



**Vermont Bar Association  
139th Annual Meeting Seminar Materials**

**Workplace Investigations, Part 1 & Part 2**

**October 13, 2017  
Hilton Burlington  
Burlington, VT**

**Speakers:**

**Stephen Ellis, Esq.  
Andrew Manitsky, Esq.  
Jonathan Rose, Esq.  
Eileen Blackwood, Esq.  
Justin St. James, Esq.  
Rick Weber, Elijah Ltd.**

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**Workplace Investigations, Intellectual Property and Employment Law.**

This program is a collaborative project presented by the VBA Labor and Employment and Intellectual Property Law Sections.

**Panel:** Eileen Blackwood, *Burlington City Attorney*

Stephen D. Ellis (Chair, Labor and Employment Law Section), *Ellis Boxer & Blake PLLC*

Andrew Manitsky (Chair, Intellectual Property Law Section), *Lynn, Lynn, Blackman & Manitsky, P.C.*

Jonathan Rose, *Dunkiel Saunders Elliott Raubvogel & Hand, PLLC*

Justin St. James, *Burlington City Attorney's Office*

Rick Weber, *President, Elijah LTD*

**Session One 8:45-10:30**

**Act One**

VTC is a tech company with business in the health care industry, as well as contracts with the U.S. Department of Defense. Glen Gary, a maintenance supervisor, delivers a computer “thumb drive” to Rosie Lopez, director of HR. He says a third shift maintenance technician, Rob Roy, found it on a table in the break room and gave it to him. It rode around in Gary’s pocket for a few days and he looked at it on his computer at home. He didn’t know who to give it to, so he came to HR. Later that day, Lopez plugs the thumb drive into her office computer and it opens to the following:

[VTC Stuff](#)

Lopez decides to send the files to the company’s law department. When she arrives home that evening, she realizes that she left the thumb drive in her computer without sending it, so she logs in to her work computer with her phone and sends the files on the thumb drive to the law department’s general email address, [legal@vtc.com](mailto:legal@vtc.com), as attachments to an email marked “High Priority” with the subject “Confidential.” The next morning, the email is opened by a legal assistant, Larry Boyd, who forwards Lopez’ email to you, a staff attorney in the VTC law department generally assigned to HR matters.

**Act Two:** You open the VTC Stuff file and see that it contains four subfolders: Client Dox, Legal, Personal, and VTC. Intrigued, you open the “Personal” folder and find that it contains three subfolders, named “Ideas,” “Nancy,” and “Pix.” The “Nancy” folder contains a series of emails between two company engineers, Nancy Drew and Tom Hardy, the most recent of which indicate that the two have been having a secret affair which Drew has been trying to end in order to save her marriage. The “Pix” folder contains what appear to be candid photos of Drew getting out of a car, shopping, playing tennis, and sitting at a table in a restaurant with a male companion. The “Ideas” folder contains five subfolders, “Cover letter,” “Inventions,” “Marketing,” “My Novel,” and “Resume.”

You open the “Client Dox” folder, and find that it contains two documents, one entitled “A-Plus Specifications” and the other “Master Customer List.”

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The “Legal” folder contains a document entitled “Notes” which contains a link to “The Whistleblower Law Firm,” and copy of an “OSHA Manual”.

The “VTC” folder contains four documents: Business Plans, Logos, Marketing Materials, and Source Code.

**Session Two: 10:45-12:30**

**Act Three:** You call your boss, Edie Cornflower, V.P., Strategic Compliance and Director, Legal Affairs, who answers from her cell phone. She says she is with VTC’s CFO, Hank Hornblauer and some “procurement guys,” and she is about to tee off so you need to “make it quick.” You give her a brief overview of the situation, and she instructs you to “handle it.”

**Act Four:** You have engaged Overbrook & Woods LLP, a law firm you have worked with before in defending a wrongful discharge case against VTC, to investigate. You get a call from an Overbrook associate, Jane Goodman, who asks you to get the thumb drive from Lopez and put it in a safe place. When you call Lopez to ask for the thumb drive, she tells you that she just got call from Hardy who claims that Drew has been creating a hostile environment for him and he thinks she has hacked into his computer and may be trying to “set him up.” She also reports that Hardy made a statement to the effect that he has observed “a lot of females doing really well” and wondered if there is still a place at VTC for “guys like me.” You report this to Goodman. She instructs you to place Drew and Hardy on paid administrative leave effective immediately and to cut off their access to the company’s facilities and computers pending the outcome of the investigation. She asks you to provide her “forensic guy” with access to the VTC email accounts and computer files used by Gary, Lopez, Roy, Drew and Hardy. She also wants you to provide her with access to their personnel files, as well as their company computers and devices, and to schedule their interviews after getting them to sign a confidentiality and nondisclosure agreement. Goodman says she just got a call from Hornblauer, who told her that VTC “might have an OSHA problem” and he wants the issue to be “buried” even if “somebody has to be paid.” She tells you that she assured him that Overbrook will do its best to get to the bottom of this and make sure VTC’s interests are protected. You contact Lopez and ask her to place Drew and Hardy on paid leave and to work with Goodman and give her whatever she needs for her investigation. Lopez tells you she just received a voice mail message from an attorney, Rhona Rhymes, who says she represents Hardy in connection with his hostile environment claim.