DANIEL WEBSTER-BATCHELDER AMERICAN INN OF COURT

Table 3 Presentation

December 4, 2019

A Brief Survey of Privacy Rights
Under the New Hampshire Constitution
***Before* the Adoption of Part I, Article 2-b**

Part I, Article 2-b of the New Hampshire Constitution states that "[a]n individual's right to live free from governmental intrusion in private or personal information is natural, essential, and inherent." Article 2-b is a recent addition to the New Hampshire Constitution, having only come into effect on December 5, 2018. While New Hampshire citizens overwhelmingly favored adoption of the amendment – receiving more than 80% approval from voters – its impact on privacy law in New Hampshire remains unknown.

Before the adoption of Article 2-b, questions of individual privacy and governmental intrusion under New Hampshire law centered on Part I, Article 19 of the New Hampshire Constitution. Article 19 "protects all people, their papers, their possessions and their homes from unreasonable searches and seizures. It particularly protects people from unreasonable police entries into their private homes, because of the heightened expectation of privacy given to one's dwelling." *State v. Grey*, 148 N.H. 666, 668-69 (2002). Although analogous to the Fourth Amendment, the Article 19 ban against unreasonable search and seizure pre-dates the Federal Constitution. *State v. Ball*, 124 N.H. 226, 233 (1983).

As viewed by the New Hampshire Supreme Court, Article 19 manifests a "strong right of privacy" and a "preference for privacy over the level of law enforcement efficiency which could be achieved if police were permitted to search without probable cause or judicial authorization." *State v. Canelo*, 139 N.H. 376, 386-87 (1995).

In reviewing constitutional claims under Article 19, New Hampshire courts apply the same reasonable expectation of privacy analysis used by federal courts to analyze claims under the Fourth Amendment. *State v. Goss*, 150 N.H. 46, 48-49 (2003) (expressly adopting analysis of *Katz v. United States*, 389 U.S. 347, 353 (1967)). The analysis recognizes that the requirements of Article 19 exist to protect a person's legitimate expectation of privacy from unreasonable governmental intrusion. *Id*. at 360-62. To determine the legitimacy of the defendant's privacy expectation, New Hampshire courts examine first whether the defendant had an actual, subjective expectation of privacy and second, whether this expectation is one that society is prepared to recognize as reasonable. *Goss*, 150 N.H. at 48-49.

In application, the New Hampshire Supreme Court has found Article 19 to be more protective of individual privacy than the Fourth Amendment. In *Goss*, for example, the New Hampshire Supreme Court held contrary to the United States Supreme Court in *California v. Greenwood*. 150 N.H. 46, 49-50 (2003). Both cases concerned the warrantless search of trash left out on the curb for the trash collector. In *Greenwood*, the United States Supreme Court held that while the defendant might have had an actual expectation of privacy with respect to the trash, it was not an objectively reasonable expectation.

> "It is common knowledge that plastic garbage bags left on or at the side of a public street are readily accessible to animals, children, scavengers, snoops, and other members of the public. Moreover, respondents placed their refuse at the curb for the express purpose of conveying it to a third party, the trash collector, who might himself have sorted through respondents' trash or permitted others, such as the police, to do so. Accordingly, having deposited their garbage in an area particularly suited for public inspection and, in a manner of speaking, public consumption, for the express purpose of having strangers take it, respondents could have had no reasonable expectation of privacy in the inculpatory items that they discarded.

> Furthermore, as we have held, the police cannot reasonably be expected to avert their eyes from evidence of criminal activity that could have been observed by any member of the public. Hence, what a person knowingly exposes to the public, even in his own home or office, is not a subject of Fourth Amendment protection.

California v. Greenword, 486 U.S. 35, 40-41 (1988) (internal quotations and citations omitted).

The *Goss* Court found that the defendant's actual expectation of privacy was objectively reasonable.

> We find the first ground persuasively answered by Justice Brennan in his *Greenwood* dissent: "The mere possibility that unwelcome meddlers might open and rummage through the containers does not negate the expectation of privacy in their contents any more than the possibility of a burglary negates an expectation of privacy in the home ..."
>
> As for the second ground, we do not believe that conveying trash to a trash collector for disposal renders an expectation of privacy in the trash unreasonable. "It should be reasonable to expect that those who are authorized to remove trash will do so in the manner provided by ordinance or private contract." In most cases that expectation would be that "the contents of [the resident's] garbage [would be] intermingled with other refuse in the well of the truck, and ultimately dumped into a central collection place where the forces of nature would destroy them." We conclude that such an expectation of privacy is reasonable.

Goss, 150 N.H. at 49-50 (internal citations omitted).

Similarly, the New Hampshire Supreme Court has applied Article 19 to rigorously examine the probable cause needed to search an individual's vehicle. In *State v. Ball*, 124 N.H. 226 (1983), the Court ruled a police officer did not have probable cause to seize a partially smoked hand-rolled cigarette during a lawful vehicle stop. *Id*. at 237. Even though the cigarette was in plain view during the stop, the police lacked any objective corroborating circumstances – such as a suspicious smell or furtive gesture of the defendant – to reasonably suspect the

cigarette contained contraband. *Id*. The officers' mere suspicion that the cigarette contained marijuana was insufficient, standing alone, to justify the warrantless search. *Id*.

Privacy rights under Article 19 drop rather precipitously beyond the domain of an individual's person, home, or vehicle, however. This is most evident when questions arise about what kinds of personal information the government can secure from third parties without a warrant. The New Hampshire Supreme Court has ruled that the government can, without a warrant, obtain from a telephone carrier the numbers a defendant has dialed using the carrier's landline or cellular telephone network. *State v. Valenzuela*, 130 N.H. 175 (1987) (telephone pen registers); *State v. Gubitosi*, 152 N.H. 673, (2005) (cell phone records). It has held that a defendant's basic internet subscriber information on record with an internet service provider, such as an internet protocol address, is accessible by the government without a warrant. *State v. Mello*, 162 N.H. 115, 120 (2011). The Court has also ruled that test results on file with a hospital derived from blood a defendant voluntarily submitted for testing is accessible by the government without a search warrant. *State v. Davis*, 161 N.H. 292 (2010).

To be sure, the Court's decisions in the realm of individual privacy and third party discovery have not been without dissent. In rejecting the majority opinion allowing the warrantless search of telephone pen registers, Justice Batchelder observed:

> Article 19 protects a person's "papers" from all unreasonable searches and seizures. "Papers" as tangible objects, however, have little or no intrinsic value. The value of "papers" rests in the content of the information contained in them. The mere advance in technology from paper as the medium for the flow of information to, for example, telephonic communications should not alter the protective force of article 19. Similarly, article 19 should not be limited to protections against the intrusive capabilities of the government at the time of the adoption of article 19. Rather, the areas of protected privacy must be examined and determined on a case by case basis in light of the technology available to the government at any given time. The protected rights, of necessity,

> become more sharply defined as science and technology broaden the scope of governmental power. In the end, I see no functional difference between government officials searching for and seizing a person's papers, in the course of an investigation without the benefit of a warrant based on probable cause, and their monitoring the communicative activities of a citizen without the burden of similar requirements.

Valenzuela, 130 N.H. at 201 (Batchelder, J., dissenting).

Nearly two decades later, Justices Nadeau and Galway strode a similar line of dissent as it concerned the warrantless search of cellular telephone records. They reasoned that the use of cellular telephones had evolved to become "a personal and business necessity indispensable to one's ability to effectively communicate in today's complex society" and that a caller's disclosure to a wireless carrier of the numbers dialed "does not alter the caller's expectation of privacy and transpose it into an assumed risk of disclosure to the government." *Gubitosi*, 152 N.H at 688 (Nadeau and Galway, JJ., dissenting). "The reality of today's technological society and common experience requires protection of this information from warrantless seizure." *Id*. at 687.

* * * * *

It is against this backdrop that Article 2-b has been adopted. Perhaps it is a manifestation of the privacy rights championed by Justices Batchelder, Nadeau, and Galway. True or not, it certainly appears to be an expression that society in New Hampshire is prepared to recognize as reasonable an expectation of privacy in personal information beyond what the law has acknowledged to date.

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Table 3 Presentation

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Privacy Rights (Search and Seizure)

~~The New Hampshire Standing Doctrine~~

In 1960, the Jones Court established the "automatic standing" rule which permitted a movant to challenge a search where in order to show a possessory or proprietary interest sufficient to assert fourth amendment rights, the movant would otherwise be required to admit guilt. Jones v. United States, 362 U.S. 257, 264-65 (1960). New Hampshire quickly adopted the "automatic standing" rule. State v. Crump, 107 N.H. 62, 65 (1966).

Twenty years later, the United State Supreme Court abandoned the Jones "automatic standing" rule in United States v. Salvucci, 448 U.S. 83, 88-89 (1980). The Salvucci Court held that the logic underlying the "automatic standing" rule had changed because testimony given by a movant in support of a motion to suppress could no longer be admitted against him at trial and there were significant development of the privacy interest case law. Id.

But, as with many things, the great New Hampshire State Constitution provides broader protections then the Federal Constitution. Under the New Hampshire State Constitution, a party seeking to challenge a search has two ways to establish standing: (1) automatic standing where the movant is charged with a crime in which possession of an item or thing is an element; or (2) the movant has a legitimate expectation of privacy in the place being search or the item seized.

In State v. Settle, a decision authored by Justice Batchelder, New Hampshire rejected the federal analysis and found that N.H. Const. pt. 1 art. 19 "requires that 'automatic standing' be afforded to all persons within the State of New Hampshire who are charged with crimes in which possession of any article or thing is an element. Article 19 prohibits all unreasonable searches of

all a citizen's possessions. Absent a recognized exception to the warrant requirement, a warrantless search is ~~"~~per se unreasonable.~~"~~" 122 N.H. 214, 217-18 (1982). New Hampshire still retains the "automatic standing" rule.

> "A preliminary inquiry which any court must make before it will consider a motion to suppress evidence based upon an unreasonable search or seizure is whether the individual filing the motion has standing." State v. Sidebotham, 124 N.H. 682, 686 (1984). "Standing confers upon an individual the right to challenge unreasonable government conduct." Id. "The threshold question as to the determination of a party's standing to challenge the introduction of evidence by means of a motion to suppress is whether any rights of the moving party were violated." State v. Gubitosi, 152 N.H. 673, 680 (2005). A defendant may have standing based upon: (1) being charged with a crime in which possession of an item or thing is an element, which confers automatic standing; or (2) having a legitimate expectation of privacy in the place searched or the item seized. Id. To claim standing based upon a legitimate expectation of privacy, a defendant must establish both: (1) a subjective expectation of privacy in the place searched or the item seized; and (2) that his subjective expectation is legitimate because it is "one that society is prepared to recognize as reasonable." State v. Goss, 150 N.H. 46, 49 (2003) (quotations omitted).

State v. Boyer, 168 N.H. 553, 557 (2016).

New Hampshire also has significant differences in its case law regarding actual and subjective expectations of privacy. While the New Hampshire Supreme Court has adopted the Katz test, it has not been afraid to come to conclusions contrary to the United States Supreme Court when applying it. State v. Goss, 150 N.H. 46, 49 (2003). In Goss, the New Hampshire Supreme Court held contrary to the ~~United State's~~US Supreme Court in California v. Greenwood. 486 U.S. 35, 41 (1988); 150 N.H. 46, 49-50 (2003). Both cases were concerned with a warrantless search of trash left out on the curb for the trash collector. In Greenwood, the United States Supreme Court held that that while the movant might have had an actual expectation of privacy with respect to the trash, it was not an objectively reasonable expectation.

> "It is common knowledge that plastic garbage bags left on or at the side of a public street are readily accessible to animals, children, scavengers, snoops, and other members of the public. Moreover, respondents placed their refuse at the curb for the express purpose of conveying it to a third party, the trash collector, who might himself have sorted through respondents' trash or permitted others, such as the police, to do so. Accordingly, having deposited their garbage in an area particularly suited for public inspection and, in a manner of speaking, public consumption, for the express purpose of having strangers take it, respondents could have had no reasonable expectation of privacy in the inculpatory items that they discarded.
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State v. Goss, 150 N.H. 49-50 (2003) (internal citations omitted).

New Hampshire's wiretap statute, NH RSA 570-A, also utilizes the reasonable expectation of privacy standard. The Court looks to federal case law as NH RSA 570-A

resembles Title III of the U.S.C.A. State v. Telles, 139 N.H. 344, 346 (1995). Generally, NH RSA 570-A bars and criminalizes the interception of any telecommunication or oral communication. NH RSA 570-A:2. While a "telecommunication" is fairly well defined in the statute, an "oral communication" is "any verbal communication uttered by a person who has a reasonable expectation that the communication is not subject to interception, under circumstances justifying such expectation." NH RSA 570-A:1. RSA 570-A also provides for civil damages for violations of RSA 570-A. RSA 570-A:2; 570-A:11; see Fischer v. Hooper, 143 N.H. 585 (1999) (discussing issues regarding civil damages for violation of RSA).

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Sampling of Multi-Jurisdictional Interpretations of State Privacy Amendments

Robinson v. City of Seattle
Court of Appeals of Washington, Division One
102 Wn. App. 795 *; 10 P.3d 452 (2000)

City of Seattle required a pre-employment urinalysis drug test for approximately half its positions. Taxpayers challenged the constitutionality of this program. Article I, section 7 of the Washington State Constitution provides: "No person shall be disturbed in his private affairs, or his home invaded, without authority of law." This protects the citizenry's personal autonomy.

The Court's inquiry was whether the City has unreasonably intruded into a person's private affairs. Holding that the testing constitutes a warrantless search without particularized grounds for suspicion, it found that the City must show the program is narrowly drawn to achieve a compelling governmental interest. branches of privacy under article I, section 7. The City argued that its pre-employment testing requirement satisfies the "special needs" test because of the City's need to avoid hiring drug abusing applicants in "safety-sensitive" jobs. It also argued that an applicant who applies with knowledge of the test has no reasonable expectation of avoiding it and so in effect consents to it. It also described its goal to avoid increased absenteeism, diminished productivity, greater health costs, increased safety problems, potential liability to third parties and more frequent turnover.

The Court held that given the "special solicitude of article 1, section 7 for the privacy rights of individuals," an application for government employment does not constitute voluntary submission to an invasion of constitutional rights. It noted that the City was unable to explain what duties implicating public safety are performed by certain employees, such as accountants, ushers, librarians, administrative assistants and public relations specialists. While the Court recognized the legitimate interest in efficiency and finances, it found that the privacy interest was greater. Ultimately, the Court held that the privacy standard was satisfied only as to testing of City applicants whose duties will genuinely implicate public safety.

Loder v. City of Glendale
California Supreme Court
14 Cal. 4th 846, 59 Cal. Rptr. 2d 696, 927 P.2d 1200 (Cal. 1997)

A taxpayer filed a suit challenging an employment-related drug testing program adopted by the City of Glendale. Under the program, all individuals who conditionally had been offered new positions with the city (both newly hired persons and current city employees approved for promotion to a new position) were required to undergo urinalysis testing for a variety of illegal drugs and alcohol as part of a preplacement medical examination. One basis for the lawsuit was Art. I, § 1 of the California Constitution, which relates to privacy and states: "All people are by nature free and independent and have inalienable rights. Among these are enjoying and defending life and liberty, acquiring, possessing, and protecting property, and pursuing and obtaining safety, happiness, and privacy."

A divided California Supreme Court found the requirement constitutional under both the Fourth Amendment and the California constitution. It relied heavily on the fact that all applicants were required to undergo a "lawful medical examination," and concluded that the program resulted in a significantly lesser degree of intrusion than would otherwise occur.

People v. Buza,
California Court of Appeals, Fifth District
4 Cal. 5th 658, 721, 230 Cal. Rptr. 3d 681, 731,
413 P.3d 1132, 1174 (2018)

California's DNA Act requires law enforcement officials to collect DNA samples and fingerprints from all persons who are arrested and/or convicted of felony offenses. It also permits the government to store DNA with the potential to reveal it later. Buza was arrested for felony arson charge and ultimately convicted. At the time of his arrest, officers swabbed his cheek as part of a routine booking procedure at county jail in accordance with the Act.

On appeal, Buza challenged the securing of his DNA on the basis of California's right to privacy embodied in Article I, section 13, which has the purpose of protecting citizens from governmental surveillance and other forms of information gathering. The Court of Appeals held that DNA Act's collection requirement is valid as applied to an individual who, like Buza, was validly arrested on probable cause to hold for a serious offense. According to the Court, the requirement was not unreasonable.

Gomillion v. State
Court of Appeal of Florida, Second District
267 So. 3d 502 (Fla. Dist. Ct. App. 2019)

Gomillion was charged with one count of leaving the scene of an accident and one count of carelessly or negligently causing serious bodily injury while driving on a canceled, suspended, or revoked license after rear-ending a taxi and causing serious injuries to the driver and her passenger. Gomillion fled the scene, leaving his vehicle behind, but was soon found hiding under a trailer. He had been injured during the accident so was brought to the hospital for treatment where medical professionals tested his blood for purposes of medical treatment as opposed to law enforcement purposes. DNA was recovered from the vehicle's airbag, which had deployed during the accident, was tested and the results eventually showed that it matched Gomillion.

After Gomillion was charged and while preparing for trial, the State issued a subpoena of Gomillion's toxicology records. Before the records were released, Gomillion objected, arguing that the subpoena impinged on his right to privacy under article I, section 23, which states that "[e]very natural person has the right to be let alone and free from governmental intrusion into the person's private life." The State argued that toxicology records might help impeach Mr. Gomillion at trial. The Court rejected the State's argument that it had a compelling interest in the records, noting that it had not presented evidence making it reasonable to believe that the toxicology records will turn up evidence that Mr. Gomillion was under the influence of drugs or alcohol at the time of the accident. It held: "The fact that he is alleged to have left the scene of an accident, standing alone, is insufficient to make that showing, as there are myriad reasons unrelated to drug or alcohol use someone might do so." The arrest affidavit contained no information about Gomillion's smell, appearance, or demeanor that would support the assumption that he had been under the influence. Without that evidence, the State could not establish a nexus between the toxicology records and its case against Gomillion. In the absence of that nexus, there was no compelling state interest to override Gomillion's constitutional right to privacy.

Thomas v. Smith
Court of Appeal of Florida, Second District
882 So. 2d 1037 (Fla. App. 2004)

The State required disclosure of an individual's social security number on the application for homestead tax exemption. Applications without the social security numbers were summarily rejected, resulting in the properties being taxed without the exemption. The taxpayers who had to pay the higher rate for that reason filed suit, asserting that the required disclosure of their social security numbers violated Article I, section 23, of the Florida Constitution, which provides: "Every natural person has the right to be let alone and free from governmental intrusion into the person's private life except as otherwise provided herein. This section shall not be construed to limit the public's right of access to public records and meetings as provided by law." That provision has been recognized as ensuring that individuals are able 'to determine for themselves when, how and to what extent information about them is communicated to others."

The trial court rejected the taxpayers' argument on the basis of the State's legitimate need for the SSN's. It did not properly evaluate the intrusion on the taxpayers' privacy. Finding that the taxpayers' did have a legitimate expectation of privacy in their SSN's, the Court of Appeal vacated the trial court decision and remanded the case for a proper assessment of whether the State had demonstrated a compelling state interest in requesting disclosure of an individual's social security number on the application; and, if so whether the required disclosure meets the least intrusive means test.

State v. Conforti,
Court of Appeal of Florida, Fourth District
688 So. 2d 350 (Fla. 4th DCA 1997)

An undercover police officer entered Studio XXX and paid $ 80.00 for a "two female entertainment package." In a private room, two women danced erotically, masturbated and performed cunnilingus on each other. "The sex acts were performed rhythmically, in conjunction with the music, as part of the performance. The dancers contended that they attempted to communicate the message of eroticism. The officer testified that he, in fact, received the message." Both women were arrested and charged with engaging in lewd acts but the trial court dismissed the charges on constitutional grounds, including Florida's constitutional right to privacy. The Court of Appeals reversed, holding that the dancers had no legitimate expectation of privacy in the conduct which formed the basis for the criminal charges.

Hope Clinic for Women, Ltd. v. Flores
Illinois Supreme Court
2013 IL 112673, ¶ 67, 372 Ill. Dec. 255, 272-73, 991 N.E.2d 745, 762-63

Plaintiffs challenged the Parental Notice of Abortion Act, asserting that it violates the privacy clause found in in the Illinois Constitution, article I, section 6 by unreasonably intruding upon a minor woman's right to bodily autonomy and her right to make medical decisions about her reproductive health care. The Court rejected the argument, stating: "while a minor clearly has an expectation of privacy in her medical information, which includes the fact of her pregnancy, the intrusion on the minor's privacy occasioned by the Act is not unreasonable." It weighed the minor's right against the State's "interest in ensuring that a minor is sufficiently mature and well-informed to make the difficult decision whether to have an abortion" It held: "To advance that interest, it is reasonable for the state to encourage an unemancipated minor under the age of 18 who wishes to have an abortion to seek the support of a parent or other interested adult, or to require her to prove her maturity by obtaining a judicial waiver in a waiver process that is expedited and confidential."

State v. Reid
New Jersey Supreme Court
194 N.J. 386, 389, 945 A.2d 26, 27 (2008)

Shirley Reid allegedly logged onto a website from her home computer. The site belonged to a company that supplied material to her employer's business. The supplier's website captured the ten-digit IP address. While on the supplier's website, Reid allegedly changed her employer's password and shipping address to a non-existent address. The supplier told Reid's employer what had occurred and provided the IP address. The employer reported the IP address to local authorities, which issued a subpoena to Reid's internet provider. The provider revealed that the IP address was assigned to Reid, who was subsequently indicted and convicted of theft.

On appeal, the Court reversed Reid's conviction, finding that Article I, Paragraph 7 of the New Jersey Constitution protects an individual's privacy interest in subscriber information In so holding, the Court noted that with IP addresses, the government can learn intimate details about one's personal affairs, including "the names of stores at which a person shops, the political organizations a person finds interesting, a person's … fantasies, her health concerns, and so on."

State v. Morris
165 Vt. 111, 114, 680 A.2d 90, 92 (1996)

An informant told an officer that Morris was selling marijuana from his apartment. Police officers went to his apartment building and seized five or six opaque trash bags that had been set out for collection near the curb. The bags were later searched and police found marijuana seeds and stems. Based on the items found in the trash, the police sought and obtained a warrant to search defendant's residence. Morris filed a motion to suppress the evidence seized from his apartment on the ground that the search warrant was based on evidence discovered during an illegal warrantless search of his garbage. The trial court denied the motion and Morris appealed following his conviction.

The Vermont Supreme Court reversed on the basis of Article 11 of the Vermont Constitution, which protects persons "from unreasonable, warrantless governmental intrusions into affairs which they choose to keep private." The Court held that Morris had an objectively reasonable privacy interest in the contents of the trash bags. Consequently, the police should have obtained a warrant before searching through Morris's trash. The warrantless search of defendant's trash violated Vt. Const. art. 11, ch. I, and the warrant to search defendant's home, which depended on the contents of the trash bags, was infirm.

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Hypotheticals

Hypothetical Fact Pattern #1

The police are investigating a homicide in which the victim was stabbed to death. After forensic evaluation by the State Crime Lab, the detectives leading the investigation are informed that the clothes the victim was wearing also contain blood from a source other than the victim. Eyewitnesses reported seeing the victim engaged in a fist fight with an unidentified assailant. The witnesses described seeing the assailant pull out a knife after he was punched in the nose, knocking the victim to the ground and stabbing him multiple times in the chest before fleeing. Because of darkness, there are no good descriptions of the assailant other than that he appeared to be a male of average build. The police believe that a local man, Danny D, might have been the assailant but lack probable cause for a warrant. An undercover detective follows Danny into a local fast food restaurant. After Danny throws his drink cup into the trash and walks away, the detective secures the thrown away cup and submits it to the Crime Lab for DNA testing. DNA from the cup matches the blood from the source other than the victim found on the victim's clothes. Danny is charged with murder based upon this DNA match. Does this violate Danny's constitutional rights?

Hypothetical Fact Pattern #2

The cold case unit of the AG's office is investigating a thirty year old unsolved homicide in which the body of a 20 year old young woman was found in the woods, the victim of an apparent strangulation. The new investigation reveals DNA evidence from a source other than the victim. It does not match any of the people who the police suspected may have been involved and all of those people consented to having a DNA sample taken from them. The AG's office decides to request records from "23andMe" and another similar service in an effort to find the suspect who may have left the DNA evidence. Other than the DNA evidence, the police have no idea who may have committed the murder. The providers voluntarily turn over the records and the police determine the records show DNA consistent with that of a local handyman, Sam S, who moved from the area about a year after the homicide and has lived out of state for the past 29 years. The police arrest Sam for the murder. Sam moves to suppress citing an alleged violation of his constitutional rights. Does Sam win his motion to suppress the evidence gathered from 23andMe and the other service provider and the fruits of that evidence?

Hypothetical Fact Pattern #3

Son believes mom needs a guardian.
Son files a petition and wants mom's medical information as an attachment. He goes to family physician who is old friend of the family and he provides an affidavit of Mom's forgetfulness.
Upon filing of the petition, pursuant to 464-A, an attorney is appointed for the 'proposed ward'/mom.

Mom tells the attorney she does not need a guardian and will not disclose her medical information. Attorney objects on mom's behalf citing, among other things, her privacy rights under the state amendment. RSA 329-B:26 provides for a waiver of the physician/patient privilege in hearings conducted pursuant to RSA 135-C:27 through 135-C:54

Does the constitutional amendment affect the statutory scheme and how.

Hypothetical Fact Pattern #4

A 72 year old blind woman is assaulted in Manchester parking garage. After the assault, the assailant got onto a motorcycle and drove away. The women did not know the assailant, except that she believed he was a man. The garage maintains cameras on each parking level and customers only can pay for parking using cash or credit at a kiosk. The payment kiosks also have cameras. Law enforcement have approached the owner of the parking garage for copies of the videos and kiosk useage records to pull pictures to show the woman. They seek consent to make copies of the garage's records without any other process. Is it permissible?

Hypothetical Fact Pattern #5

Joe Baggadonuts wants to work for the NH State Police as a State Trooper. He is eminently qualified. Applicants are asked to disclose any chronic health conditions and the Department of Safety requires that all applicants submit to a blood test prior to any interview. The lab tests the urine sample for all foreign substances, including medications and illegal substances, as well as a myriad of health conditions. Joe also has to be fingerprinted and provide his social security number for background and credit check. Its stated purpose is for public safety but meeting minutes from when the policy was developed show that another objective was financial. If the applicant is hired, results are held on a secure server for the duration of employment. If not, the results are not maintained.

Joe's lifelong dream is to be a State Trooper but doesn't feel that he should have to give up his privacy rights to do so. The Department of Safety will not move forward with his application unless Joe provides the required information. Does he have any recourse as a result of the privacy amendment?

Joe's second choice for employment is to be a school librarian and the town where he lives is advertising but requires certification by the NH Department of Education. The NH Department

of Education has the same requirements for certification as the Department of Safety has for law enforcement positions with the stated objective of the safety of NH's public school pupils. Does the analysis change if Joe opts to apply for certification?

Hypothetical Fact Pattern #6

Law enforcement is notified that a man brought a young girl to the Cadillac Hotel in Manchester and reportedly sexually assaulted her. She became pregnant and gave birth. She will not disclose the man's name. Law enforcement want to test blood collected from the infant by the hospital to attempt to determine the identity of the man. The girl is only 15 years old. May they test that blood against the State felony database without a warrant?

Hypothetical Fact Pattern #7

Husband and wife, now divorced, with a 7 year old son. Parenting plan in place which includes significant assistance from Parents of both husband and wife in a close family unit. Wife is changing son into his soccer clothes at the field. She has him partially in the car with the door open for his privacy. Husband has been texting wife excessively about visitation with son, using vulgar language and making threats. Husband comes over and is yelling/swearing at her to dress him outside the car. She tells husband to quiet down and stop calling her names. He continues, pushes the car door so as to hit her with it, and throws her to the end of the car. She has her phone and tries to call her father whom she knows is with her mother and in their regular spot for soccer game viewing. Husband's mother is close by as well in her regular viewing spot. Husband tosses the phone, but wife's father hears her saying, "Stop, you're hurting me" and he runs to his daughter. The 7 yr old child is so frightened he runs away. One grandmother goes after him and the other begins video filming the following.

Wife's father arrives and goes directly to husband and gets between husband and wife. He is a larger man than husband and pushes him back and demands to know if he put hands on his daughter. Husband mouths off some but then says if father doesn't back off, he will 'take action' and takes his handgun out of his pocket. Daughter has called the police. When the sirens are heard, the husband takes off in his car. The police find him a short time later and arrest him.
He is placed on bail with the terms of contact being the parenting plan.

Wife files a Domestic Violence petition. She has screen shots of previous texts.