

**RAISING THE BAR**

**A DECATO LAW OFFICE NEWSLETTER**

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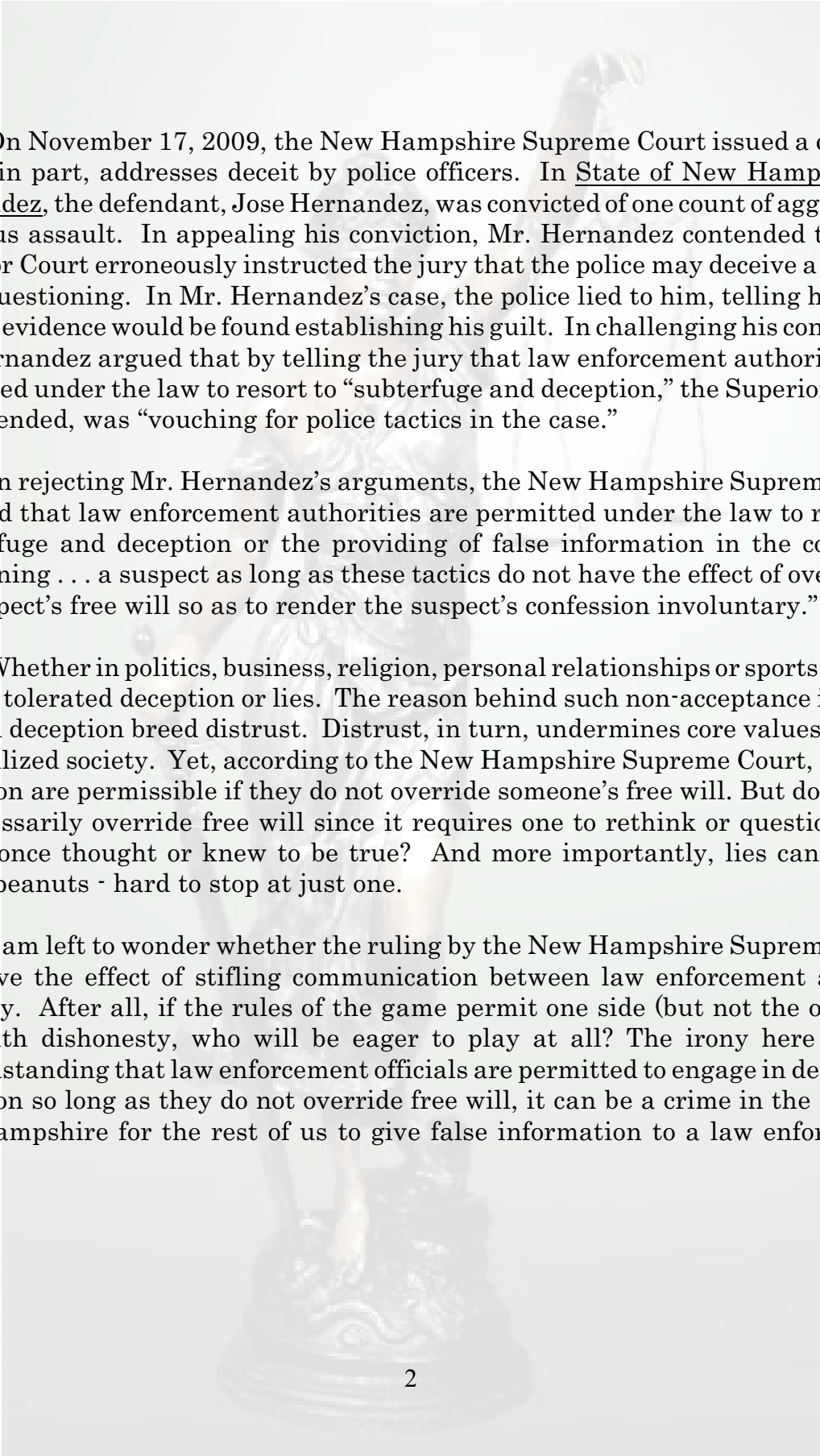
**The Consequences of a Lie**

A number of years ago, I initiated a criminal prosecution against a New Hampshire Fish and Game Conservation Officer. Notwithstanding that I was neither a police officer, county attorney nor local prosecutor, New Hampshire law afforded me (a private citizen) the right to bring a criminal case.

My decision to initiate criminal process against a law enforcement officer was premised on my belief that the officer regarded himself as above the law. The Conservation Officer had taken traps belonging to another, and then lied about his actions. To make matters worse, I requested that the Conservation Officer come to my office to discuss his actions. My invitation was accepted, and he showed up only to find a tape recorder on my table. I informed the Conservation Officer that our conversation would be tape recorded. He did not have a problem with the recording, a decision I am sure he received plenty of heat over from his superiors as the criminal matter progressed.

During our conversation, I asked the Conservation Officer why he felt the need to take traps belonging to someone else. He responded by suggesting he believed a trapping violation had occurred, although the facts he addressed with me would not have supported a violation. I then asked him why he told the owner of the traps that someone else had turned the traps in when that information was simply not true. In fact, the Conservation Officer had taken the traps himself and wanted to see whether the owner would report the traps as stolen. The Conservation Officer readily acknowledged that he had lied to the owner of the traps about the situation. I suggested to him my strong objection to his actions and asked why he felt the need to lie about such a trivial matter. To this day, I remember his response "Sometimes there is no other way."

I still have the tape of my conversation with the Conservation Officer. I have kept it because I continue to find it hard to fathom why a law enforcement officer would rely on dishonesty in an effort to establish a violation of the law.



On November 17, 2009, the New Hampshire Supreme Court issued a decision which, in part, addresses deceit by police officers. In State of New Hampshire v. Hernandez, the defendant, Jose Hernandez, was convicted of one count of aggravated felonious assault. In appealing his conviction, Mr. Hernandez contended that the Superior Court erroneously instructed the jury that the police may deceive a suspect while questioning. In Mr. Hernandez's case, the police lied to him, telling him that specific evidence would be found establishing his guilt. In challenging his conviction, Mr. Hernandez argued that by telling the jury that law enforcement authorities are permitted under the law to resort to "subterfuge and deception," the Superior Court, he contended, was "vouching for police tactics in the case."

In rejecting Mr. Hernandez's arguments, the New Hampshire Supreme Court accepted that law enforcement authorities are permitted under the law to resort to "subterfuge and deception or the providing of false information in the course of questioning . . . a suspect as long as these tactics do not have the effect of overriding the suspect's free will so as to render the suspect's confession involuntary."

Whether in politics, business, religion, personal relationships or sports, society has not tolerated deception or lies. The reason behind such non-acceptance is basic: lies and deception breed distrust. Distrust, in turn, undermines core values needed in a civilized society. Yet, according to the New Hampshire Supreme Court, lies and deception are permissible if they do not override someone's free will. But does not a lie necessarily override free will since it requires one to rethink or question what he/she once thought or knew to be true? And more importantly, lies can be like eating peanuts - hard to stop at just one.

I am left to wonder whether the ruling by the New Hampshire Supreme Court will have the effect of stifling communication between law enforcement and the citizenry. After all, if the rules of the game permit one side (but not the other) to play with dishonesty, who will be eager to play at all? The irony here is that notwithstanding that law enforcement officials are permitted to engage in deceit and deception so long as they do not override free will, it can be a crime in the State of New Hampshire for the rest of us to give false information to a law enforcement officer.