



NEW HAMPSHIRE BAR NEWS



July 16, 2014
Vol. 25, No. 2

www.nhbar.org

An Official Publication of the New Hampshire Bar Association

...Supporting Members of the Legal Profession & Their Service to the Public and Justice System

New Law Allows Panel Voir Dire in All Criminal Trials

By Kristen Senz

All trial attorneys in New Hampshire will have the right to question panels of prospective jurors as part of jury selection starting Jan. 1, 2015. The right was extended to criminal attorneys in a bill Gov. Maggie Hassan signed into law last month.

Civil litigators have been able to conduct panel voir dire since 2005, but nearly 90 percent of them still voluntarily waive the opportunity to question potential jurors, according to court officials.

Criminal defense attorney Mike Iacopino and Katherine Cooper, director of the NH Association of Criminal Defense Lawyers, approached Rep. Gary Richardson, a civil trial attorney, about sponsoring the new law this past legislative session.

"Many judges were already permitting it, but some judges were not," Iacopino said. "We believe that [attorney-conducted] voir dire is the best method for determining how to exercise your peremptory

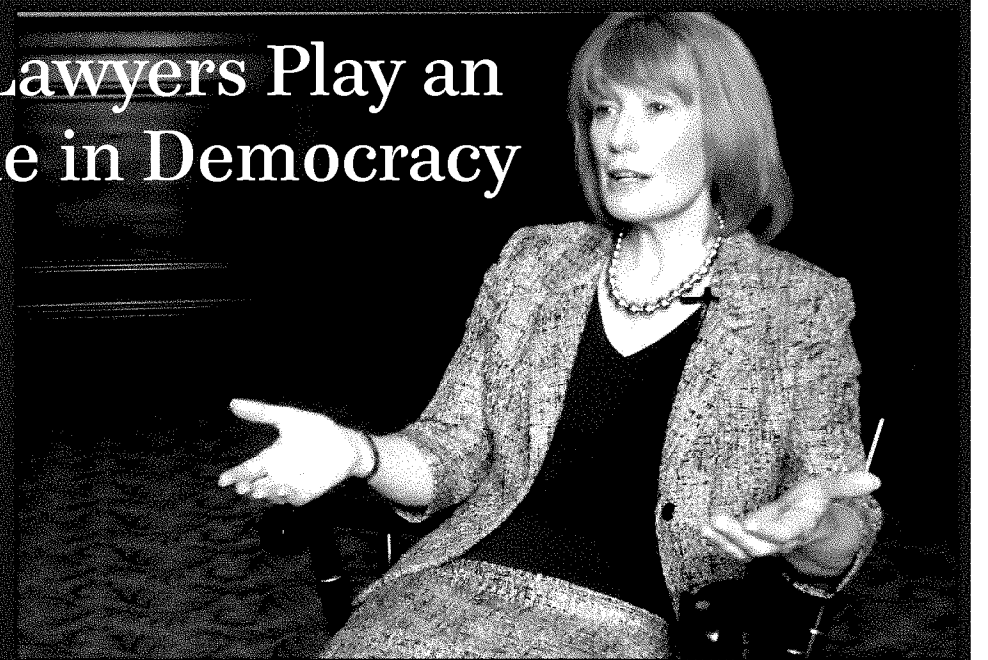
VOIR DIRE continued on page 17

Gov. Hassan: Lawyers Play an Important Role in Democracy

By Dan Wise

Some elected officials who are lawyers do not advertise their legal backgrounds, but Gov. Maggie Hassan has no qualms about saying that her training and experience as a lawyer has helped her in public office.

In a mid-June interview with *Bar News*, Hassan discussed the successes and challenges of the just-completed legislative session, as well as insights from her perspective as a lawyer and as a woman in a top leadership position. Having already appointed nine judges with five months



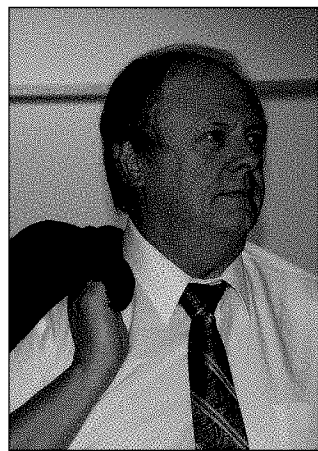
still left in her first term, Hassan also talked about the experience of interviewing judicial candidates.

Hassan sidestepped a question about whether she will continue to make judicial appointments given

the recent freeze she imposed on state government hiring due to a shortfall in state revenues. She said the Judicial Branch has asked

HASSAN continued on page 16

Reluctant Exit for Judge McHugh



By Kristen Senz

An umpire who calls a strike doesn't second-guess himself.

Neither does Judge Kenneth McHugh, who will officially retire July 18 – his 70th birthday – after 36 years on the bench. A die-hard sports fan with an aversion to modern technology, McHugh is a first-generation lawyer whose civil law prowess and straightforward style have earned him a reputation as a dedicated and pragmatic judge.

"I am a renegade. I'm a dinosaur. I'm my own person. Never really looked up to or followed anybody," he said during a recent interview in his chambers, which doubles as a display space for his collection of New York Giants memorabilia.

"I do live and die with them," he says of his team. McHugh's favorite sport is football, but he regularly plays softball and some pick-up basketball games. The only sport he doesn't like? "I do not golf," he says, raising both his hands. "I have no interest in that. It's far too calm a game for me."

There's no computer on McHugh's desk. He has never used one – "I just never had the need for it" –

McHUGH continued on page 35

After 36 years on the bench, Judge Kenneth McHugh is waiting until the day of his 70th birthday to retire, so that he can preside over cases until the last possible moment. "There's some symmetry to that," he says.

PRACTITIONER PROFILE

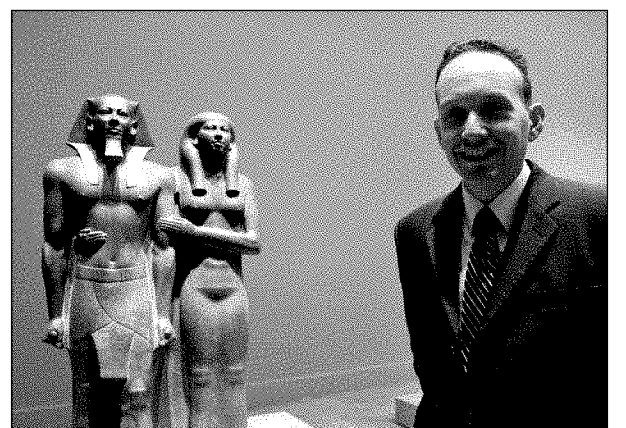
Cultural Heritage Lawyer Expects the Unexpected

By Carol Robidoux

To say Rick St. Hilaire knows his way around Boston's Museum of Fine Arts is like saying he has an interest in the legal system.

Meet St. Hilaire on a Saturday afternoon in the museum lobby and you will quickly understand why this place is like a second home to him. Follow him up the John Singer Sargent Grand Staircase and be prepared for a guided tour like no other.

As you move toward the Ancient World collection, St. Hilaire seamlessly navigates the built-in labyrinth that adds a



Rick St. Hilaire at the Museum of Fine Arts in Boston with a sandstone statue of King Menkaure and his Queen.

layer of security from would-be thieves. He knows by heart the intrigue most of these treasures hold based on their archaeological context. He lingers near a display of Egyptian tombs for as long as it takes to understand how every mummy wrap tells a story.

He proudly poses for a photo next to his favorite piece, a statue of King Menkaure and his Queen, carved from sandstone, circa 2500 B.C. What he appreciates most

ST. HILAIRE continued on page 19

INSIDE

Opinions 4-5 Practice Area Sections 28-34
NHBA News 6-21 NH Court News 35-44
NHBA • CLE 22-27 Classifieds 45-47

Periodical Postage paid at Concord, NH 03301

THE DOCKET

Helping Rural Lawyers & Towns. Project seeks to match attorneys with communities. **PAGE 6**

New MCLE System. Self-reporting credits puts attorneys in the driver's seat. **PAGE 8**

Jazz for Justice. Save the date for the annual NH Bar Foundation dinner. **PAGE 10**



Friending Jurors? Attorney Chris Hawkins writes about the ethical limits of online juror research. **PAGE 12**

Federal Practice & Bankruptcy. Topics covered in this special practice area section include federal prosecution priorities, characters missing from bankruptcy practice, immigration consequences of divorce, and some must-know local federal rules. **PAGE 28-34**

Drug Court in Nashua. New small-scale program could get a boost this fall. **PAGE 35**

NH e-Court Project. The launch date is set, but work continues on updating filing fees and public access to court records. **PAGE 36**

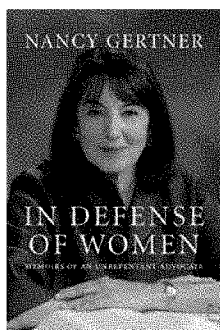


At-a-Glance. NH Supreme Court decision summaries from June 2014. **PAGE 37**

Unapologetic Memoir Describes Battle Against Discrimination

In Defense of Women: Memoirs of an Unrepentant Advocate
By Nancy Gertner
Beacon Press
(2012), 264 pages

Review by Marcia Brown



Walk a mile in my shoes. That is what former federal Judge Nancy Gertner asks of readers, story after story, in her memoir about a tenacious pursuit of justice. She makes no apology for her advocacy and describes both the personal discrimination she endured and the discrimination she fought against for her clients.

Gertner was raised in Flushing, NY, and was the valedictorian of her high school. She honed her advocacy skills by arguing for hours with her father, Moishe, about the evening news. While he gave his blessing for her to attend law school, her mother recommended she take the Triborough Bridge toll taker's test, "just in case." She graduated from Yale Law School in 1971.

In 1975, Gertner defended antiwar activist Susan Saxe for her role in a robbery that resulted in the murder of a police officer. The Saxe case defined Gertner's strength and tenacity. In her signature red suit, she demonstrated daring litigation tactics. After enduring sexist remarks from the prosecutor and court that punctuated the case, she waited for the state to rest. Rather than present a defense, she stunned her opponent by launching into a well-rehearsed closing. She won.

In other stories, she describes the women denied tenure and held to impossible standards, unlike their male counterparts. She recalls that at one speaking engagement, the moderator was tempted to introduce her credentials not by the number of universities she attended, but rather, by the number of universities she had sued over gender discrimination.

Humor aside, she fought to level the playing field for women in the workplace. Sometimes the stakes were high. In one story, her client, a baggage handler at Boston's Logan Airport, was found dead after she sought Gertner's help to stop the unending stream of sexual epithets.

Intertwining the stories are Gertner's observations of how society's evolving views on abortion, sexual assault, and sexual harassment impacted her cases. Gertner compares the early gender discrimination suits where the "law cure" was effective to later sexual harassment cases. The heavy political and legal focus on sexual harassment started to obscure the larger issue of gender discrimination.

Other stories are about Gertner's defense cases. She defended 1,400 demonstrators from the Clamshell Alliance and Ted Anzalone on trial for extortion. She defended the brother of Charles Stuart and discusses the racial uproar that resulted from Stuart's false accusation that a black man killed his pregnant wife.

Lastly, she reflects on her role as a judge. She describes sitting on a panel with Judge Sonia Sotomayor where each was asked to describe her path to the bench. Sotomayor graduated from Yale, worked as a prosecutor and then as a corporate lawyer, and otherwise demonstrated her ability to be a neutral, temperate jurist.

Gertner took a different path. She represented a feminist, radical, anti-Vietnam War activist; took every abortion case in the state; spoke out on the major hot-button legal issues of the day; and represented defendants from all stripes.

Her point? Every judge, regardless of their path, has to move to neutral. That move should be no more difficult for the civil rights advocate than for the prosecutor or corporate lawyer.

Gertner is a gifted writer and advocate. Her stories of breaking down gender barriers and promoting justice for all will leave you feeling you've walked that mile with her.

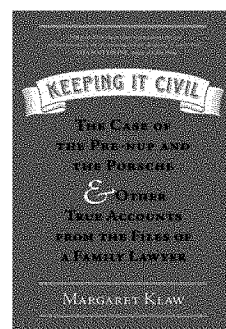
Gertner was recently selected to receive the ABA's 2014 Margaret Brent Lawyers of Achievement Award.

Marcia A. Brown is a member of the New Hampshire Women's Bar Association and the NHBA Gender Equality Committee. She practices in Concord.



Highly Readable Stories from the Family Law Trenches

Keeping It Civil: The Case of the Pre-nup and the Porsche & Other True Accounts from the Files of a Family Lawyer
By Margaret Klaw
Algonquin Books
(2013), 272 pages



Review by Kevin J. Powers

The deceptively long full title of Margaret Klaw's *Keeping It Civil* disguises an eminently readable and breezy work that should educate and entertain both lay readers and attorneys who practice outside of the domestic relations arena.

While few, if any, of these war stories from Klaw's Philadelphia practice would surprise a law student who took a survey course in domestic relations, the author lends a personal perspective that most published decisions and casebooks lack.

Most of the chapters use one or two sample cases, with changed personal details or composite characters, to illustrate an issue that arises within modern family law. These include: relocation of a former spouse and children, negotiation and enforcement of a pre-nuptial agreement, property division in the absence of a pre-nuptial agreement, an irreversible paternity judgment against a man later determined to not be the biological father, an attempt to enforce a non-Pennsylvania homosexual marriage through Pennsylvania contract law, division of property with sentimental value, enforcement of child support arrearages, drafting contracts (and looming uncertainty over the enforceability of those contracts) for alternative reproductive arrangements, and judicial discretion in assessing fitness of a parent.

Lay readers will doubtless find many of the laws – and, just as importantly, many of the ambiguities – surprising. Unmarried readers, given this opportunity to peek at the far end of divorces and other domestic disputes, will doubtless find many causes for circumspection in making major marital decisions.

Three of the chapters are focused on the day-to-day work of practicing family law. Klaw talks bluntly about the collegial relationship that she enjoys with many of her opposing counsel, the minority of opposing counsel who do not maintain a re-

spectfully professional tone, the difference between attorneys who uncompromisingly fight and attorneys who try to broker the most viable outcome without running up their billable hours, the practicalities of running a firm and employing support staff, and the choices that she has made in balancing work with family over the course of her career.

Interspersed throughout the book in episodic fashion are seven chapters chronicling a particular child custody trial. The author guides the reader through the history of the case, to direct and cross-examination, to the judge's interview with the children in chambers, to the judgment and the consequences for Klaw's client. A family law practitioner will probably not find any new ground here, but attorneys who do not practice family law will take interest in observing the differences between traditional civil or criminal trial practice and child custody trial practice. Lay readers, as with the other chapters, will learn a great deal here about the rigors of a trial and the uncertainty that both clients and attorneys wrestle with in anticipating a result.

While Klaw does not offer direct advice to the reader on managing his or her own relationships, she does not really need to; her cases and insights speak boldly for themselves. Her writing is smooth and entertaining, and she makes modern issues in family law very accessible to non-attorneys.

In an age in which divorce rates have never been higher, and in which more than a few personal and household budgets are ruined by the fallout from domestic legal issues, most casual readers would gain a great deal from taking this light and well-narrated tour through the travails of modern family life. That said, most readers will be reluctant to envision themselves standing in the shoes of Klaw's clients – and for that, no one could blame them.

Kevin J. Powers was admitted to the NH bar in 2006 and currently prosecutes criminal appeals and white collar crime at the Norfolk County District Attorney's Office in Canton, Mass.



Kathleen McGuire

MEDIATION/ARBITRATION

*Facilitative Mediation/
Judicious Arbitration*

mcguka744@yahoo.com
(603) 496-9621

Member of American Arbitration Association Roster of Neutrals

www.mcguirearbitration.com



Patent Law

– intellectual property answers –

Patents
Trademarks, Copyrights, Trade Secrets
Licensing

Mesmer & Deleault, PLLC

668-1971

Main Office: Manchester, NH
Seacoast Office: Portsmouth, NH
E-mail: mailbox@biz-patlaw.com

Robert R. Deleault
Frank B. Mesmer, Jr.