

Re: Submissions to ethics committee



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Duncan MacCallum <madbarrister@aol.com>

8:07 AM 

To votenancypearson@gmail.com Copy johnktabor@gmail.com, rgamester@comcast.net, amwjcw@comcast.net, commissionerhart@gmail.com, rpsullivan@cityofportsmouth.com, esthersmarina@gmail.com, edinan@seacoastonline.com

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I do not know why Ms. Pearson thinks that her credibility and character for truthfulness are not in issue. They most certainly are.

Any third-year law student will tell you that evidence of spite, motive, ill will, hatred, bias, and interest are all highly relevant and admissible on the issue of the witness's credibility, particularly in the case of the accuser testifying against the accused. For those of you who may happen to have a burning interest in the subject, I invite your attention to 1 Robert P. Mosteller et al., eds., McCormick on Evidence §§ 39-40 (8th ed. 2020), and Charles G. Douglas, III, New Hampshire Evidence Manual §§ 608.02[2], -[7] (2020 ed.), for a couple of concise summaries.

Evidence of spite, ill will, or malice is not "salacious but irrelevant material"; rather, it is highly relevant evidence which bears directly on the issue of a witness's credibility--in this case, the issue of whether Ms. Pearson has been untruthful with you. Such evidence would be routinely admitted into evidence by any experienced trial judge in any court in the State of New Hampshire, state or federal. In fact, there are several standard jury instructions which judges regularly give to juries, instructing the jurors that they are to take any evidence of these traits into consideration when assessing the credibility of the witnesses.

I would hope that it is a mere statement of the obvious for me to posit to you that, all other things being equal, you would be far more inclined to accept at face value the testimony of a disinterested, independent witness to a car accident who was not acquainted with either of the drivers and who had no interest in the outcome, than you would the testimony of the two drivers themselves as they launched accusations and counter-accusations against one another, each blaming the other for causing the accident. For the same reasons, you would assess a witness's testimony quite differently if it turned out that the witness happened to be the brother, sister, or spouse of one of the drivers, than if the witness had no connection whatsoever with either driver and had never met either one of them before. So, too, would you appraise a witness's testimony with greater skepticism if it were brought to your attention that the witness knew one of the drivers from prior dealings with him and had a longstanding personal grudge against him.

By now you should all have figured out that one of the central themes of my defense of Councilor Kennedy is that Ms. Pearson's mean-spirited complaint against her is nothing more than "political payback," motivated by spite, animosity, and resentment over the fact that she (Ms. Pearson) was turned out of office in our last City Council election, along with several other incumbents who were her allies and political soul mates. In the 2019 election, Ms. Pearson received 500 fewer votes than she had in 2017, despite the fact that there was a 10% increase in the overall number of registered voters who cast votes in that election in comparison to the number in 2017. The other incumbents who were swept out of office had an average of about 400 fewer votes each, despite the 10% increase.

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If you are a regular reader of letters to the editor in the Portsmouth Herald, then you know that Ms. Pearson,