police departments of small towns, and litigants in circuit court for many years. She has certainly exhibited daily dedication and devotion to our community.

I am equally happy to report that I have chosen Gilles Bissonnette to receive the Distinguished Service to the Public Award. Gilles is a superb lawyer who, in plain English, gave up what would have been a lucrative career in Boston at a big fancy firm to come to New Hampshire and do public interest work for the ACLU. He is the Legal Director there where he leads a team of three civil rights lawyers. They work tirelessly to protect the constitutional rights of all New Hampshire citizens. Gilles has litigated cases on the criminalization of poverty, voting, police and government accountability, public records, the First Amendment, immigrants’ rights, and criminal justice issues. He works at the other end of the spectrum from Martha, on big policy-oriented cases, work that is just as important as the representation of individual clients. His work is a great service to the public and promotes justice for all New

Hampshire citizens.

One final word about both Gilles and Martha: I know both of them and I know their work, but I did not pick them based on that knowledge alone. I made a point of talking to those who were often their opponents in court. As to both Gilles and Martha, the responses were the same. They are both respected by their opponents as skilled attor-

neys with the highest integrity. Those who they fight against in court said they deserve these awards. In my view, to be respected and admired by opposing counsel is the highest praise. I cannot think of a better recommendation than that.

Please congratulate and thank Martha and Gilles when you see them

President’s Awards

Presented by NHBA President, Richard Guerriero

Outstanding Service in Public Sector/Public Interest Law Award

This award is presented to a member of the New Hampshire Bar, or an organization employing eligible members, with at least five years of service in government, military, law enforcement, or public interest law services (including prosecution, public defense, legal advocacy in low-income communities or for individuals with disabilities at a nonprofit organization), or at another nonprofit organization.

Cordell Johnston

Cordell Johnston, Government Affairs Counsel at the New Hampshire Municipal Association, was admitted to the New Hampshire bar in 1984 after graduating from Princeton University and from Boston University School of Law. From 1984 to 2003 he worked at the Concord law firm Orr & Reno, P.A., primarily practicing corporate

and business law. Although he loved Orr & Reno as a firm and still has many friends there, he almost never enjoyed his work. After 19 years at the firm, fearing he might spend his entire career doing something he disliked, he walked away without a plan. When asked what he was going to do next, he replied, “Something else.”



Cordell had some knowledge of municipal law, and in late 2003 he saw an ad for an attorney/lobbyist position at the Municipal Association. He took the position and spent the next 18 years representing the interests of the state’s 234 cities and towns before the legislature, as well as providing legal advice and training to municipal officials. He loved it.

Since 2004 Cordell has been involved in the enactment of almost every significant new law af-



Orr & Reno is proud of our colleague **Lindsay Nadeau**, a worthy recipient of the **Philip S. Hollman Award for Gender Equality**

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Feinberg from page 11

I feel. And it sounds hollow and pretentious. Don’t do this. Well, I’ll never do that again. You learn the hard way. That there are mistakes, mostly in approach, in your attempt to empathize, that are very very problematic if you’re not careful.

Have these experiences that you’ve had administering these funds shaped your understanding of fairness, justice and the law?

There’s nothing about these programs that promotes fairness. The idea that you’re providing compensation to people who have lost loved ones or suffered life altering injuries money is a poor substitute so I don’t like to use the word fairness or justice. I suppose it’s mercy but not fairness or justice. It’s also 911, impacted my professional life. Within a year after the 911 fund ended I shut down my law firm. We had about 15 people. No more. I retrenched. I continued to practice with just my colleague Camille baio and my brother. That’s it. People become very fatalistic. Those people who died on 911 never knew what hit them. A sunny day, getting on a plane, going to the World Trade Center, the pent to work and all of a sudden your life is wrecked. And you become very fatalistic about the curveballs that get thrown at you day by day you never know and that can have impact on how you approach things.

What shows do you see and who were some of your favorite characters to play?

I see everything. Back in the day at UMass I loved playing the Duke in Othello. I also loved playing a roman slave in Ploutus’s Menaechmi. To this day if I go to Broadway both dramas and musicals can be uplifting.

Did you consult with the producers and directors of the film, Worth?

Oh my goodness yes! When I wrote the book What is Life Worth I sold the rights to the book ten years before the film was made. I nev-

er thought they’d be able to make the film and the producers said, ‘you’ll see.’ And then when they were making the film, I met with Michael Keaton and Camille met with Amy Ryan. We spent a fair amount of time before and during filming to meet with them and to chat with them. They were very, very, nice. They were trying to get a handle on what we went through with the 911 fund and how it worked.

How do you think they did?

I think they did well..Especially since I was dubious that they’d be able to pull this off. When my children saw the film for the first time at the sundance film festival I asked them what did they think and they said, “well, the movie was pretty good. And Michael Keaton Dad, does a pretty good job, but he really ought to stick with batman or Beetlejuice because there’s no way he could capture ‘our father’s’ psyche in the course of the 911 fund. They’re tough critics my kids. But overall I think they did a pretty good job and I think Michael Keaton was superb.

Did everyone work pro bono?

Yes, entire team felt a patriotic duty having been asked by the president. It was really the only realistic thing to do. The idea of taking money for compensating victims and their families, I mean, we would have been pilloried. And I felt that this was the only sensible and appropriate thing to do.

You mentioned a sense of community after 911. Do you think we will see another day when we’ll overcome the type of partisanship we’re seeing now?

Well, I certainly hope so.. I don’t think the current polarizing political atmosphere is helpful to the nation. And as I said, the single most important example from watching worth and reading the book What Is Life Worth is for the american public today to study a striking example of bipartisanship, one community, everyone in this to help fellow citizens and I think that’s the great lesson of the movie, and the book.

fecting New Hampshire municipalities. Perhaps more important, he has helped to kill countless pieces of bad legislation. He is most proud of NHMA's work to protect local authority from incursion by the state and to prevent powerful businesses from skirting local regulation and taxation. With very mixed emotions, he is retiring from NHMA in January 2022.

Cordell lives in Henniker, where he is the town and school district moderator; he previously served as a member and chairman of the planning board and as a selectman. He has a daughter who is a junior in college, and next summer he will marry Christine Bruno Fillmore, an attorney at Drummond Woodsum in Manchester, whom he met when they both worked at NHMA.

Distinguished Service to the Public Award

This award is presented to the nominee who best exhibits service to the public on behalf of the administration of justice.

Gilles R. Bissonnette

Gilles Bissonnette is the Legal Director at the ACLU of New Hampshire, where he leads a team of three civil rights lawyers. He has litigated cases on racial justice, the criminalization of poverty, voting, police and government accountability, public records, the First Amendment, immigrants' rights, and criminal justice issues. Gilles has testified before the New Hampshire legislature on hundreds of bills impacting civil liberties. In 2021, his legal team -- along with co-counsel -- received the Granite State Advocacy Award from the New Hampshire Association for Justice for their legal

work on behalf of medically-vulnerable immigrants being civilly detained amid the COVID-19 pandemic.

Gilles is admitted to practice law in the state and federal courts in New Hampshire, the federal courts in Massachusetts, the First Circuit Court of Appeals, and the United States Supreme Court. Gilles has taught multiple Continuing Legal Education courses on government transparency, as well as on the United States and New Hampshire Constitutions. He is a member of the Hearings Committee of the Attorney Discipline System, as well as the Federal Court Advisory Committee where he is on the subcommittee that reviews changes to the Local Rules. He is also a trustee of the New Hampshire Supreme Court Society. He lives in Concord with his partner, Reagan, and son, Sage.



Vickie M. Bunnell Award for Community Service

Instituted in 1998 to honor the memory of Vickie M. Bunnell "A Country Lawyer" and to applaud the community spirit that is a hallmark of our profession this award is presented to an attorney from a small firm (four or fewer attorneys) who has exhibited dedication and devotion to community by giving of their time and talents, legal or otherwise.

Martha M. Jacques

Martha Maynard Jacques is the youngest child of the late Former Attorney General, and Assistant US Attorney William Maynard, and the late Leila Lister Maynard, who was the 25th female admitted to the Bar of New Hampshire.



A graduate of Concord High School, Saint Anselm College (B.S., Criminal Justice), and JD, Suffolk Law School, 1982, Ms. Jacques was hired as one of the first female NH State Troopers, graduating from the 61st NH Police Academy.

Following admission to the Bar in 2001, Ms. Jacques began practicing Law as an associate of Small & Lyons in Nashua, NH. She soon opened her own practice as a solo practitioner, remaining as such first in general practice and then concentrating in district court prosecution, representing several small towns.

Having grown up in Bow, NH, Ms. Jacques has resided in Mason NH for the past 25 years. She is well known as an avid baseball fan, enjoys photography, travel, and spending time with family.

Philip S. Hollman Award for Gender Equality

Established on the occasion of Judge Hollman's retirement from the Superior Court bench in 2003, the award is designed to honor Judge Hollman's efforts as a stalwart advocate for gender equality in the legal system.

Lindsay E. Nadeau

Lindsay Nadeau is a graduate of Franklin Pierce University of New Hampshire Law School, and an attorney at Orr and Reno where she is a member of the firm's litigation department and governmental relations department.



Currently Lindsay is Chair Emeritus for the New Hampshire Coalition Against Domestic and Sexual Violence, a member of the Board of Trustees for the New Hampshire Institute for Civics Education, Board of Trustees member for the New Hampshire Supreme Court Society and a past member of the Board of Directors of the New Hampshire Women's Bar Association.

Presented by: Lyndsay N. Robinson, Chair, NHBA Gender Equality Committee

Pro Bono Awards

Presented by Emma Slsti, Pro Bono Manager, 603 Legal Aid

Distinguished Service to Pro Bono

This award is presented to a person or organization who has provided consistent support to the Pro Bono Program over many years. Recipients of this award typically volunteer their time and expertise not only by providing direct client representation, but also mentoring newer volunteer lawyers, providing support to Pro Bono staff on difficult legal issues, and being advocates for New Hampshire's vulnerable residents in the legislature and courts. This Award aims to recognize the unsung heroes of the Pro Bono Program.

Allen Lucas

Attorney Allen Lucas, a solo practitioner in Wolfeboro, has been a stalwart volunteer with the Pro Bono Program since 2010, and joined the DOVE Project panel in 2014. Attorney Lucas regularly accepts challenging family law cases including guardianship matters, and volunteers to take cases in many parts of the state with scarce volunteer resources. As a volunteer with the DOVE Project, he routinely represents survivors of domestic violence facing their abusers at final hearings on protective orders. When COVID-19 hit and closed the courts, Attorney Lucas extended his volunteerism beyond traditional Pro Bono service when he participated on a committee launched by the Administrative Office of the Courts to develop an online application process for Protective Order petitions to improve victim/survivor access to the Courts in response to COVID 19 restrictions. It is our sincerest pleasure to award the Distinguished Service to Pro Bono to Attorney Lucas in recognition of this commitment to volunteering his services both through the Pro Bono Program, and within the Bar at large, in order to expand access to justice.



Attorney Robert Moore has been helping Pro Bono clients with bankruptcy filings since joining the panel in 2013. Since 2018 Attorney Moore's contributions include accepting 11 cases; becoming an active advisor to staff and clients on complicated bankruptcy issues; and mentoring other volunteer attorneys with respect to bankruptcy questions. In 2019 he became a valued member of the Pro Bono Governing Board, further cementing Attorney Moore's commitment to the mission of the Pro Bono Program. Attorney Moore continues to offer advice on all consumer issues. His excellent advocacy on behalf of clients going through bankruptcy has allowed these clients to gracefully, and with dignity, discharge crushing debts, allowing them to move forward. We are grateful for the contributions Attorney Moore has made to the Pro Bono Program and we are honored to give him this award for Distinguished Service to Pro Bono.



Kevin Collimore

Attorney Kevin Collimore has been serving on the Pro Bono panel for over 20 years, first while at Devine Millimet, and now through his own firm, CullenCollimore in Nashua. Attorney Collimore regularly volunteers his time in order assist individuals and families in the Nashua area facing eviction, debt collection matters, and tort defense. Attorney Collimore's advocacy has achieved extraordinary outcomes for the clients referred to him. Clients provide wonderfully positive feedback regarding his compassion and commitment, as well as the outcomes he achieves for them, enabling them to



successfully move forward in their lives. Attorney Collimore is vocal advocate for private attorney volunteerism through the Pro Bono Program, and his receptiveness to taking on cases, even on short notice, is greatly appreciated by the Pro Bono staff. We are honored to recognize Attorney Collimore's commitment, compassion, and vocal support for the Pro Bono Program with this award for Distinguished Service to Pro Bono.

L. Jonathan Ross Award

This award was named for Jon Ross in 1988 to recognize his work on the state and national level to mobilize bar leaders to support civil legal services for the poor along with his unsurpassed leadership and dedication to pro bono legal services.

Scott Harris

Attorney Scott Harris has been a consistent and vocal supporter of the mission of providing volunteer service through the Pro Bono Program since joining the panel in 2001 by not only taking referral cases of his own, but also encouraging members of his firm and members of the NH Bar at large to volunteer their services. Since 2019 Attorney Harris has also been a member of the DOVE Project panel and has been focusing on assisting survivors of domestic violence in obtaining protective orders. While his current pro bono practice has been focused on helping survivors of domestic violence, he has assisted clients with a wide range of legal needs, including housing, homeownership, immigration, and contracts issues. Not only has Attorney Harris been a fantastic resource to the Pro Bono Program throughout the years, but his contributions to reducing the barriers to access to justice for New Hampshire's most vulnerable community members are extensive. In 2017, he assisted with the formation of the Manchester Family Justice Center by coordinating legal support from within McLane Middleton with additional financial contributions. During his 2017-18 tenure as NH Bar President, he orchestrated the



Race for Justice, a fundraising event to promote domestic violence awareness. The race proceeds, held during the annual NHBA annual meeting, were donated to the Pro Bono Program's DOVE Project. Attorney Harris continues to set the bar for leadership when it comes to providing support for civil legal services, and he exemplifies the qualities we seek to recognize in awarding him this year's L. Jonathan Ross Award.

Rising Star Award

Rising Stars make valuable contributions during their early years as attorneys and help ensure that the Pro Bono Program fulfills its commitment to equal justice for the low-income and disadvantaged throughout the Granite State.

Sean List

Attorney Sean List has been an advocate for Pro Bono since his internship with the DOVE Project as a rising 2L. Over the last 6 years, Attorney List's commitment to survivors of domestic violence has been an invaluable resource to vulnerable New Hampshire litigants. Attorney List gives generously of his time and knowledge to promote Pro Bono work and supports volunteers by acting as a mentor to new attorneys, participating as a faculty member on DOVE Project attorney trainings, and continuing to serve annually as a faculty member for the DOVE miniseries training for the Daniel Webster Scholars at the UNH School of Law. Complimenting the work Attorney List does with the DOVE Project, he frequently steps up to help survivors of domestic violence who have been charged criminally for conduct related to the abuse they have suffered and stands ready to assist with systemic concerns affecting survivors through legislative advocacy. Attorney List is a tireless advocate in making our state safer for survivors of domestic violence and we are pleased to recognize these valuable contributions by awarding him this year's Rising Star Award.



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KENNETH FEINBERG

Unconventional Responses to Unique Catastrophes:
Tailoring the Law to Meet the Challenges



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Kenneth R. Feinberg is one of the Nation's leading experts in alternative dispute resolution, having served as Special Master of the 9/11 Victim Compensation Fund, the Department of Justice Victims of State-Sponsored Terrorism Fund, the Department of Justice Boeing 737 Max Crash Victim Beneficiaries Compensation Fund, the Department of the Treasury's TARP Executive Compensation Program and the Treasury's Private Multiemployer Pension Reform program. He was also Special Settlement Master of the Agent Orange Victim Compensation Program. In 2010, Feinberg was appointed by the Obama Administration to oversee compensation of victims of the BP oil spill in the Gulf of Mexico. Most recently, he has served as Administrator of the NY State Dioceses' Independent Reconciliation and Compensation Funds, the One Orlando Fund, the GM Ignition Switch Compensation Program, and One Fund Boston Compensation Program arising out of the Boston Marathon bombings. He is currently the Court-appointed Settlement Master in the Fiat/Chrysler Diesel Emissions class action litigation. He has been appointed mediator and arbitrator in thousands of complex disputes over the past 35 years.

ELLIE KRUG

Gray Area Thinking®



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*We've all heard the phrase, "diversity and inclusion," but what does it actually mean to make a workplace or organization or even our personal lives more diverse and inclusive? Ellen (Ellie) Krug, a civil trial attorney in Cedar Rapids with 100+ trials, transitioned from male to female in 2009 and later became one of the few attorneys nationally to try jury cases in separate genders. The author of *Getting to Ellen: A Memoir about Love, Honesty and Gender Change* (2013), Ellie has trained on diversity and inclusion to court systems, law firms, Fortune 100 corporations, and colleges/universities. A hopeless idealist, Ellie has presented her inclusivity training, Gray Area Thinking®, across the country. In 2016, Advocate Magazine named Ellie one of "25 Legal Advocates Fighting for Trans Rights." She is also a monthly columnist for Lavender Magazine and a weekly radio host on AM950 radio. Her monthly newsletter, The Ripple, can be found at elliekrug.com. Ellie presently lives in Minneapolis and is the founder and president of Human Inspiration Works, LLC (humaninspirationworks.com).*

LISA BRAGANÇA

Thinking of Accepting Bitcoin as Payment?
What Lawyers Need to Know



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Lisa Bragança helps defrauded investors recover losses and represents individuals and firms in federal and state financial regulatory investigations. She served as a Branch Chief in the Division of Enforcement of the Chicago Office of the Securities & Exchange Commission (SEC), where she handled investigations of accounting fraud, Ponzi schemes, insider trading, churning of investor accounts, and unsuitable investments. Since leaving the SEC, Lisa has helped recover millions of dollars of investment losses in court and in FINRA arbitrations. She has represented individuals and entities in numerous investigations by the SEC and other regulators into cryptocurrencies and token offerings, insider trading, financial fraud by public companies, and other alleged misconduct. Recently she served as a testifying expert on insider trading law. Lisa also writes and speaks about recovering investment losses, digital coin regulation, securities regulation, elder financial exploitation, and behavioral finance.

PATRICK JAICOMO

The Past, Present, & Future
of Qualified Immunity



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Patrick Jaicomo is an attorney with the Institute for Justice and one of the leaders of IJ's Project on Immunity and Accountability. Through the project, Patrick works to promote judicial engagement and ensure that government officials are held to account when they violate individuals' constitutional rights.

*In November 2020, Patrick argued *Brownback v. King* before the U.S. Supreme Court. That case, which involves the brutal choking and beating of an innocent college student by law enforcement officers working as members of a state-federal task force, will now return to the Sixth Circuit. There, the court will decide whether two claims brought in the same lawsuit can cancel each other out, simply because one of the claims was brought against the federal government. Patrick has litigated accountability issues — including qualified immunity and the restriction of constitutional claims against federal workers — across the country and at every level of the federal court system.*

Register now at nhbar.org/nhba-mym-2022/

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SCHEDULE

- Pre-Event Exhibitor Showcase
- Welcome from Bar President Richard Guerriero
- Remarks from NHSC Chief Justice Gordon MacDonald
- CLE – Thinking of Accepting Bitcoin as Payment? What Lawyers Need to Know(Lisa Bragança)
- President's Awards & GEC Hollman Award Presentation
- CLE – The Past, Present, and Future of Qualified Immunity (Patrick Jaicomo)
- Pro Bono Awards Presentation
- Lunch Break, Exhibitor Showcase
- CLE – Gray Area Thinking (Ellie Krug)
- CLE – Unconventional Responses to Unique Catastrophes: Tailoring the Law to Meet the Challenges (Kenneth R. Feinberg)
- Closing Remarks
- Post-Event (OPTIONAL): Virtual Tea & Chocolate Pairing (*add'l fee*)

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April 1, 2021

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Pamela Ann Moreau
Nour Eisa Sulaiman
Laura McKelligott Kahl
Joshua David Leckey
Maureen Theresa Patrigani
Hilary Jennifer Miller
Timothy James Brown
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Sonja Starins
Jason Michael Sullivan
Brandon Michael Tanguay
Jonathan Teller-Elsberg
Peter Daniel Utz
Christopher J. Yagoobian
Christopher Scott Brown
Philip Norman Elbert
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May 21, 2021

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Cameron Joseph Cox
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Teresa Diane Farley
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Haley Jane Goeckel
James Wilson Hawthorne
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Maria Teresa Hyde
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Colleen Marie Yoder
Benjamin A. Chapman
Autumn Hannah Kish
Victoria Saxe
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May 26, 2021

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Matthew Joseph Fay
Harriet Kate Fraser
Meagan Nicole Gann
Elizabeth Anne Ingermann

Alexander Robert Murphy
Chelsea Nicole Pande
Daniel S. Rich
Brittani Lee Schanstone
Whitney Louise Shephard
Miles Mear Stafford
Daniel Richard Torrey
David Stanley Wickman
Moriah Jade King

June 9, 2021

Alexander Dominic Andruzzi
Olivia Faith Bensinger
Joseph P. Bonfiglio
Kimberly Michelle Brekalis
Matthew Charles Campbell
Melanie Carolyn Cormier
Kayla Ashlen Day Estes
Joshua David Hadiaris
Joseph Michael Hall
Heather Maureen Hamel
Caroline Helen Howe
Benjamin Robert Inman
Kristin Marie Jacobson
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Matthew Stephen LaValley
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Bridget Elizabeth Murray
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James Andrew Vogt
Daniel Wu
Matthew Coll Young
Marc Paul Zwetchkenbaum
Joseph Thomas Toomey
Philip Arcidiacono
Edward F. Vinhateiro
Alice L. Vautour
Nancy Lynn Tomasko

September 9, 2021

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Andrew Conrad Strosahl
David R. Hardy
Sana Asstafan
Marisa Kathryn Roman
Joshua Silverstein
John Caulfield McDonnell
Alexander James Kellermann
Connor James Gilbert
Mark Matthew Madden Jr.
Elizabeth Wentworth Cochrane
Jane C. Wang
Arinda Rae Brooks
Alisha Elizabeth Cahall
Patrick James Finn
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Andrew Nicholas Bettinelli
Stephanie Yacoub Melhem
Kimberly Elizabeth Johnson
Chelsea Raine Francek
Vanessa Blomette Baron
Francis Raymond Genus III
Nicole Ann Perreault

October 7, 2021

Erin Elizabeth Ferry
Zachary Al Host
Eric Paul DeGoosh-DiMarzio

October 25, 2021

John Anderson Proctor

October 27, 2021

Matthew Michael Livi
Luke E. Kraus
Oliver Toland Bok

Philip Harrison Elbert
Benjamin F. Lewis
Katheryn Elizabeth Benvie
Alexandra Nicole Brewer
Sophie Anna Karpf
Jay Tyler Jarosz
Johanne Constance Egeland
Jessica Francis Kallipolites
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Daniel Thomas Divis
Cynthia Sharon Keeley
Sofia Catarina
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Pietro Alfredo Conte
Taylor Elizabeth Morgan
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Matthew David Smith
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Brian Scott Young
William Wellington Strehlow
Towanda Nicole Smith
John Mirabello
Michele Turtleneck
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Christopher Dean Jones

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Kyle Woulf Thomas Amell
Michael D. Brown
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November 17, 2021

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Thomas Patrick McNulty
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Jeb S. Penka
Kristin Stein Saroyan
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justice a reality for and with people who experience economic hardship that threatens their basic human needs. With this merger, 603 Legal Aid seeks to improve the already robust efforts to expand access to justice for New Hampshire's most vulnerable residents. One effort that has been implemented is the creation of a statewide in-take process for people seeking civil legal aid. This consolidated intake process serves the purpose of eliminating the confusion on the part of our clients regarding which civil legal service organization (603 Legal Aid, NH Legal Assistance, or the Disability Rights Center) to call to help them with their concern.

For more information, please visit our website at www.603legalaids.org.

On June 1, the NH Pro Bono Referral Program and the Legal Advice and Referral Center (LARC) merged to become 603 Legal Aid, a civil legal aid provider offering legal representation, advocacy, and education. In partnership with volunteer attorneys and community organizations, 603 Legal Aid works to make jus-

Learn More About the NHBA by Visiting Our Exhibitor Booths at MYM 2022

By Tom Jarvis

NHBA's annual Midyear Meeting, scheduled for Friday, February 18, 2022, will be virtual again this year. In addition to four CLE speakers, multiple award ceremonies, and a post-event tea and chocolate pairing, there will be multiple exhibitor booths featuring products and services to help you better manage your practice. A number of these booths will be devoted to NHBA services, including the following:

Attorney License Renewal

The NH Supreme Court requires all members of the Bar to renew their license each year, completing three key compliance steps through the NHBA Member Portal. Bar staff will be on hand to answer your questions and provide additional information about your obligations.

Law Related Education (LRE)

The NHBA is committed to improving civics instruction in schools through its LRE programming. Students need civics and social studies instruction to better prepare them for participation as citizens. Programs include We the People: The Citizen and the Constitution, We the People: Project Citizen, A Lawyer & Judge in Every School, and Beyond High School: A Guide to Your Rights and Responsibilities. These programs would not be possible without the assistance of volunteer attorneys. Stop by the LRE booth to find out how you can help.

NHBA Leadership Academy

The NHBA Leadership Academy is a nine-month leadership training program designed to foster the professional growth and enhance the leadership skills of a diverse group of attorneys. This program is designed with curriculum most meaningful for those in practice between three and 10 years. The next class begins in October 2023, but it's not too early to start preparing now. A brochure and other information is available at the Leadership Academy Midyear Meeting exhibitor booth.

Member Records

This NHBA department maintains our member records database, processes attorney information and membership status changes, issues member ID cards, and can issue letters of good standing on behalf of NHBA members. Bar staff will be at this exhibitor booth for any questions or status changes you may have.

Member Services

Your Bar Association works hard for you! We offer many services to NHBA mem-

bers at all stages of their legal careers, such as the Mentor Advice Program (MAP) and the Lawyer Referral Service (LRS). MAP pairs new attorneys with experienced practitioners to provide guidance regarding ethical, practical, and professional issues. LRS provides pre-screened referrals for prospective clients in all areas of practice. LRS connects more than 3,000 prospective clients with Panelists annually and generates more than \$2 million in fees for Panelists per year. Many other services are offered for free or at a discount. Find out how your bar dues are being used when you visit our MYM exhibitor booth.

New Lawyers Committee

Did you know that the New Hampshire Bar Association has several standing committees that are made up of members appointed by the Bar President? These are a great way to network and share your experience with your peers. The NHBA New Lawyers Committee – sponsors of the post-event tea and chocolate pairing – makes it easy for newly admitted members of the NH Bar to acclimate into Granite State legal practice. This Committee also plans meetings, social events, and educational materials.

Professional Development

The ever-growing complexity of the law requires that NH attorneys maintain a commitment to continuing legal education and professional development. The minimum amount of CLE time each year is 720 minutes, set by the NH Supreme Court under Rule 53. The NHBA Professional Development department helps members meet these requirements by providing a wide online catalog of locally produced and national programs. Drop by their exhibitor booth to learn more.

Publications and Advertising

The NHBA publishes information on a regular basis through the monthly Bar News, the weekly eBulletin, specialty publications, social media, and the nhbar.org website. Are you interested in writing for the Bar News? Do you want to promote yourself or your firm to our members? Just curious about everything we do? Then stop by our exhibitor booth.

Sections and Forums

We've developed several Sections to allow attorneys interested in a particular practice area to meet, communicate, and collaborate with each other. Join one or more to build your knowledge and skillset in a welcoming environment. More than 2,000 NHBA members currently belong to one or more of the Bar's 19 sections, which cover a wide array of practice areas. Make some time to stop by our MYM exhibitor booth to learn more and meet the staff who keep our sections and forums running smoothly.

Immunity from page III

"Find a photo of an officer from 1992 and hold it next to an officer from 2022. The officer in 1992 has far fewer pieces of equipment. We are asking our officers to do so much more today. To go back and dissect every move they make wouldn't be possible," he says. "Qualified immunity allows work to get done."

Velardi says finding the line between a misinterpretation of a law is much different from a willful breach of the law and that the prosecution bar is not immune from prosecution when individuals "run rough shod over rights and duties."

"We do an awful lot of investigations when it comes to the basic rules of search and seizures for instance," he says. "Ignorance is one thing, but willful disregard for the rules is another."

Qualified Immunity "Makes it difficult for good cops to do their jobs"

Approaching the question from a different perspective, Jaicomo believes qualified immunity places all police and government officials above the law, because the doctrine makes people less trusting of them.

"If people think police can get away with all sorts of things, people will be less willing to engage with them. So many of these cases are being dismissed before fact finding is even done," he says. "In cases where cops have stolen money the court's saying, 'we assume they did in fact steal money' and yet they are also immune. So, in some cases police don't even have the opportunity to clear their name," he says.

Jaicomo pointed to what he calls the red herrings of the qualified immunity discussion, describing former Attorney General William Barr's response to the Lafayette square protests in 2020 that led to multiple arrests.

"In that incident, Attorney General Barr encouraged peaceful protestors who were arrested to comply with police and to bring a lawsuit later," he says. "And then of course when the lawsuits

came, which were run by Barr, they dismissed the cases because of things like qualified immunity. So you're just making everything a red herring.... it's always a shell game."

A lawless area of the law

Greabe doesn't think qualified immunity should be eliminated completely but he does believe the way the doctrine stands prevents the law from evolving because of the arbitrary way it can be used.

"I personally don't think a world where you just do away with qualified immunity and keep everything else the same would be a good development at all," he says. "Government officials need some room to breathe. Again, by analogy I go back to the divisive concepts law which is putting a target on the backs of teachers. This is what makes it so unprecedented. Usually, the government wants to create a little zone around their employees to protect them. But here the government's saying please sue teachers. It's repugnant."


Jaicomo and Greabe agree that the politics involved in the qualified immunity debate can't be overlooked.

While the doctrine has always been criticized by civil libertarians on the left, Greabe says that in recent years it has also come under attack from libertarians more on the right who basically lodge the same complaint.

"I don't like this area of law at all....It's so lawless and entirely made up by judges," he says. "It's a fair criticism to say that the way that qualified immunity doctrine has been established and developed is the result of judges not being comfortable with lawsuits against government officials. There's nothing in 1983 that contemplates a qualified immunity defense."


The requirement to find a "clearly established" law leaves the door open for judges essentially making arbitrary decisions, Jaicomo says.

"It comes down to whether a judge likes your case or whether they think that what happened was particularly outrageous because these doctrines can be massaged in one direction or another regardless of how close the cases are."



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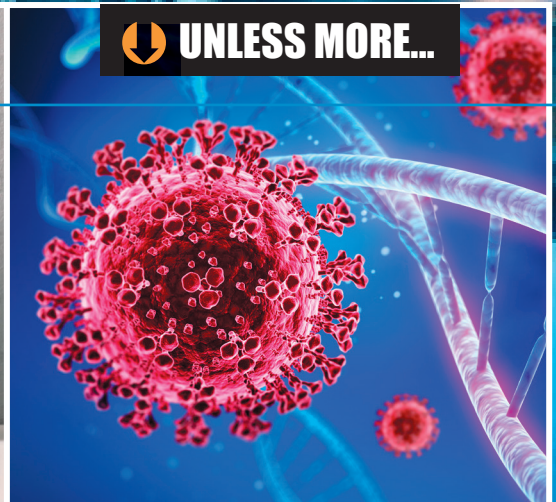
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