

**ATTORNEY GENERAL'S REPORT OF ALDERMAN JOSEPH KELLY
LEVASSEUR'S ALLEGATIONS AGAINST MANCHESTER POLICE CHIEF
DAVID MARA AND MANCHESTER POLICE OFFICERS**

February 12, 2014

I. INTRODUCTION

Joseph Kelly Levasseur ("Levasseur") is an alderman-at-large from Manchester. Levasseur is also a member the New Hampshire Bar, and the owner of Theo's Restaurant on Elm Street in Manchester. Levasseur wrote an email to Manchester Police Chief David Mara on July 31, 2013, demanding that Chief Mara take action against Manchester Police Officer Steven Maloney for what Levasseur alleged to be intimidation both before and after a January 15, 2013, Board of Alderman meeting. He also alleged that Manchester officers were interfering with a Hooksett Police Department criminal investigation concerning his client, who was an alleged victim of a domestic assault by Manchester Police Officer William Soucy in Hooksett while he was off-duty on July 9, 2013. In support of these claims, Levasseur made the following specific allegations:

- "Steve Maloney continues to use his position as a Manchester police officer to intimidate me as an elected city official;"
- "[Maloney] was within inches of my face screaming at me in a hostile and menacing manner. He also placed his hands on me and poked me in the chest while you watched him do so;"
- "Once before I was intimidated by an employee of your department. You covered that up for Mr. Mills. You never told me he worked at the police department nor did you tell me that he resigned;"
- "Mr. Mills did not like what I had to say at a meeting and bullied me to my face;"
- "Mr. Maloney is interfering with an official police investigation and trial of one of your officers;"
- "At this point Chief, I am starting to believe that because you allow these intimidating acts to continue, that I may have to go even further with my complaint about constant intimidation I feel I am being subjected to."

Levasseur ended the email by stating, "I expect a call, reply or a meeting concerning these slanderous statements by officer [sic] Maloney. His threats, malicious and outrageous statements can no longer be tolerated. If this is not resolved I will be forced to take this matter to a higher level." Levasseur also wrote, "I don't know what authority you have to

address this issue, but I will come forth and speak to you further about this in private if you would like.” **See Exhibit A**, Levasseur’s email to Chief Mara dated July 31, 2013.

Chief Mara forwarded the email to the Attorney General to investigate Levasseur’s allegations of an assault by Officer Maloney, inactivity by the Manchester Police Department, and interference with a Hooksett Police Department investigation to the extent that they could be construed to implicate New Hampshire criminal laws. Separately, Levasseur forwarded his email to Investigator Richard Tracy at the Attorney General’s Office on August 16, 2013.

The Attorney General’s investigative team thoroughly reviewed Levasseur’s allegations. Read liberally, those allegations could give rise to two criminal charges: Simple Assault and Obstructing Government Administration. In the course of its investigation, the team interviewed more than 15 witnesses, reviewed multiple recordings of surveillance footage, and gathered documents and records from multiple agencies. The investigation has concluded with a determination that there is no evidence to support a charge of either offense. A discussion of the potential charges and the gathered facts follows.

II. SIMPLE ASSAULT

Levasseur’s email alleged that Officer Steven Maloney poked him in the chest following a January 15, 2013, Board of Alderman meeting and that Chief Mara watched him do so.

New Hampshire law addresses the alleged conduct in **RSA 631:2-a**, entitled “Simple Assault.” Under this statute, a person is guilty if he:

(a) Purposely or knowingly causes bodily injury or unprivileged physical contact to another.

A conviction for the above-offense constitutes a misdemeanor unless committed in a fight entered into by mutual consent, in which case it is a violation. By law, a person acts “purposely” when a person’s conscious object is to cause the result or engage in the conduct that comprises the material element of an offense. **RSA 626:2, II(a)**. A person acts “knowingly” with respect to his or her conduct or to a circumstance that is a material element of an offense when he or she is aware that his conduct is of such nature or that circumstances exist. **RSA 626:2, II(b)**.

III. OBSTRUCTING GOVERNMENT ADMINISTRATION

Levasseur’s email alleged that Officer Steven Maloney was interfering with the Hooksett Police Department investigation of Manchester Police Officer William Soucy for an alleged assault upon Levasseur’s client, the named victim of that assault.

The New Hampshire statute that best addresses the alleged conduct is **RSA 642:1**, entitled “Obstructing Government Administration.” Under this statute, a person is guilty if he:

I. [U]ses intimidation, actual or threatened force or violence, simulated legal process, or engages in any other unlawful conduct with a purpose to hinder or interfere with a public servant (...), performing or purporting to perform an official function or to retaliate for the performance or purported performance of such a function.

A conviction for the above-offense constitutes a misdemeanor. By law, a “public servant is any officer or employee of the state or any political subdivision thereof, including judges, legislators, consultants, jurors, and persons otherwise performing a governmental function.” **RSA 640:2, II.**

IV. INVESTIGATIVE PROCESS

As stated above, this investigation began when Levasseur wrote to Manchester Police Chief Mara and later notified this office about that email. Chief Investigator Tracy met with Levasseur on August 9, 2013. Due to a scheduling conflict, Tracy had to end the meeting after one-half hour, but informed Levasseur that he would contact Levasseur in the future and asked Levasseur to send copies of emails regarding the allegations.

On August 16, 2013, Levasseur forwarded Investigator Tracy a copy of his email to Chief Mara. On August 26, 2013, Chief Mara sent a letter to Attorney General Joseph Foster requesting an investigation of Levasseur’s complaints.

Because Investigator Tracy’s son is currently an officer with the Manchester Police Department, to avoid any appearance of a conflict of interest, this Office assigned investigative responsibilities to Investigator Todd Flanagan.

The investigation took longer than anticipated. The delay was largely due to Levasseur’s repeated cancellations of his interviews and his scheduling with this Office. In fact, it took nearly four months between the first contact made to Levasseur to the time he finally appeared and would submit himself for a full substantive interview.

On September 4, 2013, Investigator Flanagan left voice mails and emailed Levasseur to follow up on Levasseur’s complaint. Investigator Flanagan requested that Levasseur submit a written and signed complaint detailing the conduct he felt should be addressed and identifying witnesses he felt were important to the investigation. He stated he would contact Levasseur with possible interview dates after he reviewed the materials. Levasseur called back that day and told Investigator Flanagan that he did not ask for an investigation into the matter of Officer Maloney, Chief Mara requested it. Levasseur stated he was not sure this was worth investigating, and he did not want the assault looked into. Rather, he wanted the overall actions of the police toward him as an elected official to stop. Levasseur stated he would “get some things together” and send them in the following week.

On September 11, 2013, Investigator Flanagan sent Levasseur a certified letter requesting an interview. Levasseur responded on September 12, 2013, reiterating some of his allegations, but not providing available dates for an interview.

On September 18, 2013, Investigator Flanagan sent Levasseur another certified letter, again asking for dates for a possible interview. On September 19, 2013, Levasseur responded, requesting Investigator Flanagan to call him to set up a time for an interview.

On September 24, 2013, Levasseur wrote to Investigator Flanagan, stating he had just received the September 18 certified letter. Levasseur again denied making an assault complaint against Officer Maloney. He stated, "I am now no longer available to be interviewed by you or Ms. Young. . . . Please do not contact me about this again." As a result of subsequent discussions with this office, including a direct request made by the Attorney General, Levasseur agreed to come to the office for an interview.

On October 4, 2013, Levasseur unexpectedly arrived for an interview accompanied by State Representative Will Infantine. Because Infantine was a potential witness to some of Levasseur's allegations, Levasseur was told that Infantine could not be present for Levasseur's interview, and they would have to be interviewed separately. Levasseur was informed that he was welcome to have an attorney present during the interview so long as he or she was not a potential witness. Levasseur then opted to reschedule the interview for a date when his chosen attorney could be present. He was urged to schedule this as quickly as possible as a member of the investigative team had an upcoming trial to prepare for on the first week of November.

Investigator Flanagan sent a follow-up email on October 9, 2013, asking if Levasseur had hired an attorney and requesting a subsequent interview date. Levasseur responded and requested a couple of dates for his attorney to review. Attorney Agati emailed Levasseur on October 16, 2013, suggesting three specific possible dates. Levasseur responded that he was trying to coordinate a time but was very busy with a trial that week. Hearing nothing further, Investigator Flanagan emailed Levasseur on November 18, 2013, to schedule the interview. Levasseur responded that he had hired Attorney David Horan and would get back to Investigator Flanagan. On November 19, 2013, Levasseur emailed Investigator Flanagan stating that he was still waiting for a response from Attorney Horan, who was reading all the relevant documents.

Receiving no response, Investigator Flanagan emailed Levasseur on December 2, 2013, and said that the investigation had been on hold the past few months pending the interview with Levasseur. Levasseur replied that his attorney was supposed to contact our office. That same date, Attorney Horan mailed a letter to this office asking to speak with Associate Attorney General Young about the matter. Attorney Agati spoke with Attorney Horan about the investigation, and on December 12, 2013, Attorney Horan stated he would be meeting with Levasseur that day to decide if Levasseur would make a formal statement to our office.

On January 7, Attorney Horan informed our office that Levasseur was “focused on” the hearing of Officer Soucy, set for the following week during which his client would be testifying. He proposed four dates for an interview in mid to late January when Levasseur would be available. On January 8, Attorney Agati confirmed January 17 would work. On January 16 at 2:39 p.m., Attorney Horan emailed Attorney Agati to inform him that Levasseur was attending an all-day Continuing Legal Education program on the 17th, and therefore could not attend the interview. He proposed a meeting the following week. Attorney Agati informed Attorney Horan that Levasseur was under no obligation to appear for an interview, but if he wanted to speak with us, he had to do so in the next several days or the Office would complete the investigation without the benefit of his participation.

On January 22, 2014, more than five months after he had lodged his original complaint, Levasseur finally came in for a full interview at the Attorney General’s Office.

This office also attempted to interview Ms. Nunn, Levasseur’s client and the alleged victim of an assault by off-duty Manchester Police Department Officer William Soucy, regarding Levasseur’s complaints that the police attempted to intimidate her. Levasseur insisted on being present at Nunn’s interview. However, because Levasseur was also a witness in this investigation, he was informed that Nunn could not be interviewed while he was present. This office recommended to Levasseur and Attorney Horan that Nunn find alternative counsel for the meeting if she felt she needed an attorney present. Both Levasseur and Attorney Horan agreed. Through later emails, however, Levasseur again insisted upon being present during Nunn’s interview. Based upon Levasseur’s response, this office did not feel it appropriate to contact his client directly to be interviewed when his representations to us indicated that Levasseur did not consent for his client to be interviewed outside his presence.¹

V. LEVASSEUR’S ALLEGATIONS

A summary of the information gathered during the investigation with respect to each of the allegations follows.

Interaction with Officer Steven Maloney after a Board of Alderman Meeting on January 15, 2013

At the January 15, 2013, Board of Aldermen meeting at City Hall, several members of the Manchester Police Department appeared to speak out during the public comment section against Levasseur’s comments about the police in an email Levasseur had sent to Chief Mara.

¹ See New Hampshire Rules of Professional Conduct 4.2 Communication With Person Represented By Counsel: “In representing a client, a lawyer shall not communicate about the subject of the representation with a person the lawyer knows to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer or is authorized to do so by law or a court order.”

Following the meeting, Levasseur left City Hall into a courtyard area. According to Levasseur's statements to investigators, the following then took place. Levasseur was on the Elm Street side of the courtyard when, he called out to Officer Maloney and said that if Officer Maloney wanted to hear his side of the story Maloney should call him the following day. Officer Maloney responded, "You got nothing I want to hear." Levasseur began to walk towards the Franklin Street side of the courtyard when Officer Maloney stated, "Why are you walking away, I want to hear what you have to say." Officer Maloney's voice was raised, which caused Levasseur to say that if Officer Maloney yelled he was going to walk away. Levasseur told Officer Maloney that he was sorry Maloney had seen an email that was only meant for Chief Mara's eyes. At this point, Officer Maloney repeatedly pointed his finger at Levasseur's face while expressing his displeasure with Levasseur for mentioning Maloney's wife on Levasseur's cable television show and making fun of him Officer Maloney told Levasseur that he "had no f***ing balls," and to "get down on your knees." (In his interview, Levasseur explained that he believes that Officer Maloney was referring to a portion of Levasseur's cable television show. Officer Maloney is approximately 5 feet 7 inches tall, and Levasseur had recently impersonated Maloney from a kneeling position on his television show.).

Their conversation became heated and Levasseur felt intimidated. No one was near them, with the next closest person being at least 15-20 feet away. Levasseur's focus was on Officer Maloney rather than anyone else, and that he was anticipating that Maloney would physically assault him. They both continued to square off with one another, and that he backed up as Maloney advanced.

During his January 22, 2014, interview, Levasseur said that Officer Maloney had not poked him in the chest, but "poked at" him and "nicked" him a couple of times. Levasseur admitted he had also pointed his finger at Officer Maloney during their exchange. Levasseur reiterated that he did not want to file a complaint for assault. Nevertheless, he maintained that Officer Maloney's finger did make contact with his person.

In September, investigators interviewed many other people who reportedly did or may have witnessed the altercation outside of City Hall after the January 15, 2013, Board of Aldermen meeting. None of these witnesses said that they saw any physical contact that night.

Chief Mara stated that after the public comment period of the meeting ended, Levasseur came out looking like he was in an "agitated state." Levasseur then yelled over to Officer Maloney, who was in the vicinity of Chief Mara, Alderman Pat Long, Alderman Jim Roy and Police Commissioner Mark Roy and said, "Maloney, if you really want to know what happened give me a call." Levasseur said that either once or twice, at which point Officer Maloney responded, "Well, why do I have to call you, why don't you just tell me now." According to Chief Mara, that is when Levasseur changed his direction of travel very quickly and came up to Officer Maloney. Levasseur started yelling loudly at Officer Maloney, waving his arms, and pointing at Officer Maloney. Chief Mara stated that they were an arm's length away from each other. Although Chief Mara was in a position to see

physical contact if it had occurred, he did not see any such contact between the two men. Officer Maloney became angry and said to Levasseur, “Why don’t you ask me to get on my knees now?” or something to that effect, in reference to Levasseur previously imitating Officer Mahoney on his television show. Chief Mara heard Officer Maloney tell Levasseur that he did not “have the balls” to be a police officer, after which Levasseur grabbed his own crotch, stood up on his toes, and continued to argue.

Chief Mara specifically stated that he did not see Officer Maloney get within inches of Levasseur’s face, and did not see Officer Maloney scream at him in a hostile and threatening manner. He did not view Officer Maloney place his hands on Levasseur or poke Levasseur in the chest. Chief Mara did not see either Levasseur or Officer Maloney physically touch one another. He told investigators that Levasseur started to walk away while “screaming” at Officer Maloney. Chief Mara asked Levasseur to keep his voice down, at which point Levasseur directed his yelling toward Chief Mara, telling him to go back to Bedford and yelling something about his safety.

Mayor Ted Gatsas reported that he was only within sight of the altercation at the very end of the event. He could see that Officer Maloney and Levasseur were close enough to touch each other, but he did not see either man do so, and did not see any poking by anyone.

Alderman Jim Roy witnessed the entire interaction between Officer Maloney and Levasseur, and at no point saw any physical contact between the two.

Alderman Pat Long saw the entire interaction, and neither Levasseur nor Officer Maloney put their hands up or got physical in any way. Alderman Long also received a phone call from Levasseur shortly before the investigator contacted Long, during which Levasseur said Officer Maloney never poked him but that Maloney’s hand had “rubbed against him.” Levasseur also asked Long whether he had been interviewed by the Attorney General’s Office yet.

Alderman Phil Greazzo saw two groups of people moving towards one another, Levasseur was in one group and Officer Maloney was in the other. He saw no physical contact between the two, but did go over and alert the Mayor.

Alderman Ronald Ludwig witnessed the beginning of the altercation. He did not see any poking, but stated that he left before the altercation was over.

Alderman Daniel O’Neil saw Officer Maloney and Levasseur engaged in a “serious conversation,” but that they were at least 5-7 feet apart. He did not see any physical contact between the two men, nor did he recall anyone poking at each other. O’Neil did not hear Officer Maloney call Levasseur a coward, and did not see Officer Maloney scream at Levasseur in a hostile or menacing manner.

Clerk Matthew Normand was looking out a window from inside City Hall when he saw Levasseur walking towards some police officers. The group engaged in what he called

an “animated discussion.” A few moments later, Normand went outside and saw Officer Maloney and Levasseur standing close to one another talking with raised voices. Normand, along with local Security Guard Luis Gonzales, stepped in between the two men. Normand never saw the two men touch one another. After the incident, Normand received a phone call from Levasseur sometime in August of 2013, which was also around the time after Levasseur’s initial email to Chief Mara. Levasseur told Normand that he had asked the Attorney General’s Office to see if they would investigate the situation involving Officer Maloney posting to blogs about Levasseur. During that conversation, Levasseur told Clerk Normand that Officer Maloney had incidentally touched him during the January 15, 2013, incident.

Security Guard Luis Gonzales came outside from City Hall to see people arguing following the meeting. Gonzales saw nothing physical between the two men, and stepped in to separate them specifically because he didn’t want anything to happen.

Fire Chief James Burkush was walking away from City Hall when he stopped upon hearing what he called a “heated discussion,” between Levasseur and Officer Maloney. Chief Burkush saw Levasseur and Officer Maloney in close proximity to each other arguing loudly, but did not see anyone physically touch anyone else. He did not see the entire incident, and soon walked away.

Police Commissioner Mark Roy witnessed the entire altercation from beginning to end. He saw Levasseur walk up to Officer Maloney to engage in what he called a “verbal confrontation,” but never saw Officer Maloney touch Levasseur or poke his finger at Levasseur throughout their interaction. Commissioner Roy told investigators he was pleased the investigation was being handled outside of Manchester because, “I had heard, for so many months, what in [Alderman Levasseur]’s mind, it had turned into, versus what it was that evening. ... He had turned it into, I think, a fabrication of what actually happened that evening. You know, I can’t give you a second-by-second of what came out of everyone’s mouth. But, I do know that no one hit each other. No one poked each other. If anything, he was the aggressor.”

Officer Maloney was interviewed. He acknowledged saying to Levasseur, “Why do I have to call you, why can’t you tell me right now,” after which Levasseur changed direction and came directly towards him. Officer Maloney also acknowledged referring to Levasseur’s television show, and saying words to the effect of, “You think it’s a joke that you can get on your TV show, and get on your knees and pretend you’re me and you bring my wife into this? You want to make fun of me?” Officer Maloney denied ever ordering Levasseur to go to his knees. He said that Levasseur challenged him to work in his kitchen to see what a tough job was like, and followed by saying, “I got balls. You think I don’t got [sic] balls?” Officer Maloney said he didn’t think Levasseur did, after which Levasseur proclaimed that he did while grabbing his own crotch. Officer Maloney admitted that he was shorter than Levasseur, but said he believed Levasseur thought he was short. He flatly denied poking Levasseur or having any physical contact with him that night. Officer Maloney recalled that towards the end of the altercation, Chief Mara advised Levasseur that

he was being disorderly, at which point Levasseur directed his yelling toward Chief Mara, started walking away, and telling Chief Mara to go back to Bedford. Officer Maloney did not hear Levasseur yell anything about his safety.

The investigators reviewed video footage from four cameras positioned outside City Hall. The quality of the footage was poor, to the extent that faces were unrecognizable. The video also had a slow recording speed, making the footage jumpy. As a result, the video had no investigative value to determination of whether there was any physical interaction during the January 15, 2013, incident.

In summary, other than Levasseur's unambiguous email statement that: "[Officer Maloney] placed his hands on me and poked me in the chest," – a statement from which Levasseur has minimized but not withdrawn – there is no evidence to substantiate a claim that Officer Maloney had any knowing unprivileged physical contact with Levasseur.

Board of Alderman Meeting on December 18, 2012

In Levasseur's July 31, 2013 email to Chief Mara, Levasseur alleged: "Once before I was intimidated by an employee of your department. You covered that up for Mr. Mills. You never told me he worked at the police department nor did you tell me that he resigned." Levasseur was referring to a December 18, 2012, meeting of the Board of Aldermen, during which the Aldermen were discussing the naming of the new Manchester Police facility after Officer Michael Briggs, a Manchester police officer who was murdered in the line of duty. At the meeting, which was taped, Levasseur requested that Chief Mara answer some questions about the naming of the facility. Chief Mara went to the front to speak, and upon concluding his remarks, walked back to the gallery in the room.

Levasseur later wrote to Chief Mara, complaining that an officer who was attending that meeting stared him down "with a look like he wanted to beat me up." He claimed that this "officer" became "unglued, unhinged and manic in his actions," and that he had to be "pulled out of the room by the chief of police." He wrote that the "officer" "pointed directly at me and made a fist. His face was burnt red and he was so angry I thought he was coming over the gate. Thankfully you [Chief Mara] were there to pull him away and calm him down. I feel as if he has singled me out for some sort of retaliation down the line, and if he is the officer that I believe he is, this officer has made questionable statements about me to an area business." Levasseur stated that as a result of this altercation, he did not feel safe even "going out for a beer." He asked the chief for the officer's name so he could file a complaint with the Attorney General's Office, and stated that he had spoken with individuals who witnessed the event and did not think the actions were warranted.

In response to Levasseur's allegations, Chief Mara assigned Manchester Police Captain Cunha to conduct an internal investigation into the incident. Levasseur told Captain Cunha that he believed the officer's name was Officer Tony Batistelli, based on pictures he was shown. However, Captain Cunha's investigation revealed that Batistelli was not at the meeting. During the course of the investigation, Levasseur account of the incident changed,

in that he now claimed that the police officer mouthed words to the effect of, “I am going to get you,” to “You’re a f***ing a**hole.” When Captain Cunha told Levasseur that a criminal investigation might be warranted and that he would conduct one if requested, Levasseur made clear that he did not want to and he was not reporting a crime.

After reviewing the tape of the meeting, Captain Cunha concluded that Levasseur’s allegations were unfounded. Specifically, he found that the person Levasseur described was not a police officer, but a retiring police dispatcher, Patrick Mills. Captain Cunha informed Levasseur of this on January 7, 2013, and on January 9, 2013. Captain Cunha told Levasseur that the person at issue was a dispatcher who had previously submitted his resignation, and because this person was not an employee of the police department, this would not be an internal affairs matter.

This Office interviewed Chief Mara regarding this aldermen meeting. He provided the following account. After he spoke at the meeting, he walked back to the gallery. He then saw Mills, a Manchester Police Department dispatcher, so he asked how Mills was doing. Knowing that Mills had resigned and his last work day was approaching, the chief shook Mills’s hand. Mills appeared calm to Chief Mara. Later, Chief Mara spoke with Mills outside. Chief Mara never forcibly removed Mills from the meeting, nor did he view any other police department employee threaten Levasseur at any point during the meeting.

Chief Mara’s account was consistent with video footage from the meeting, in which there is no action observed consistent with this subject pointing or waving his hands. The video does not show Mills’ face, therefore it would not be possible to determine if he mouthed any words to Levasseur. The video does, however, show that Levasseur displayed anger during an exchange with Chief Mara, to such an extent that Alderman Long interrupted and asked that Levasseur adhere to decorum and to pose his questions through the Mayor. It also appears from the video that Levasseur may have been making faces at Chief Mara, because the chief said to Levasseur during the meeting that Levasseur could make all the faces he wanted but Chief Mara was very passionate when it came to officers killed in the line of duty. At no time did Levasseur seem to show any concern or worry for anyone in the audience.

In conclusion, although Levasseur states in his email that Chief Mara covered up the investigation, and that Chief Mara never told Levasseur that Mills worked at the police department, it is clear that Captain Cunha did inform Levasseur of this information several months earlier. Specifically, Captain Cunha told Levasseur that the person involved was a police dispatcher that had resigned, and not a Manchester police officer. It is also clear from the video and Chief Mara’s account that Levasseur’s allegations of Mills’s actions are not supported by the evidence.

Allegations Regarding Interference with the Hooksett Police Department’s Investigation of William Soucy

Levasseur asserts that members of the Manchester Police Department engaged in conduct that was intended to intimidate his client, Joni Nunn, who accused off-duty Manchester police officer William Soucy of assault in early 2013. The assault investigation is being investigated by the Hooksett Police Department as it allegedly occurred in Hooksett. The client lives in Manchester. The alleged incidents of intimidation are addressed below.

Officer Maloney's Online Statements

In his July 31, 2013, email to Chief Mara, Levasseur alleged that Officer Maloney was "interfering with an official police investigation and trial of one of your officers," by making outrageous statements in an attempt to make the criminal case into a case about Levasseur. He claimed that Officer Maloney demanded in an online blog that Ms. Nunn fire Levasseur for allegedly using her to go to the press. He stated he might bring a lawsuit against Officer Maloney for such a "severely outrageous claim."

Investigator Flanagan reviewed the blog entry at issue. In it, Officer Maloney opined on Levasseur's ability as an attorney and stated that if he were Nunn, he would fire Levasseur, "hire a competent attorney," and sue Levasseur and the City of Manchester for damages. This is not criminal conduct. Because Officer Maloney's comments were his personal comments on his opinion of Levasseur, they do not qualify as criminally defamatory statements,² nor is there any evidence that the comments were made to interfere with the criminal investigation by the Hooksett Police Department.

City Ordinance Violation

Levasseur alleged that a Manchester Police Officer went to his client's address in Manchester on July 19, 2013, to notify the owners that a vehicle had been on the lawn for five days in violation of a city ordinance. Levasseur claimed that such violations are not normally handled by the Manchester Police Department but instead by the Manchester Building Department. He asserted the police were involved to intimidate his client.

Upon receiving a request from Levasseur to investigate the matter, Chief Mara asked Manchester Police Department Communications Manager Rachael Page to look into the situation. Page was unable to locate a call for service for that address on any day in July 2013.

The investigative team attempted to interview Nunn about this and the other alleged incidents of intimidation. However, Levasseur's insistence that he be present for Nunn's interview effectively prevented the team from doing so.

² Criminal Defamation, pursuant to RSA 644:11, criminalizes someone who purposely communicating to another person any information which a person knows to be false and knows will tend to expose any other living person to public hatred, contempt, or ridicule. Statements of opinion rather than fact do not qualify as defamation. See Nash v. Keene Publishing Corp., 127 N.H. 214 (1985).

Even assuming a city official went to Nunn's property as claimed, there is no evidence to suggest it was an act of intimidation or was improper in any way.

Visit from Manchester Officers

Levasseur alleged that two Manchester Police Officers, Detective/Sergeant Brennan from the domestic violence unit and Captain Cunha, who handled internal investigations within the department, showed up at Nunn's door in Manchester four days after her interview with the Hooksett Police Department regarding her allegations against Soucy. According to Levasseur, they told Nunn they wanted to check up on her to make sure she was okay and to notify her she did not have to worry about Soucy coming to her place. They told her to call them if she needed anything and left a number to reach them. Levasseur claims that these actions were acts of intimidation.

The investigation revealed the following sequence of events. Nunn met with Hooksett Police Sergeant Bouchard regarding her assault allegations against Soucy on April 12, 2013. Sgt. Bouchard said that she would reach out to Nunn on Monday, April 15th, as Nunn was not sure if she wanted to press charges. On April 15th, Sgt. Bouchard sent Nunn an email informing her she had a few follow-up questions. Nunn did not write back. On April 16th, after not receiving a response from Nunn, Sgt. Bouchard tried to call Nunn at the phone number she had provided. The phone number was no longer in service. Sgt. Bouchard was concerned about Nunn, but she was in court, and unable to go to Nunn's residence in Manchester immediately. Sgt. Bouchard called Captain Cunha, who had initially notified the Hooksett Police Department of the alleged assault, to inquire if he had a working phone number for Nunn. Captain Cunha was not able to get in touch with Nunn by phone either, but later made contact with her at her residence.

These facts do not support a claim that the Manchester Police Department attempted to intimidate Nunn at her home in Manchester. Rather, the Hooksett Police Department asked the Manchester Police Department to check on the well being of a Manchester resident who was not responding to phone calls or emails, when the Hooksett officer in charge of the Hooksett investigation was not available to do so. In fact, it appears the visit was successful as Nunn contacted Sgt. Bouchard the day after the visit, on April 16th. Nothing in Levasseur's allegations indicates that the Manchester officers acted towards Nunn in an inappropriate manner. On the contrary, all the evidence presented indicates that they acted in Nunn's best interests to ensure that she was safe and that she knew help was available if she needed it.

Allegations of General Intimidation by the Manchester Police Department

Levasseur complained, both in his email correspondence and in his interview, that he was generally intimidated by Chief Mara shortly after Levasseur's election as an alderman in 2012. Levasseur said that 30 days after the 2012 election he received a call from Chief Mara requesting a meeting. Levasseur claimed that Chief Mara and now-Deputy Chief Enoch ("Nick") Willard came to his restaurant in Manchester and told Levasseur that as an elected

official, and an employee of the city, he could not criticize the police department on his weekly community access television show. He felt these comments were an attempt to intimidate him at his own restaurant. In a September 12, 2013 email to Manchester City Solicitor Thomas Clark, Levasseur wrote that the chief and deputy chief “tried to get [him] outside of [his] restaurant the day they came to [him] but [he] would not leave the inside of it so I had witnesses. [He] had a feeling they were setting [him] up.” Levasseur told investigators that there was a witness to this event, a Mr. Arthur Beaudry, who was eating in the restaurant at the time of Chief Mara and Deputy Chief Willard’s visit. He stated that Beaudry got up and left because the interaction between Levasseur and the police made him scared and nervous. Levasseur encouraged the investigator to reach out to Beaudry.

Interviews with Chief Mara and Deputy Chief Willard showed that their memories markedly differed from Levasseur’s recall of the meeting. Chief Mara and Deputy Chief Willard separately spoke with investigators about the incident. Chief Mara explained that he was aware that one of his employees, who had since been terminated, was providing information to Levasseur about a disciplined officer. Levasseur was talking about this information on his television show, and was also discussing pending labor cases on the show involving officers and the department. By law, personnel records are exempt from public disclosure and police personnel matters are confidential. Chief Mara was concerned that Levasseur was discussing these matters in public, and as a city official, should show more restraint discussing non-public material

Chief Mara and Deputy Chief Willard set up an appointment at Levasseur’s restaurant to speak with him. Chief Mara stated that while initially the conversation was calm, Levasseur paced and became upset while talking about the employee that Levasseur had wanted the Chief to dismiss. Chief Mara and Deputy Chief Willard asked Levasseur to sit down, but Levasseur pointed to his bellybutton, and stated that it was his “bullybutton” and when someone pushes his “bullybutton” he goes crazy and would not be intimidated. Both the Chief and Deputy Chief told investigators that neither Levasseur nor either of them ever raised their voices, and by the end of the meeting Levasseur had calmed down. Chief Mara denied telling Levasseur that he was an employee of the city, but instead asked Levasseur as an alderman to check with the Department before talking publicly about pending criminal or internal personnel cases.

Investigators spoke with Beaudry, whose recollection also differed from Levasseur’s. Beaudry stated that he was eating lunch when he saw Levasseur meeting with the Chief and Deputy Chief. Beaudry said that he was partially deaf from years in the fire service and only took notice that Levasseur appeared to get agitated at one point and raised his voice. Beaudry said the Chief asked Levasseur what he was getting upset about. Beaudry did not see anything else of note. He said he left the restaurant because he had finished his lunch, not due to feeling uncomfortable in any way with the conversation taking place.

Beaudry’s observations as an impartial bystander mostly support Chief Mara and Deputy Chief Willard’s recounting of the meeting. There is no evidence that Chief Mara and Deputy Chief Willard used actual or threatened force or violence, simulated legal process, or

other unlawful conduct during the meeting. There is also insufficient evidence to support a conclusion that Chief Mara or Deputy Chief Willard used intimidation towards Levasseur, or had a purpose to hinder or interfere with Levasseur for performing his public function or to retaliate for performing that function when he was asked to not discuss non-public personnel matters on his television show.

VI. LEVASSEUR'S CONDUCT

Levasseur made an unambiguous written statement in an email to Chief Mara that Officer Maloney placed his hands on Levasseur and poked Levasseur in the chest in the context of a verbal altercation. He forwarded that statement to the Attorney General's office. Over the course of the investigation, Levasseur significantly and repeatedly back away from that assertion. He told the investigators that it either did not happen or was inadvertent and that his intent was not to report an assault, but that he wanted the overall actions and comments of the police toward him to stop. On September 24, 2013, Levasseur wrote the following in an email to Investigator Flanagan: "I would like you to show me anything in writing, or any tape recording or anything else for that matter that states I brought an assault complaint? Your letter specifically states that I complained that I brought a complaint whereby I was 'victim of an assault committed by a Manchester Police officer' I suggest that you re-read anything you think states I was asking for an investigation into an assault? Nothing I stated anywhere verbally or in writing states that I was assaulted by a police officer. I told you that on the phone. I told you that in my last email and I am telling you one last time I NEVER asked for an investigation concerning an assault nor have I alleged that there was an assault." [errors in original]. His only reason for bringing up the incident involving Officer Maloney at City Hall was "to show a history" between himself, Officer Maloney, and the Manchester Police Department. As he told Chief Investigator Tracy, his purpose in forwarding the email to the Attorney General's Office was to prompt Tracy to make a call to a contact with Manchester Police Department, his former employer, and "get them to back down."

Levasseur's initial claim clearly suggests an act of criminal conduct – simple assault. The evidence revealed during the course of our investigation overwhelmingly demonstrates that assertion was false. Indeed, Levasseur has acknowledged that an assault did not happen, but he still maintains that physical contact occurred. It is a crime to give false information to a law enforcement officer with the purpose of inducing the officer to believe that another has committed an offense. RSA 641:4. We considered filing a criminal charge against Levasseur for his statement, but ultimately determined that it could not be said with certainty that he acted with the requisite intent. Specifically, since making that original statement, Levasseur has repeatedly said that he did not want the assault looked into or investigated. Rather, his purpose in contacting this office was to "pok[e] around and see where we go with all of this."

While no criminal charge will be forthcoming, Levasseur's decision to make that allegation is particularly troubling. While he may not have intended to prompt an

investigation, it is clear that he knew or should have known that his email would lead to that result. Chief Mara could not ignore such allegations, and acted appropriately in referring this matter to this office. Claims that police officers improperly used force against another and engaged in intimidation tactics, especially claims made by public officials, must be carefully considered. To do otherwise would diminish the public's confidence and trust in its police force. At a minimum, raising claims of that sort in the hopes that it would ultimately get the police to "back down" leads to a waste of investigative resources. One would expect that an attorney and public official would be cognizant of those concerns and be measured in his communications.

VII. CONCLUSION

Joseph Kelly Levasseur made allegations of potentially criminal conduct against Officer Steven Maloney and members of the Manchester Police Department. The investigators interviewed numerous witnesses, not one of whom provided information that would tend to corroborate Levasseur's assertions. With respect to the alleged assault by Officer Maloney, every witness denied seeing any physical contact between the two men. These witnesses included several aldermen, the Mayor, chiefs of the fire and police departments, a police commissioner, the City Clerk, and a City Hall security guard. Investigation apart from witness interviews showed no evidence of physical contact.

With respect Levasseur's accusation that Chief Mara covered up for a police officer who allegedly intimidated him at an earlier Board of Alderman meeting, the evidence clearly refutes his claim. The alleged officer was a former dispatcher. Investigative reports, interviews, and video footage collectively failed to indicate that the dispatcher engaged in any type of intimidation at the meeting.

Similarly, the investigation revealed no evidence to support Levasseur's claim that Manchester officers tried to intimidate Joni Nunn, who had accused another officer of an off-duty assault. Instead, it showed that Capitan Cunha and Sergeant Brennan contacted Nunn in response to a request from a Hooksett officer to check on her Nunn's welfare.

Finally, Levasseur accused Chief Mara and Deputy Chief Willard of intimidation occurring at his restaurant. As explained above, there is insufficient evidence to support Levasseur's version of events.

In light of this complete lack of evidence, there is no basis to charge Officer Steven Maloney with any crime based on Levasseur's accusations, and no basis to seek further investigation of the Manchester Police Department regarding Levasseur's specific complaints of intimidation. Accordingly, the Attorney General's Office is closing this investigation and ruling Levasseur's complaints to be unfounded.

Exhibit A

From: Joseph Kelly Levasseur [jrwa2@aol.com]
Sent: Friday, August 16, 2013 4:24 PM
To: Tracy, Richard
Subject: Fwd: steve maloneys continued threats

Complaint sent to Chief Mara July 31, 2013
Joseph Kelly Levasseur, Esq.
Office No. 603-622-7575

All emails being sent from this email address are confidential. If you have received this email and you are not the intended recipient, please disregard immediately and contact this office to let us know. Thank you. Attorney Levasseur.
-----Original Message-----

From: Joseph Kelly Levasseur <jrwa2@aol.com>
To: dmara <dmara@manchesternh.gov>
Sent: Wed, Jul 31, 2013 1:32 pm
Subject: steve maloneys continued threats

Dated: 7-31-13

Dear Chief Mara:

See the post below: Steve Maloney continues to use his position as a Manchester police officer to intimidate me as an elected city official. You were present when he called me a coward, a man with no balls, and told me to drop onto my knees at city hall minutes after a public meeting which I as an elected city official must attend. He was within inches of my face screaming at me in a hostile and menacing manner. He also placed his hands on me and poked me in the chest while you watched him do so. On at least three occasions that I know of, Mr. Maloney has publicly called on me to shut my mouth. As an elected city official I took an oath to fulfill my obligations as a watch dog over the affairs of this city. As you can see in the post he made on Rich Girard's Blog today he continues his unprofessional behavior by misstating facts and motives for my simple handling of an unfortunate event involving officer Soucy and the poor female victim in this case. I have not made any determination of guilt or innocence on Mr. Soucy, my only interest in this issue was to make sure the process was followed. The Hooksett police department made the decision to arrest officer Soucy, not I. Mr. Girard's facts are incorrect but that is not the issue I am writing to you about. When a police officer publicly calls on an elected official or an attorney to shut his mouth it sends a message of intimidation. Once before I was intimidated by an employee of your department. You covered that up for Mr. Mills. You never told me he worked at the police department nor did you tell me that he resigned. Mr. Maloney is interfering with an official police investigation and trial of one of your officers. By making such outrageous statements it is obvious that he is trying very hard to make the case concerning Soucy's alleged assault into a case about me. I always believed that no police officer, in any city or state, would ever put up with the physical abuse of a woman, no matter who did it. The men in blue have been notorious protectors of women and have a well deserved reputation for being so. No matter what Mr. Maloney or any other Manchester police officer thinks about me, this case is about the alleged assault on a woman. Maloney needs to put aside his animosity of me and let the process unfold in it's normal manner. His demand that my client fire me for allegedly using her to go to the press is simply a charge that is preposterous and slanderous. I am going to hire an attorney to look into this matter further and may bring a lawsuit against Mr. Maloney for such a severely outrageous claim. At this point Chief I am starting to believe, that because you allow these

intimidating acts to continue, that I may have to go even further with my complaint is about the constant intimidation I feel I am being subjected to. The thin blue line baloney has gone too far. We are talking about the safety of an elected city official. We are talking about statements that can be seen as threatening and quite possibly could enflame someone to do something stupid to either myself or my family. Mr. Mills did not like what I had to say at a meeting and bullied me to my face. Now Maloney is bullying me publicly and posting outrageous, slanderous lies and comments about me as an elected official and as an attorney. The comments are reckless and outrageous and simply without merit. I do not know what authority you have to address this issue, but I will come forth and speak to you further about this in private if you would like. It is also important for you to note that I never once disparaged the Manchester police department over the handling of the Soucy matter to anyone in the press or to my client. Once I found out that the assault happened in Hooksett I understood that MPD did not play any further role in the possible arrest of Mr. Soucy. From what I could tell, based on the information made available to me, the procedure that MPD performed in this matter, although different than other cases I have been a part of, seemed appropriate. How Hooksett PD handled the matter is of a different concern and does not concern your department until Maloney's post. I expect a call, reply or a meeting concerning these slanderous statements by officer Maloney. His threats, malicious and outrageous statements can no longer be tolerated. If this is not resolved I will be forced to take this matter to a higher level. Thank you for your time in this important matter. PS, please inform officer Maloney that I did not nor will I receive a dime from Ms. Nunn for simply helping her through the process as it unfolded, so his first statement is not only outrageous it is a blatant and false lie. Criminal law is not my normal area of practice and I certainly do not make a living doing those cases. I actually perform a lot of pro bono work for Manchester citizens.

Joseph Kelly Levasseur



Steven Maloney

•9 hours ago•1 upvotes

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Joe Levassaur continues to use his elected position as alderman to drum up buisness for his suspect law practice. Does anybody including Miss Nunn beleive that Levassaur had her best interests in mind when he took up the case. Does she truly believe that he cares about her? We all know that this is just another sad attempt by Levassaur to garner headlines! Any competent attorney would never have placed his client in the position that Miss Nunn finds herself in today. I am sure she never wanted the headlines that Levassaur is creating for her in his dispicable attempt at furthering his anti-MPD agenda. If there is any doubt to that statement, tune into Levassaur's embarassing show on access tv tonight and watch his continued quest for headlines at the expense of Miss Nunn. If I was Nunn I would fire Levassaur immediatly, Hire a competent attorney, and sue Levassaur and the City of Manchester for damages. Use the following violation to base you're suit...

Rule 1.7 of NH Rules of professional conduct .

Conflict of interest subparagraph 10

" THE LAYWER'S OWN INTERESTS SHOULD NOT HAVE AN ADVERSE EFFECT ON

REPRESENTATION OF A CLIENT".

Somebody please tell me with a straight face the Levasseur is not guilty of that !.

If Levasseur wants to chase ambulances, that's fine. If he wants to use his elected office to drive after the flashing lights, I have a serious problem with that. When is the city going to demand that he step down? When is the NH Bar going to stop this blatant misconduct? When is the union leader going to investigate this ? Thanks to Rich Girard for shining a spotlight on this matter.

[see more](#)

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Joseph Kelly Levasseur, Esq.

Office No. 603-622-7575

All emails being sent from this email address are confidential. If you have received this email and you are not the intended recipient, please disregard immediately and contact this office to let us know. Thank you. Attorney Levasseur.