Rhode Island Bar Journal

Rhode Island Bar Association Volume 61. Number 5. **March/April 2013**

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Remembering Chief Justice Weisberger

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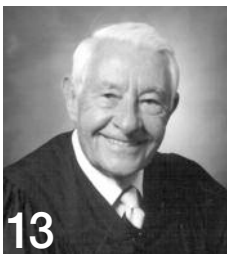

Articles

Features

RHODE ISLAND Bar Association 1898

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RHODE ISLAND BAR ASSOCIATION LAWYER'S PLEDGE

As a member of the Rhode Island Bar Association, I pledge to conduct myself in a manner that will reflect honor upon the legal profession. I will treat all participants in the legal process with civility. In every aspect of my practice, I will be honest, courteous and fair.

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Let's make our mothers proud!

Michael R. McElroy, Esq.
President
Rhode Island Bar Association

Today we are facing a crisis. Many Rhode Islanders are in dire need of legal services and simply cannot afford them.

When I was growing up, my mother repeatedly told the following story. When she was a teenager planning to get married, she was persuaded by a salesman to sign a contract to buy a matching set of plates, cups, saucers, silverware, and other items. New pieces arrived monthly, and she was billed. She did not understand that she had agreed to a continuing monthly commitment. She could not afford to pay for the new pieces that just kept coming. She went to West Warwick attorney Robert J. Harrop. She had no money to pay him and he knew that. However, he wrote a lawyer's letter to the company. He explained that my mother was not of legal age when she signed the contract, and the contract was, therefore, unenforceable. The new pieces and the billings stopped. My mother was eternally grateful, not just because she was relieved of this burden, but because she was unable to pay attorney Harrop, and, without making her feel embarrassed, he did not charge her. This positive experience is one of the reasons I became a lawyer.

Today we are facing a crisis. Many Rhode Islanders are in dire need of legal services and simply cannot afford them. This crisis was created by a perfect storm of events. We continue to experience the most serious recession since the Great Depression. We have nearly the highest unemployment rate in the country. Many who are employed have seen their compensation reduced. Others are living on unemployment compensation or barely surviving on meager, government benefits.

People are being foreclosed out of their homes. Tenants are being evicted who cannot afford to pay rent. People overwhelmed by debt need to file for bankruptcy. Help is needed against aggressive debt collectors. Families under financial stress often break up, resulting in the need for family court assistance. Many people need assistance obtaining access to government benefits. This list goes on and on, growing longer by the day.

Our Bar Association has a number of programs designed to assist with the legal needs of the poor, but funding for our programs has been drastically reduced in recent years as a direct result of our economic crisis. Much of that funding came from the Interest on Lawyers Trust Account (IOLTA) program. But those funds have been dramatically cut because the poor economy has greatly reduced real estate closings, and interest rates have fallen to essentially zero.

The need is so great for all *pro bono* services that, at times, the Bar Association must close intake. We have had to take on overload from Rhode Island Legal Services, which is at crisis stage. As I write this, our family law intake is temporarily closed to focus on placements, while our bankruptcy, collections and housing issues remain at the highest level we have seen for years.

While I am proud to say that Rhode Island lawyers have one of the highest volunteerism rates, we have suffered funding reductions of over 50% for our volunteer programs and we need more help.

Last year, the Bar Association fielded approximately 14,000 calls. Those calls resulted in the placement of 1,725 persons in *pro bono* programs through the Volunteer Lawyer Program (VLP), the Military *pro bono* program, and the Elderly *pro bono* program. Another 3,146 were placed in reduced fee programs.

We have over 6,000 lawyers admitted to practice in Rhode Island.

Rule 6.1 of the Rules of Professional Conduct provides in part:

> "Every lawyer has a professional responsibility to provide legal services to those unable to pay. A lawyer should aspire to render at least (50) hours of *pro bono publico* legal services per year."

The commentary to the Rule makes it clear that:

> "Every lawyer, regardless of professional prominence or professional work load, has a responsibility to provide legal services to those unable to pay, and personal involvement in the problems of the disadvantaged can be one of the most rewarding experiences in the life of a lawyer."

The Bar's Volunteer Lawyer Program (VLP) is designed so that if you sign up to take a mat-

ter in an area that you are unfamiliar with, you will be assigned a mentor to assist you. This is also a great way to expand your practice into a new area.

We currently are faced with not only a tsunami of need, but a drought of resources. Our members have always risen to the occasion whenever our state has experienced disasters, such as floods, the Station Nightclub fire, and storms. You have offered your services selflessly and quickly.

For those of you who have already stepped up to the plate and continue to do so, I say, from the bottom of my heart, thank you. My mother would be very proud of you. For those of you who have not yet volunteered, please call our Bar's Public Services Director, Susan Fontaine, at 421-5740, ext. 101, and tell her you are prepared to take just one *pro bono* case. It could be the most rewarding call you will ever make. And it will make your mother very proud! ❖

RHODE ISLAND BAR JOURNAL

Editorial Statement

The Rhode Island Bar Journal is the Rhode Island Bar Association's official magazine for Rhode Island attorneys, judges and others interested in Rhode Island law. The *Bar Journal* is a paid, subscription magazine published bi-monthly, six times annually and sent to, among others, all practicing attorneys and sitting judges, in Rhode Island. This constitutes an audience of over 6,000 individuals. Covering issues of relevance and providing updates on events, programs and meetings, the *Rhode Island Bar Journal* is a magazine that is read on arrival and, most often, kept for future reference. The *Bar Journal* publishes scholarly discourses, commentary on the law and Bar activities, and articles on the administration of justice. While the *Journal* is a serious magazine, our articles are not dull or somber. We strive to publish a topical, thought-provoking magazine that addresses issues of interest to significant segments of the Bar. We aim to publish a magazine that is read, quoted and retained. The *Bar Journal* encourages the free expression of ideas by Rhode Island Bar members. The *Bar Journal* assumes no responsibility for opinions, statements and facts in signed articles, except to the extent that, by publication, the subject matter merits attention. The opinions expressed in editorials represent the views of at least two-thirds of the Editorial Board, and they are not the official view of the Rhode Island Bar Association. Letters to the Editors are welcome.

Article Selection Criteria

- The *Rhode Island Bar Journal* gives primary preference to original articles, written expressly for first publication in the *Bar Journal*, by members of the Rhode Island Bar Association. The *Bar Journal* does not accept unsolicited articles from individuals who are not members of the Rhode Island Bar Association. Articles previously appearing in other publications are not accepted.
- All submitted articles are subject to the Journal's editors' approval, and they reserve the right to edit or reject any articles and article titles submitted for publication.
- Selection for publication is based on the article's relevance to our readers, determined by content and timeliness. Articles appealing to the widest range of interests are particularly appreciated. However, commentaries dealing with more specific areas of law are given equally serious consideration.
- Preferred format includes: a clearly presented statement of purpose and/or thesis in the introduction; supporting evidence or arguments in the body; and a summary conclusion.
- Citations conform to the Uniform System of Citation
- Maximum article size is approximately 3,500 words. However, shorter articles are preferred.
- While authors may be asked to edit articles themselves, the editors reserve the right to edit pieces for legal size, presentation and grammar.
- Articles are accepted for review on a rolling basis. Meeting the criteria noted above does not guarantee publication. Articles are selected and published at the discretion of the editors.
- Submissions are preferred in a Microsoft Word format emailed as an attachment or on disc. Hard copy is acceptable, but not recommended.
- Authors are asked to include an identification of their current legal position and a photograph, (headshot) preferably in a jpg file of, at least, 350 d.p.i., with their article submission.

Direct inquiries and send articles and author's photographs for publication consideration to:
Rhode Island Bar Journal Editor Frederick D. Massie
email: **fmassie@ribar.com**
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6th Amendment's Confrontation Clause Evolution

Robert H. Humphrey, Esq.
Law Offices of Robert H. Humphrey

Kimberly A. Petta, Esq.
Associate, Law Offices of Robert H. Humphrey

Although not automatically excluded by the confrontation clause, the 6th Amendment right usually trumps the use of hearsay evidence.

The 6th Amendment guarantees the defendant's fundamental right to confront the witnesses against him or her in all criminal prosecutions. This right is applicable through the 14th Amendment Due Process Clause.[1] The defendant's opportunity to cross-examine witnesses is a cornerstone of all criminal defenses and the primary purpose of the right of confrontation. Therefore, out-of-court statements must not deny criminal defendants this right. The 6th Amendment to the United States Constitution states:

> In all criminal prosecutions, the accused shall enjoy the right … to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense.[2]

The rights protections of the 6th Amendment are applicable to the States through the 14th Amendment, and the Rhode Island Constitution has a comparable provision in Article I, Section 10, which states:

> Rights of accused persons in criminal proceedings. – In all criminal prosecutions, accused persons shall enjoy the right… to be confronted with the witnesses against them, to have compulsory process for obtaining them in their favor, to have the assistance of counsel in their defense, and shall be at liberty to speak for themselves; nor shall they be deprived of life, liberty, or property, unless by the judgment of their peers or the law of the land.[3]

In certain criminal cases, a balance must be developed between the criminal defendant's right of confrontation and the use of hearsay evidence by the introduction of out-of-court statements. Although all hearsay evidence is not automatically excluded by the confrontation clause, the 6th Amendment right usually trumps the use of hearsay evidence.

In several cases, the U.S. Supreme Court has analyzed the relationship between the confrontation clause and the use of hearsay evidence. In **Ohio v. Roberts**,[4] the Court held "[i]n sum, when a hearsay declarant is not present for cross-examination at trial, the Confrontation Clause normally requires a showing that he is unavailable. Even then, his statement is admissible only if it bears adequate 'indicia of reliability.' Reliability can be inferred without more in a case where the evidence falls within a firmly rooted hearsay exception. In other cases, the evidence must be excluded, at least absent a showing of particularized guarantees of trustworthiness."[5]

However, the "reliability" standard established in **Ohio v. Roberts**, was overturned by the Court in **Crawford v. Washington**[6] where the Court held that the confrontation clause permits the admission of "testimonial statements of witnesses absent from trial… only where the declarant is unavailable and only where the defendant has had a prior opportunity to cross-examine."[7]

During the trial for attempted murder and assault, the defendant's wife's statements made during police interrogation were recorded and introduced at trial after a finding that the statements were trustworthy and reliable. The defendant's conviction was overturned by the U.S. Supreme Court which held that the admission of the statements were in violation of the defendant's right to confrontation and to cross-examine witnesses against him. The statements were testimonial, and their reliability could only be ascertained through confrontation. The Court concluded that the language of the confrontation clause applies to witnesses who made statements to police officers during interrogation and that those statements are testimonial. If such statements are testimonial, they are only admissible when a defendant has had a prior opportunity to cross-examine the unavailable witness regarding his/her statements. "To be sure, the Clause's ultimate goal is to ensure reliability of evidence, but it is a procedural, rather than a substantive, guarantee. It commands not that evidence be reliable, but that reliability be assessed in a particular manner: by testing in the crucible of cross-examination."[8] In **Crawford**, the Court declined to fully define what statements are testimonial. Instead "[w]here testimonial evidence is at issue, however, the Sixth Amendment demands what the common law

required: unavailability and a prior opportunity for cross-examination. We leave for another day any effort to spell out a comprehensive definition of 'testimonial.' Whatever else the term covers, it applies at a minimum to prior testimony at a preliminary hearing, before a grand jury, or at a former trial; and to police interrogations."[9]

In the cases of **Davis v. Washington**,[10] **Hammon v. Indiana**,[11] and **Michigan v. Bryant**,[12] the U.S. Supreme Court had an opportunity to interpret the definition of "testimonial" left open in its holding in **Crawford**. In **Davis** and **Hammon**, a tandem decision, the Court attempted to determine when statements made to law enforcement personnel during a 911 call or at a crime scene are "testimonial" and thus subject to the requirements of the confrontation clause. In **Davis**, the defendant's conviction was upheld because the Court held that "[s]tatements are nontestimonial when made in the course of police interrogation under circumstances objectively indicating that the primary purpose of the interrogation is to enable police assistance to meet an ongoing emergency. They are testimonial when the circumstances objectively indicate that there is no such ongoing emergency, and that the primary purpose of the interrogation is to establish or prove past events potentially relevant to later criminal prosecution."[13] Therefore, the 911 calls from the defendant's girlfriend/victim were properly admitted into evidence at trial to identify the defendant as the perpetrator despite the absence of the girlfriend/victim at trial. In contrast, the affidavit prepared by the wife/victim after the police responded to a reported domestic disturbance in **Hammon's** case was improperly admitted into evidence because the affidavit was testimonial and not part of an ongoing emergency.[14]

In **Michigan v. Bryant**, the police responded to a gas station after reports of a gunshot. The victim made statements to the police officers about the person who shot him. The victim died and the defendant was charged and convicted of second degree murder. The U.S. Supreme Court reinstated the defendant's conviction because the statements to police were non-testimonial because they were made as part of an ongoing emergency. The Court attempted to clarify what it meant by "the primary purpose of the interrogation is to enable police assistance

to meet an ongoing emergency."[15] The Court reasoned, "[t]he existence of an ongoing emergency is relevant to determining the primary purpose of the interrogation because any emergency focuses the participants on something other than 'prov[ing] past events potentially relevant to later criminal prosecution.' Rather, it focuses them on 'end[ing] a threatening situation.'"[16]

More recently, in **Melendez-Diaz v. Massachusetts**[17] and **Bullcoming v. New Mexico**,[18] the U.S. Supreme Court overturned petitioners' convictions in a drug case and drunk driving case, respectively. In **Melendez-Diaz**, the prosecution, during a state court drug trial, "introduced certificates of state laboratory analysts stating that material seized by police and connected to petitioner was cocaine of a certain quantity. As required by Massachusetts law, the certificates were sworn to before a notary public and were submitted as *prima facie* evidence of what they asserted. Petitioner objected, asserting that **Crawford**…required the analyst to testify in person. The trial court disagreed, the certificates were admitted and petitioner was convicted. The Massachusetts Appeals Court affirmed, rejecting petitioner's claim that the certificates' admission violated the Sixth Amendment."[19] However, the U.S. Supreme Court held the following:

> "admission of certificates violated petitioner's Sixth Amendment right to confront the witnesses against him. Under *Crawford*, a witness's testimony against a defendant is inadmissible unless the witness appears at trial or, if the witness is unavailable, the defendant had a prior opportunity for cross-examination. The certificates here are affidavits, which fall within the 'core class of testimonial statements' covered by the Confrontation Clause. They asserted that the substance found in petitioner's possession was, as the prosecution claimed, cocaine of a certain weight – the precise testimony the analysts would be expected to provide if called at trial. Not only were the certificates made, as *Crawford* required for testimonial statements, 'under circumstances which would lead an objective witness reasonably to believe that the statement would be available for use at a later trial,' but under the relevant Massachusetts law their *sole purpose* was to provide

prima facie evidence of the substance's composition, quality, and net weight. Petitioner was entitled to 'be confronted with' the person giving this testimony at trial."[20]

In **Bullcoming**, the U.S. Supreme Court overturned the petitioner's conviction for driving while intoxicated based on a forensic laboratory report certifying that his blood alcohol readings were above the legal limit. The blood sample had been tested at the state laboratory by a forensic analyst who completed, signed, and certified the report. However, the prosecution never called the analyst to testify or stated why the analyst was unavailable. Instead, the prosecution had another analyst, who validated the report, testify at trial. The analyst at trial testified about the testing device used to analyze the defendant's blood and the laboratory testing procedures. However, the testifying analyst had not participated in or observed the testing of the blood sample in question. The Court held that "surrogate testimony of that order does not meet the constitutional requirement. The accused's right is to be confronted with the analyst who made the certification, unless that analyst is unavailable at trial, and the accused had an opportunity, pretrial, to cross-examine that particular scientist."[21]

Most recently, in **Williams v. Illinois**,[22] the U.S. Supreme Court, in a follow-up to its holdings in **Melendez-Diaz** and **Bullcoming**, ruled that the confrontation clause does *not* preclude an expert witness from testifying about the results of testing performed by a non-testifying analyst where the actual report itself is never introduced. In **Williams**, the defendant was convicted of aggravated criminal assault. During the trial, a forensic specialist from the state crime laboratory testified that the defendant's DNA matched a sample of semen found on the victim. An out-of-state laboratory actually tested the sample and produced the DNA profile that the specialist used to make the match. The lab report from the out-of-state laboratory was never admitted into evidence. In a split decision, the Court held "this form of expert testimony does not violate the Confrontation Clause because that provision has no application to out-of-court statements that are not offered to prove the truth of the matter asserted."[23] As a result, because the statements were not hearsay, the confrontation

clause did not apply. The Court further held "[out]-of-court statements that are related by the expert solely for the purpose of explaining the assumptions on which that opinion rests are not offered for their truth and thus fall outside the scope of the Confrontation Clause."[24]

The U.S. Supreme Court's holdings in **Melendez-Diaz** and **Bullcoming** demonstrates that the Court is adamant in protecting the criminal defendant's 6th Amendment right of confrontation even when it involves laboratory reports in drunk driving and drug cases. However, the recent **Williams** decision is also a clear indicator that the scope of the confrontation clause is continuing to evolve.[25]

ENDNOTES

1 ***Pointer v. Texas**, 380 U.S. 400 (1965).*
2 *U.S. CONST. amend. VI.*
3 *R.I. CONST. art. 1, § 10.*
4 ***Ohio v. Roberts**, 448 U.S. 56 (1980).*
5 ***Id.** at 66.*
6 ***Crawford v. Washington,** 541 U.S. 36 (2004).*
1 ***Id.** at 59.*
1 ***Id.** at 61.*
1 ***Id.** at 68.*
10 ***Davis v. Washington**, 547 U.S. 813 (2006).*
11 ***Hammon v. Indiana**, 547 U.S. 813 (2006).*
12 ***Michigan v. Bryant**, 131 S.Ct. 1143 (2011).*
13 ***Davis** at 822.*
14 ***Hammon** at 832.*
15 ***Davis** at 822.*
16 ***Michigan** at 1157.*
17 ***Melendez-Diaz v. Massachusetts**, 129 S.Ct. 2527 (2009).*
18 ***Bullcoming v. New Mexico**, 131 S. Ct. 2705 (2011).*
19 ***Melendez-Diaz** at 2529.*
20 ***Id.** (Citations omitted). After **Melendez-Diaz** there was the case of **Briscoe v. Virginia**, 130 S.Ct. 1316 (2010), wherein the Court vacated the judgment for "further proceedings not inconsistent with the opinion in **Melendez-Diaz v. Massachusetts**." **Briscoe** at 1.*
21 ***Bullcoming** at 2710.*
22 ***Williams v. Illinois**, 132 S.Ct. 2221 (2012).*
23 ***Williams** at 2228.*
24 ***Id.***
25 *The authors express their appreciation for the assistance of Kathleen Child and Jodi Van Sprang in the preparation of this article.* ❖

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Lunch with Legends:
Trailblazers, Trendsetters and Treasures of the Rhode Island Bar

Matthew R. Plain, Esq. **Elizabeth R. Merritt, Esq.**
Taylor Duane Barton & Gilman, LLP, Providence

Lauren Jones' meeting with Roger Baldwin, one of the co-founders of the American Civil Liberties Union (ACLU), during his senior year of high school, catalyzed Lauren's interest in pursuing a legal career. Following high school, and shortly after enjoying a little music and peace at Woodstock in 1969, Lauren set out for the University of Michigan, where he majored in History, graduating in 1973. He spent summers working in automobile factories, and was a probationary member of the United Auto Workers labor union. Following graduation, he worked for the radical *Ann Arbor Sun* for a year, and then entered Duke University School of Law, graduating in 1977. After a nation-wide search for a place to call home, he and his wife came to Rhode Island in 1978. Lauren enrolled in the state's clerkship course and a Rhode Island Bar review course. During the clerkship course, he met Mike Schwartz, a soon-to-be associate of the famed Raul Lovett. Upon Schwartz's recommendation, in 1979, after Lauren gained admission to practice, Lovett hired him to write briefs. After a few years at Lovett & Linder, in 1983, he opened his own practice, "Lauren Jones – Research and Writing Services to the Legal Profession," soon thereafter he formed a partnership with Marty Aisenberg, and then reopened his own practice in 1990. Lauren cites Raul Lovett, Aram Schefrin, Marty Donovan, Ray LaFazia, Joe Kelly, and former Rhode Island Supreme Court Justices Joseph Weisberger and Thomas Kelleher, among his many mentors. He credits his success to luck, hard work, and the people who've worked with him over the years, particularly Rob Thurston. We had the opportunity to sit with one of the state's most prolific legal writers and appellate advocates. Excerpts from our conversation follow.

Lauren E. Jones

What is your most memorable experience from your law practice?

I've had a number of experiences, good and bad, winning and losing cases. Losing cases I thought I should have won. Winning cases I thought I should have lost, and being surprised by outcomes. Most litigation is about money, but in about 1987, I had the experience of handing an infant child back to its mother in a situation where an adoption had been arranged improperly.

What do you think has been the single biggest change to the legal profession since you started practicing law?

It's funny, because ten years ago, my answer would have been the increasing number of women in the practice of law, but that's not my answer today. Today, my answer is the electronic revolution. Email and the internet have changed so many things about how we practice. Today there is less willingness to wait. And, one of the things about practicing law in a litigation context is that the decisions you make have consequences. If you do something too quickly, that you didn't think through and you didn't look around the corner, you may be making a mistake.

What is the best advice you ever received?

Never own a chain saw and don't put money in credit unions.

…And as a lawyer?

Make a telephone call. Don't assume the worst of your opponent, and, if you've got a problem, contact him or her directly.

Would you do it all again?

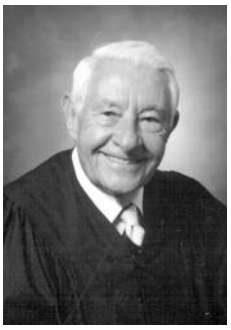
Absolutely. Would I advise anybody else to do it again? Maybe not. It was perfect for me. To this day, when I get to my office, I almost run up the stairs to get in. There's still that excitement of getting to do this again today. And, you know, if you can have joy in your work, it makes the rest of your life a lot easier. I have had my times. Everybody has their moments. But, I've enjoyed the practice immensely.

What advice would you give to new lawyers?

Get balance in your life. Yes, you are going to work hard, but try to keep some balance.

Lauren also encourages new lawyers to find mentors like the "Joe Kellys of this world who will talk to you whenever." New lawyers may find that Lauren, too, fits squarely within this category.

Chief Justice Joseph R. Weisberger:
A REMEMBRANCE



Former Rhode Island Supreme Court Chief Justice Joseph R. Weisberger

We have all experienced the loss of someone we are close to and with whom we wish we had had just one last conversation or communication. This is the letter that I wish I had written to former Chief Justice Joseph R. Weisberger, who died unexpectedly on December 7, 2012.

Dear Chief:

As you come to the conclusion of your long and storied career, I am struck by the fact that you are the single constant in my legal career. When I was sworn in as a member of the bar in October 1978, you were already an associate justice of the Rhode Island Supreme Court, having been sworn in on March of 1978. Remarkably, you have been a constant as well for all but a very few of the lawyers practicing law in Rhode Island today.

Your ascendancy to the Rhode Island Supreme Court came after you had served for some 22 years on the Rhode Island Superior Court, including as the Presiding Justice. I did not know you, or of you, then, but the older lawyers who I came to know told me about your days as a Superior Court trial judge and particularly your skill in bringing parties to settlement. It was not until years later that I understood what they were talking about.

I did find one clue to that earlier time, though. In the wonderful ways of a more traditional time, the *Exercises Incident to Swearing-In Ceremony of Justice Joseph R. Weisberger* are printed at the beginning of volume 119 of the *Rhode Island Reports*, at xix. There is your picture, taken long before I knew you. You, with the confident and assured gaze of a jurist completely comfortable with himself. The direct look at the camera that was just like the look you gave lawyers from the bench and later, when we worked most closely together, parties and attorneys at appellate mediations. Your Superior Court, and soon-to-be Supreme Court, colleague Justice Florence Murray spoke at that ceremony and brought greetings from both the National Conference of State Trial Judges, of which you were then Chairman, and the National College of the State Judiciary, now called the National Judicial College, to which you devoted so much of your professional career. You served on the College faculty for 33 years, bringing your erudition and skills to the benefit of judges throughout the country, not to mention bringing Rhode Island the honor of your service in those organizations. You received countless awards and honors for your commitment to the improvement of the judiciary and the judicial system throughout your career, though, frankly, I don't think those awards and honors ever really mattered to you: what mattered was the commitment and the work.

As my own career as an appellate lawyer took shape, I came to know you as a member of the Supreme Court. Arguing before you on the there was a daunting experience, but not because you were aggressive or ill-tempered. As your son Robert recounts, and I can only second, you never spoke in anger or even irritation, and you did not seem to have a mean bone in your body. I cannot begin to describe the essential sweetness of your disposition. That written, your direct questioning from the bench was always at the heart of the case, digging to the core ques-

tion, always seeking the *right* answer. I saw your persistence in seeking those answers, even as lawyers tried to duck and avoid. I learned early on I had to be completely prepared for every argument, because you would be there, ready to explore the legal and factual issues to their end. And I will never forget, the day, after one particularly difficult argument (for my side), when you stopped me on South Main Street outside the courthouse and, with a big grin on your face, exclaimed, "Wasn't that fun yesterday!" It was that moment that you changed for me, from my perception of you as a difficult adversary to a new understanding of you as a colleague of the law, enjoying the process and experience as much as I was, albeit from the other side of the bench.

During your time as justice on the Supreme Court you wrote more than 700 opinions. It is a huge body of work, covering all areas of law, far too extensive for me to do justice to in a few short paragraphs, but a few of my favorites stand out:

- **In re Advisory Opinion to the Governor** (*Rhode Island Ethics Commission–Separation of Powers*), 732 A.2d 55 (R.I. 1999), where your majority opinion upheld the then-constitutional power of the legislature to appoint members of boards and commissions and legislators to sit on them, while conveniently setting the stage for constitutional change by describing Rhode Island's political history as "a quintessential system of parliamentary supremacy."
- **State v. DiPrete**, 710 A.2d 1266 (R.I. 1998), where your opinion reinstated bribery and extortion charges against a former Republican governor.
- **State v. Quattrocchi**, 681 A.2d 879 (R.I. 1996), where your majority opinion required the trial court to act as gatekeeper and verify a scientific basis for "flashbacks and repressed recollection" evidence.
- **Truk Away of Rhode Island, Inc. v. Macera Bros. of Cranston, Inc.**, 643 A.2d 811 (R.I. 1994), where you wrote in a municipal bid-challenge case that "government by injunction save in the most compelling and unusual circumstances is to be strictly avoided."
- **Security Pacific Credit (Hong Kong) Ltd. v. Lau King Jan**, 517 A.2d 1035 (R.I. 1986), where your opinion vacated

a default, emphasizing not only the "liberal interpretation" of Rule 55, but adopting a rule that resolves doubts in favor of vacating a default.

- **Milardo v. Coastal Resources Management Council of Rhode Island**, 434 A.2d 266 (R.I. 1981), where your opinion upheld the legislature's delegation of power to the Coastal Resources Management Council.
- **Albertson v. Leca**, 447 A.2d 383 (R.I. 1982), where your opinion outlined the history of the protection of property rights, reiterated the historic perspective that "our law has strongly disfavored forfeitures of real property," and established that the only basis for the superior court to deny a landowner the right of redemption after a tax sale is financial inability.
- **Pulawski v. Pulawski**, 463 A.2d 151 (R.I. 1983), where your opinion established in Rhode Island that when a party in a civil case refuses to testify about certain matters on the basis of the Fifth Amendment, the finder of fact is entitled to draw adverse inferences against that party, and the court may sanction that party, including denial of affirmative relief.

Your dedication to the Rhode Island judicial system cannot be understated. I was impressed beyond measure when, in the early 1990s, rather than retiring from the Supreme Court and taking the position offered to you as mediator for the Court of Appeals for the First Circuit, you instead accepted the position as Chief Justice and preserved the Court's reputation at a time when it was teetering on the edge of scandals. And, you took it to a new level when you retired as Chief Justice, but then stepped right in as Chief Mediator for the Supreme Court's mediation program, where you continued to have great impact mediating cases into your 90s. In those years, I finally saw, first hand, your skill at bringing parties together, assessing the relative merits of the parties' positions, and gracefully guiding them to an agreed resolution. Your patience — the essential characteristic of judicial temperament — was extraordinary, and your care for the litigants and your desire to help them resolve difficult cases was clear. No one who attended a mediation session with you could ever come away with a feeling that you did not have all the time necessary to address the parties' concerns and to give

the parties the space they needed to find the way to settle their cases.

During the year that I was President of the Bar, while you were still Chief Justice, there were a number of state and national initiatives we worked on, and I got to know you and Sylvia personally, as we went to various functions here and outside of Rhode Island. It was a wonderful year and a wonderful experience, made all the better by the time I got to spend with you, not focusing on legal matters, but discussing all manner of topics, legal, political, and personal. You made it easy for me (and others, before and after me) to serve as Bar President, always looking to help, never demanding control and always open to new ideas, never shutting the door on any opportunity to improve the legal system for litigants and lawyers alike.

I'm sure there was a time when you considered retiring, not taking on anything more, but it was not really part of your character: you had to be working at something, and you never stopped. You continued to prepare the Impact Decisions for the Bar Association Annual Meeting, even when you could no longer attend the meetings. It was heartening to see you, still coming regularly to the courthouse, even as your health declined.

At some point your colleagues on the bench will have far more to say than I about your life and legacy. For now, I come back to this: you have been the single constant in the Rhode Island legal universe for so long, I think we all think you will be there forever. And, in many ways, you will be.

Sincerely,

Lauren E. Jones, Esq.

Editor's Note: *Lauren Jones practices from Jones Associates in Providence. He was the Rhode Island Bar Association President in 1998-1999.*

Deducting the Cost of Life in a Retirement Community

Marc J. Soss, Esq.
Licensed in Florida,
Connecticut & Rhode Island

The benefit of a CCRC is that when a resident's health and personal care needs become more acute, they are not forced to move to a new facility, as their level of service can be increased to include assisted living, long-term care and skilled nursing care.

Many individuals in our aging population are transitioning from home ownership to life in a continuing care retirement community (CCRC). To enter a CCRC, an individual will pay a one-time entry fee and ongoing monthly charges for housing and services (meal plans, housekeeping, transportation, and social and recreational activities). The benefit of a CCRC is that when a resident's health and personal care needs become more acute, they are not forced to move to a new facility, as their level of service can be increased to include assisted living, long-term care and skilled nursing care.

Although the costs of a CCRC can be substantial, a percentage of the costs can be deducted as a medical expense income tax deduction either by the individual or third party if they are providing more than half of the resident's support.

Supporting Tax Law:

Section 213(a) of the Internal Revenue Code (IRC) allows as a deduction any expenses that are paid during the taxable year for the medical care of the taxpayer, his or her spouse, and dependents who are not compensated by insurance or otherwise. **Estate of Smith v. Commissioner**, 79 T.C. 313, 318 (1982). The deduction is allowed only to the extent the amount exceeds 7.5 percent of adjusted gross income. Sec. 213(a); sec. 1.213-1(a)(3), Income Tax Regs. For purposes of Sec. 213 the term "medical care" includes amounts paid "for the diagnosis, cure, mitigation, treatment or prevention of disease, or for the purpose of affecting any structure or function of the body."

Support for the medical expense deduction is derived from the 2004 U.S. Tax Court decision of **Delbert L. Baker v. Commissioner**, 122 TC 143, 2004. In **Baker**, the taxpayers resided in an upscale California CCRC. On their income tax returns, the Bakers claimed medical expense deductions equal to about 27% of their first-year entry fee and about 40% of their monthly fees. The IRS denied a large percentage of the Baker's claimed deductions, and the couple took the case to the Tax Court and mostly won, losing only with respect to their attempt to claim medical deductions for expenses allocable to the CCRC's swimming pool, spa, and gym.[1] The Tax Court ruled that the amount of CCRC fees that can be treated as medical expenses for tax purposes depends only upon the CCRC's aggregate medical expenditures in relation to its overall expenditures or overall revenue from fees paid by its residents.

Over the past forty-five years, the Internal Revenue Service (IRS) has issued numerous Revenue Rulings pertaining to the issue of whether the portion of a monthly fee paid by individuals in connection with their residence at a retirement home under a lifetime care contract was deductible by the individuals as an expense for medical care under section 213.[2] In each ruling, the individual was able to substantiate their argument that a portion of the monthly fee was for costs of providing medical care, medicine, and hospitalization.

Types of CCRC's and Calculation of Medical Expense Deduction:

There are three basic types of CCRCs, each categorized by the amount of healthcare covered in the resident agreement and how and when the resident pays for the healthcare. The categories are: Type A (extensive contract), Type B (modified contract), and Types C and D (fee-for-service contracts). The cash outflows associated with these options are entrance fees and monthly fees. The category of the facility will affect the tax consequences for the resident.

The medical expense deduction can be calculated by the percentage method or the actuarial method. While the IRS supports use of the actuarial method based on healthcare utilization and longevity, the Tax Court in **D.L. Baker v. Comm'r**, 122 TC 143 (2004), upheld the use of the percentage method calculated on an allocation percentage based on the number of community residents and the weighted-average monthly service fees. The CCRC is responsible for determining the amount of the entrance fee and the monthly fee that should be allocated to prepaid healthcare.[3]

The definition of the term "chronically ill" will determine the deductibility of a resident's monthly assisted-living fees.[4] Certain tax deduc-

Invitation to Exhibit

Rhode Island Bar Association Annual Meeting June 13 & 14, 2013

Where can you get a two-day exhibitor space at an event attended by over 1,300 attorneys and judges for only **$900**? At the **Rhode Island Bar Association Annual Meeting** on Thursday and Friday, June 13th and 14th, 2013 at the Rhode Island Convention Center in Providence, that's where. And, since requests have traditionally exceeded the supply of available exhibit spaces, immediate applications are encouraged.

Exhibitor space is available in the comfortable and high-visibility area located immediately in front of, and surrounding, the entrances to all Annual Meeting seminar rooms. Serving as the site for all meeting, food and beverage breaks, these are excellent locations for attracting attendee attention. Each space costs $900. This fee includes a draped six-foot table, two chairs and two tickets for all meals, including: Thursday Luncheon Buffet; Thursday Cocktail Party and Annual Dinner; and Friday Awards Luncheon.

Exhibit space is limited, and previous exhibitors receive location preference, but there are still some spaces available. Please note that sending in an application does not guarantee a space, as exhibit spaces are assigned based on availability, and product and service mix. **Completed Exhibit Space Application Contracts are due no later than March 22, 2013**. Exhibit space assignment and confirmation occurs by March 29, 2013. Exhibit payment is due upon space confirmation, but no later than April 5, 2013.

To receive 2013 Annual Meeting Exhibitor Application Forms, please contact the Bar's Director of Communications Frederick Massie by telephone: 401-421-5740 or email: fmassie@ribar.com.

tions are only available if the resident enters a CCRC as a chronically ill individual instead of for basic custodial care. To qualify as chronically ill, an individual must be certified by a licensed healthcare provider as unable to perform (without substantial assistance) at least two "activities of daily living" (eating, toileting, transferring, bathing, dressing, and continence) for at least 90 days due to a loss of functional capacity, or must require substantial supervision for protection due to severe cognitive impairment.

Additional Tax-Planning Opportunities

An individual planning their transition to a CCRC can obtain additional tax planning benefits by timing the payment of their entrance fee and liquidation of their investments to pay the fee. A combination of the tax-deductible portion of the entrance fee and monthly fees attributable to healthcare may result in significant itemized deductions. The deductions may reduce the individual's taxable income to a level that will result in their capital gains and qualifying dividends being taxed at the lower rate (5% instead of 15%).

Conclusion

The portion of both an individual's entrance fee and monthly fee, which are paid in return for being provided medical care, are a deductible expense in the year paid. The expense will be allowed only to the extent the amount exceeds 7.5 percent of the individual's adjusted gross income, as prescribed in IRC Section 213.

ENDNOTES

1 *These types of expenses are only deductible if they are necessary for a specific medical condition or illness. Expenses that simply promote general health and fitness cannot be deducted as medical costs.*

2 *Rev. Rul. 67-185, 1967-1 C.B. 70, Rev. Rul. 75-302, 1975-2 C.B. 86, and Rev. Rul. 76-481, 1976-2 C.B. 82.*

3 *For purposes of the computation of the ratio of medical to total expenses, the medical expenses include salaries of the Medical Center staff, incidental medication and supplies, the proportionate amount attributable to the provision of medical care of housekeeping, maintenance, utilities, administrative and marketing costs, interest on indebtedness, real estate taxes and depreciation of the nursing facility.*

4 *IRC Section 7702B(c) and Notice 97-31.* ❖

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March 5
Tuesday
Voir Dire: Techniques for Success
RI Law Center, Providence
3:00 p.m. – 5:00 p.m., 1.5 credits + .5 ethics

March 7
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Food For Thought
Protecting Client Data
RI Law Center, Providence
12:45 p.m. – 1:45 p.m., 1.0 ethics

March 12
Tuesday
Food For Thought
Protecting Client Data
Holiday Inn, South Kingstown
12:45 p.m. – 1:45 p.m., 1.0 ethics

March 13
Wednesday
Family Law Litigation
Beyond the Basics, A VLP seminar series
Domestic Violence Representation
RI Law Center, Providence
4:00 p.m. – 6:00 p.m., 1.5 credits + .5 ethics

March 14
Thursday
Effectively Representing Your Client in Mediation
RI Law Center, Providence
2:00 p.m. – 5:00 p.m., 2.5 credits + .5 ethics

March 21
Thursday
Food For Thought
Apps For Attorneys
RI Law Center, Providence
12:45 p.m. – 1:45 p.m., 1.0 credit
Also available as a ***LIVE WEBCAST***

April 3
Wednesday
RI Construction Law Practice
RI Law Center, Providence
2:00 p.m. – 5:00 p.m., 3.0 credits

April 4
Thursday
Food For Thought
Recent Developments in RI Business Law
RI Law Center, Providence
12:45 p.m. – 1:45 p.m., 1.0 credit

April 10
Wednesday
Family Law Litigation
Beyond the Basics, A VLP seminar series
Equitable Distribution Determination
RI Law Center, Providence
4:00 p.m. – 6:00 p.m., 1.5 credits + .5 ethics

April 11
Thursday
Food For Thought
Using Discovery Strategically – Part 2
RI Law Center, Providence
12:45 p.m. – 1:45 p.m., 1.0 credit
Also available as a ***LIVE WEBCAST***

April 24
Wednesday
Food For Thought
Recent Developments in RI Business Law
Holiday Inn Express, Middletown
12:45 p.m. – 1:45 p.m., 1.0 credit

April 25
Thursday
When Seniors Divorce
TBA

May 8
Wednesday
Family Law Litigation
Beyond the Basics, A VLP seminar series
Vital Aspects of Custody Placement & Visitation
RI Law Center, Providence
4:00 p.m. – 6:00 p.m., 1.5 credits + .5 ethics

Times and dates subject to change.
For updated information go to www.ribar.com

NOTE: You must register on-line for live webcasts.

REMINDER
MCLE Annual Reporting Requirements

Active Rhode Island attorneys must now report MCLE credits electronically through the Supreme Court's Attorney Portal located at www.courts.ri.gov. Use your RI attorney ID number to create your account.

Credits may be stored and submitted at any time during the CLE year – July 1-June 30 – rather than waiting until June 30.

If you have questions about this new requirement, please call the MCLE Commission at 401-222-4942.

— SAVE THE DATE —

2013 ANNUAL MEETING

June 13 & 14 – Providence

Reminder: Bar members may complete three credits through participation in online CLE seminars. To register for an online seminar, go to the Bar's website: **www.ribar.com** and click on CONTINUING LEGAL EDUCATION in the left side menu.

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The Rhode Island Bar Association's unique, Online Attorney Resources (OAR) is exclusively designed to help Bar members receive and offer timely and direct assistance with practice-related questions. OAR provides new and more seasoned Bar members with the names, contact information and Bar admission date of volunteer attorneys who answer questions concerning particular practice areas based on their professional knowledge and experience. Questions handled by OAR volunteers may range from specific court procedures and expectations to current and future opportunities within practice areas.

And, OAR is now available through the MEMBERS ONLY section of the Bar's web site at www.ribar.com!

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OAR TERMS OF USE

Since everyone's time is a limited and precious commodity, all Bar members contacting OAR volunteers must formulate their questions concisely prior to contact, ensuring initial contact takes no longer than 3 to 5 minutes unless mutually-agreed upon by both parties. OAR is not a forum for Bar members to engage other Bar members as unofficial co-counsel in an on-going case. And, as the Rhode Island Bar Association does not and cannot certify attorney expertise in a given practice area, the Bar does not verify any information or advice provided by OAR volunteers.

To review the names and contact information of Bar members serving as Bar volunteers, or sign-up as a volunteer resource, please go to the Bar's website at www.ribar.com, login to the MEMBERS ONLY section and click on the OAR link.

Publish and Prosper in the *Rhode Island Bar Journal*

The Rhode Island Bar Journal is one of the Bar Association's **best means of sharing your knowledge and experience with your colleagues.** Every year, attorney authors offer information and wisdom, through scholarly articles, commentaries, book reviews, and profiles, to over 6,000 subscribers in Rhode Island and around the United States. In addition to sharing valuable insights, **authors are recognized by readers as authorities in their field and, in many cases, receive Continuing Legal Education (CLE) credit for their published pieces.** The *Bar Journal*'s Article Selection Criteria appear on page 4 of every *Bar Journal* and on the Bar's website at www.ribar.com.

Aspiring authors and previous contributors are encouraged to **contact the *Rhode Island Bar Journal*'s Editor Frederick Massie by telephone: (401) 421-5740 or email: fmassie@ribar.com.**

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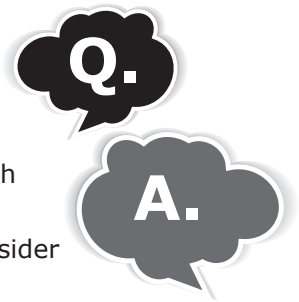


Your Bar Association's new, voluntary, free list serve is now available for all actively practicing Rhode Island attorney members. To date, the list serve has over 280 members, with new sign-ups every day. With this momentum, and active participation on the rise, please consider joining today!

Having a Bar-wide list serve gives you immediate, 24/7, open-door access to the knowledge and experience of hundreds of Rhode Island lawyers, whether you are a solo practitioner or in a firm. If you have a question about matters relating to your practice of law, you can post the question on the List Serve, and it will be emailed to all list serve members. Any attorney who wishes to provide advice or guidance can (and hopefully will) quickly respond.

All you need to do to access to this free member benefit is agree to the Bar list serve rules, which you can access by going to the Bar's website at **www.ribar.com**, click on the **MEMBERS ONLY** link, login using your Bar identification number and password, click on the **List Serve** link, read the terms and conditions, and email the contact at the bottom of the rules.

The more lawyers who join and participate in the list serve, the more valuable it will be, so we encourage all Bar members to seriously consider joining. If, at any time, you want to stop participating in the list serve, you will be able to unsubscribe with a single click.

We hope you find this new member benefit helpful to you in your practice of law. We are especially hoping that this list serve will be of particular benefit to solo and small firm practitioners.

Lawyers Helping Lawyers Book Review

An Unquiet Mind: A Memoir of Moods and Madness

by Kay Redfield Jamison Ph.D.

Genevieve M. Martin, Esq.
Assistant Attorney General
Rhode Island

Many people do not seek treatment due to fear, lack of information, and, among other reasons, the judgments of others.

Someone you have known for years to be on top of her game has been missing deadlines, missing work and seeming to avoid her colleagues and friends. You noticed this same kind of behavior with this colleague months before, but didn't think too much about it then. Perhaps it went unnoticed because you tend to think of this person as usually charismatic, energetic and seemingly unafraid to meet any challenge. Now, though, you are paying more attention and want to help but you don't know what to do. When you consult a fellow colleague who knows this friend as an acquaintance, that person responds "she's just moody and she'll snap out of it soon." If you knew the situation to be so, you might have thought she is manic depressive. Perhaps you might have used the word bipolar to describe her behavior. But you wouldn't have likely said either of these things to anyone else. Why not?

Unfortunately, for some people, the terms manic depressive and depressed may carry a level of social or professional embarrassment. As a result, many people who would use their health insurance to pay for any other treatment would not do so when seeing a mental health therapist or psychiatrist. Instead, they pay cash to avoid the possibility of having a record of their mental health treatment appear in an insurance database. They may also come a bit late for an appointment lest they run into someone they know who is just leaving. People undergoing treatment for these, or another mental health condition, may feel a sense of fear and shame that someone they know, even a client or perhaps a judge before whom they routinely appear, might see them without considering the fact that the other person is there for treatment as well.

Many people do not seek treatment due to fear, lack of information, and, among other reasons, the judgments of others. Yet, with a great sense of courage, Kay Redfield Jamison, Ph.D., a noted Professor of Psychiatry at Johns Hopkins School of Medicine,[1] tells a compelling story of her own journey into madness and back again in *An Unquiet Mind*. "People go mad in idiosyncratic ways," she writes.[2] "For as long as I can remember I was frighteningly, although often wonderfully, beholden to moods. Intensely emotional as a child, mercurial as a young girl, first severely depressed as an adolescent, and then unrelentingly caught up in the cycles of manic-depressive illness by the time I began my personal life, I became, both by necessity and intellectual inclination, a student of moods."[3]

As a teenager, she watched her father experience increasingly dark moods during which he also began drinking heavily, resulting in her fear to come to the breakfast table or come home after school to avoid the interaction. It was not long after this that she began to experience her own spells of seemingly inexhaustible energy, alternating with dark moods. These darker moods did not seem remarkable at the time, perhaps because she shared her darker side with two close friends. Together, they experienced the mania of all night discussions and the darkness in debates over the melancholic writings of authors such as Hesse, Byron, Melville and Hardy.[4] Little did any of them know at the time, but two of them came from families with manic depressive illness and the mother of one of her friends committed suicide.

These dark moods developed into an attack of manic depressive illness when she was eighteen. In their early states, she describes her manias as intoxicating and pleasurable, also giving a seemingly boundless energy to complete tasks she needed to accomplish. At first, she felt like she could do anything. When the mania burned itself out, however, she experienced an inability to think clearly, to concentrate, to follow the lectures in her classes, and her seemingly boundless energy was gone.[5] She was afraid and, repeatedly, her thoughts turned to death. Although she fought to appear normal to those around her, she writes "I knew something was dreadfully wrong, but I had no idea what, and I had been brought up to believe that you kept your problems to yourself."[6] She describes her refusal to seek treatment as a "war that I waged against myself…."[7] She did not want to take medications that she knew could help because they would not only interfere with the exuberant feelings and radiant sensations she experienced with her manias, but also because of the

side effects of the medications, which she found intolerable. The ultimate choice she faced in deciding whether to continue and consistently take lithium was "between madness and sanity, and between life and death."[8]

While she has the good experiences of finding love, she also has to deal with the losses of relationships and the difficult road that those who live with her must walk. She writes of her experiences in her personal relationships, "*[n]o* amount of love can cure madness or unblacken one's dark moods. One can help, it can make the pain more tolerable, but, always, one is beholden to medication that may or may not always work and may or may not be bearable. Madness, on the other hand, most certainly can, and often does, kill love through its mistrustfulness, unrelenting pessimism, discontents, erratic behavior, and, especially, through its savage moods."[9]

We follow Dr. Jamison's path, not only as she completes her studies and seeks the grant of tenure at UCLA and Johns Hopkins, but also through the emotional turmoil she experienced in her personal relationships. Waging war against her illness and her raw emotions over her broken marriage, she struggles to appear normal to her colleagues. As she "lived in terror that someone would find out" how ill she had been and make judgments about her ability to function personally or professionally, she also has to face the dreaded moments when she tells someone close to her about her illness. There is, in each instance, a moment frozen in time when she has to wait to see the reaction and wonder whether it will be hurtful or understanding. These moments come in both her personal and professional lives. Each time she finds herself in a new clinical setting, she understands the need for safeguards to protect her patients as well as the life she has built, so she has to tell someone. She has to give permission to others to speak to her psychiatrist if necessary. She has to face the moment where she applies for privileges to practice and sees the question: *"Are you currently suffering from, or receiving treatment for any disability or illness, including drug or alcohol abuse, that would impair the proper performance of your duties and responsibilities at this hospital?"*[10] She knows the ramifications of not telling the truth. She knows that she could be denied the appointment or be dismissed

from it if she does not tell, so she tells.

But then, *how* does one talk about madness? From a clinical perspective, the words are cold, precise and unfeeling but necessary for purposes of scientific research. From a societal perspective, hurtful words such as bat, loon, one car short of a full train, or other unfeeling characterizations can cause lasting pain and prejudice. While Dr. Jamison talks about the need for "freedom, diversity, wit, and directness of language about abnormal mental states and behavior," she also recognizes that there is a "profound need for a change in public perception about mental illness."[11] As a clinician, and one who suffers from manic depressive illness, Dr. Jamison manages to find the space in between.

Hiding from fear of what others might think and the shame we may feel can result in hiding from and within ourselves, far from treatment that can help. Dr. Jamison relates that it took her "far too long to realize that lost years and relationships cannot be recovered, that damage done to oneself and others cannot always be put right again, and that freedom from the control imposed by medication loses its meaning when the only alternatives are death and insanity."[12] In an inspirational and compelling work, Dr. Jamison brings us hope and a way to survive.

Editor's Note: *This book review is brought to you as a service of the Rhode Island Bar Association's Lawyers Helping Lawyers Committee. Please see page 28 for more information about this Committee's sponsored services for Bar members and their families.*

ENDNOTES

1 *Kay Redfield Jamison, a noted Professor of Psychiatry at the Johns Hopkins University School of Medicine, has also authored other books on manic depressive illness. In addition to* An Unquiet Mind: A Memoir of Moods and Madness, *she is the author of* Touched with Fire: Manic Depressive Illness and the Artistic Temperament; Night Falls Fast: Understanding Suicide; *and* Exuberance: The Passion for Life. *She is also coauthor of the standard medical text on manic depressive illness.*

2 ***Id.*** *at p. 71.*

3 ***Id.*** *at p. 12.*

4 ***Id.*** *at p. 35.*

5 ***Id.*** *at p. 36.*

6 ***Id.*** *at p. 37.*

7 ***Id.*** *at p. 14.*

8 ***Id.*** *at p. 80.*

9 ***Id.*** *at p. 133.*

10 ***Id.*** *at p. 155.*

11 ***Id.*** *at p. 136.*

12 ***Id.*** *at p. 14.* ❖

SOLACE

Helping Bar Members in Times of Need

SOLACE, an acronym for Support of Lawyers, All Concern Encouraged, is a new Rhode Island Bar Association program allowing Bar members to reach out, in a meaningful and compassionate way, to their colleagues. SOLACE communications are through voluntary participation in an email-based network through which Bar members may ask for help, or volunteer to assist others, with medical or other matters.

Issues addressed through SOLACE may range from a need for information about, and assistance with, major medical problems, to recovery from an office fire and from the need for temporary professional space, to help for an out-of-state family member.

The program is quite simple, but the effects are significant. Bar members notify the Bar Association when they need help, or learn of another Bar member with a need, or if they have something to share or donate. Requests for, or offers of, help are screened and then directed through the SOLACE volunteer email network where members may then respond. On a related note, members using SOLACE may request, and be assured of, anonymity for any requests for, or offers of, help.

To sign-up for SOLACE, please go to the Bar's website at **www.ribar.com**, login to the **Members Only** section, scroll down the menu, click on the **SOLACE Program Sign-Up**, and follow the prompts. Signing up includes your name and email address on the Bar's SOLACE network. As our network grows, there will be increased opportunities to help and be helped by your colleagues. And, the SOLACE email list also keeps you informed of what Rhode Island Bar Association members are doing for each other in times of need. These communications provide a reminder that if you have a need, help is only an email away. If you need help, or know another Bar member who does, please contact Executive Director Helen McDonald at hmcdonald@ribar.com or 401.421.5740.

Do you or your family need help with any personal challenges?

We provide free, confidential assistance to Bar members and their families.

Confidential and free help, information, assessment and referral for personal challenges are available *now* for Rhode Island Bar Association members and their families. This no-cost assistance is available through the Bar's contract with **Coastline Employee Assistance Program (EAP)** and through the members of the Bar Association's Lawyers Helping Lawyers (LHL) Committee. To discuss your concerns, or those you may have about a colleague, you may contact a LHL member, or go directly to professionals at Coastline EAP who provide confidential consultation for a wide range of personal concerns including but not limited to: balancing work and family, depression, anxiety, domestic violence, childcare, eldercare, grief, career satisfaction, alcohol and substance abuse, and problem gambling.

When contacting Coastline EAP, please identify yourself as a Rhode Island Bar Association member or family member. A Coastline EAP Consultant will briefly discuss your concerns to determine if your situation needs immediate attention. If not, initial appointments are made within 24 to 48 hours at a location convenient to you. Please contact Coastline EAP by telephone: 401-732-9444 or toll-free: 1-800-445-1195.

Lawyers Helping Lawyers Committee members choose this volunteer assignment because they understand the issues and want to help you find answers and appropriate courses of action. Committee members listen to your concerns, share their experiences, offer advice and support, and keep all information completely confidential.

Please contact us for strictly confidential, free, peer and professional assistance with any personal challenges.

Melody A. Alger Esq.	277-1090
Henry V. Boezi III, Esq.	861-8080
Marcia J. Boyd Esq.	792-7100
David M. Campanella Esq.	273-0200
Sonja L. Deyoe Esq.	864-3244
Kathleen G. Di Muro Esq.	944-3110
Christy B. Durant Esq.	421-7400
Brian D. Fogarty Esq.	821-9945
Merrill J. Friedemann Esq.	270-0070
Julie P. Hamil Esq.	222-3266
Nicholas Trott Long Esq. (Chairperson)	351-5070
Genevieve M. Martin Esq.	274-4400
Joseph R. Miller Esq.	454-5000
Arthur M. Read, II Esq.	739-2020
Roger C. Ross Esq.	723-1122
Adrienne G. Southgate Esq.	301-7823
Carol A. Zangari Esq.	732-1999
Ms. Judith G. Hoffman, LICSW, CEAP, Coastline EAP	732-9444 or 800-445-1195

Lawyers Helping Lawyers Committee Members Protect Your Privacy

Fundamentals of a Bankruptcy Case was the final session of a three-part, Continuing Legal Education series covering the Rhode Island Bankruptcy Court's loss mitigation program. The, series, co-sponsored by the US Bankruptcy Court and the Bar Association's Volunteer Lawyer Program, was offered free of charge to *pro bono* program members and resulted in the placement of over 40 bankruptcy cases for low income citizens. The seminar's speakers, l to r: Thomas D. Carlotto, Esq., Susan M. Thurston, Esq., and Jeffrey T. Dana, Esq.

Remembering Ray LaFazia: A Measure of the Golden Rule

Victoria M. Almeida, Esq.
Adler Pollock & Sheehan
Rhode Island Bar Association Past President

Ray LaFazia's passing reminded me again of how great an influence he was in my personal and professional life. Ray was a quiet unassuming man, a real lawyer's lawyer, a civil gentleman. I have participated in numerous workshops, symposiums and the like and chaired the Civility Workshop on Accountability. For all of the time spent, enthusiastic discussions and contrast debates, for all the experts consulted and/or retained on the subject, the essence of civility, as it relates to our relationships as lawyers with one another, still seems to elude some in our profession. For Ray, civility was easy and natural.

Our profession abounds in nice things which are heard and said. Consider some of the following: "May it please the court"; "Ladies and gentlemen of the jury"; "Your Honor"; "I respectfully submit"; and "The jury is excused, thank you for your deliberation in this matter." How, then, can we account for what is either real or perceived lack of civility? I think the simple premise for civility ought to be fashioned and based upon the Golden Rule – "do unto others as you would have them do unto you." Members of "The Greatest Generation," Ray's generation, who graced our profession, knew that and lived it and were, I believe, successful in large measure because of it. Over two thousand years ago, a good person known today as St. John told those who wanted to learn how to imitate his life to "love one another." That is all he would teach them, day in and day out. Finally, one of his followers (probably a lawyer) complained that he was not teaching them anything new (or billable for that matter). His response was that he would teach them something new when, and if, they got the first teaching right. Sadly, it remained his only teaching to them as they never quite mastered it.

My friend and mentor Ray LaFazia understood and lived that great lesson, and those with whom he came in contact in his professional life cannot help but benefit from his professional life deeply rooted in the Golden Rule. You may be fortunate enough to know a lawyer like my friend, Ray. Most of us have had a Ray in our professional lives and, unfortunately, we sometimes forget them and their lessons rooted in love and civility.

Today, consider the Ray in your lawyering life, and, if you are lucky, and she or he is still around, pick up the telephone or drop a note to that person, thanking them for their example. I remember sending just such a note to my friend Ray, and it prompted a telephone call from him and an invitation to dinner just in time for the Holiday season. What a gift!

In memory of our Ray, I ask you to reconnect with the Ray in your life. Because, as we all know, we did not get to where we are without the help of others. And I hope your Ray serves you as well as Ray LaFazia served me, providing an unforgettable experience in humility and gratitude and fostering civility.

At a recent Bar Continuing Legal Education seminar, speakers Feidlim E. Gill, Esq., from the Rhode Island Attorney General's office and Melissa Larsen, Esq. addressed the Edward O. Hawkins and Thomas C. Slater Medical Marijuana Act. The speakers reviewed the statutory requirements for the medical marijuana patient and caregiver, attempts to establish compassion centers, and the impact of the Act on State prosecutions. They reviewed how the Act is affected by the recent changes in criminal penalties for possession of marijuana. They also discussed some of the unresolved issues relating to the Act and the decriminalization of marijuana. The seminar was presented at the Bar and as a live webcast.

Bar Association Partners with Rhode Island Paralegals on Pro Bono Programs

We are pleased to announce the Rhode Island Bar Association has formed a partnership with the Rhode Island Paralegal Association to provide *pro bono* legal assistance through the Volunteer Lawyer Program, U.S. Armed Forces Legal Services Project and Pro Bono Program for the Elderly. As a member of any of these *pro bono* programs, you will now have the option of requesting paralegal assistance for your case. Please keep this valuable resource in mind when you make a decision to accept your next case. If you are not already a member of a *pro bono* program, please consider joining today, especially in light of the commitment that the Paralegal Association has made to the Bar's *pro bono* efforts. For additional information, contact Susan Fontaine, Public Services Director: sfontaine@ribar.com or 401-421-7758. We wish to acknowledge and thank Kathleen Paul, Rhode Island Paralegal Association's Pro Bono Committee Chairperson, for her hard work in organizing this effort. You may also contact Kathleen: kpaul@legaladvantage-ri.com.

BOOK REVIEW

Business and Commercial Litigation in Federal Courts – Third Edition

Robert L. Haig, Editor-in-Chief

Deming E. Sherman, Esq.

…this edition's 130 chapters (including 34 new chapters) reflect the growth of federal procedural and substantive law and offer a practical guide to all aspects of federal civil practice…

Six years ago I reviewed the second edition of a unique, eight-volume tool for commercial litigators entitled *Business and Commercial Litigation in Federal Courts* published by the American Bar Association (ABA) Section of Litigation and Thompson Reuters (West). Now comes the Third Edition, overseen by Editor-in-Chief Robert L. Haig, Esq, a seasoned New York litigator, that is an impressive improvement on an already first-rate legal resource. Expanded to 11 volumes and 12,742 pages, this edition's 130 chapters (including 34 new chapters) reflect the growth of federal procedural and substantive law and offer a practical guide to all aspects of federal civil practice, from federal jurisdiction to appeals, as well as to substantive areas such as securities and intellectual property. The work does not replace treatises such as *Moore's Federal Practice or Prosser on Torts*. Rather, it is a hybrid designed to aid the practitioner to litigate in the federal courts by combining a treatise on federal practice with summaries of substantive law common in federal litigation. Included with the set is a CD containing electronic forms of the pleadings and jury instructions set forth in the treatise and these may be copied and modified for pending cases.

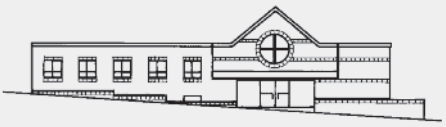
The Editor-in-Chief supervised the contributions of 229 distinguished practitioners throughout the United States and 22 federal judges who authored (or co-authored) the chapters. Authors include such recognizable litigators and judges as David Boies, Benjamin Civiletti and Warren Christopher, and District Judge Shira Scheindlin, well-known for her decisions on electronic discovery (see **Zubulake v. UBS Warburg**). Most of the authors who wrote chapters in the first or second editions carried over to this third edition, so there is both an expansion of previous work and a consistency of quality.

New chapters address a wide range of subjects, including internal investigations, international arbitration, regulatory litigation with the SEC, executive compensation, white collar crime, money laundering, sports and entertainment. The chapters carried over from the prior edition cover key topics relating to business and commercial litigation: procedural; including federal jurisdiction, removal, pleadings, discovery, motions, mediation and arbitration, class actions, multidistrict litigation, trials, and substantive; including antitrust, product liability, commercial real estate, torts of competition and environmental law.

As stated in the Foreword, this treatise is a "step-by-step practice guide that covers every aspect of a commercial case, from the assessment that takes place at the inception through pleadings, discovery, motions, trial, and appeal." This is an accurate statement. Each chapter is designed to assist the practitioner with both theoretical and practical information. The authors address strategic considerations for both plaintiffs and defendants. Importantly, the chapters reflect the authors' insights and examples drawn from real cases. Citations are numerous, but equally important are references to articles, treatises, law reviews, A.L.R. and other resources. The authors devote a number of chapters to the purely practical: case evaluation, drafting a complaint, selecting an expert, ADR and settlements, even litigation avoidance and litigation management for both companies and law firms. Of importance these days is the use of technology in the courtroom and at all stages of litigation, which the authors address as well.

As examples of the blend of the theoretical with the practical that characterizes this treatise, the authors of the chapter on the complaint not only review the technical pleading requirements for filing a complaint under the federal rules, but infuse the chapter with strategic and tactical considerations in drafting the document. Similarly, a separate chapter addresses both the technical and strategic requirements in responding to a complaint by motion or by answer, including affirmative defenses, counterclaims and third-party practice. The chapter on cross-examination not only sets forth the basic rules of cross-examination, but sets forth examples of effective cross-examination both as to lay and expert witnesses.

Likewise, authors of the substantive law chapters on intellectual property not only cover



Rhode Island Bar Foundation

Founded in 1958, the Rhode Island Bar Foundation is the non-profit philanthropic arm of the state's legal profession. Its mission is to foster and maintain the honor and integrity of the legal profession and to study, improve and facilitate the administration of justice. The Foundation receives support from members of the Bar, other foundations, and from honorary and memorial contributions.

Today, more than ever, the Foundation faces great challenges in funding its good works, particularly those that help low-income and disadvantaged people achieve justice. Given this, the Foundation needs your support and invites you to complete and mail this form, with your contribution to the Rhode Island Bar Foundation.

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Rhode Island Bar Foundation

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Questions? Please contact Virginia Caldwell at 421-6541

or gcaldwell@ribar.com

the basics of patent and trademark law, but publish checklists for matters to be considered in prosecution and defense. The same is true of chapters on antitrust law and RICO. In the environmental chapter, the author begins with a description of the substantive law relating to CERCLA and other statutory and common law environmental claims, including toxic torts, then provides checklists for allegations to be included in a complaint or defenses to be included in an answer, followed by a checklist for elements of proof in support of claims or defenses, then illustrative pleadings and jury instructions. This methodology is both a useful guide for the inexperienced practitioner and a refresher for the more experienced practitioner. For those drawn to disputes in the sports and entertainment arenas, there are chapters devoted to these subjects and the procedural and substantive laws relating thereto.

In summary, it is rare to find the full scope of federal practice and federal substantive law set forth in one treatise. The Third Edition is an immensely useful tool for commercial litigators. ❖

TITLE CLEARING

QUIETING TITLE ACTIONS

Roger C. Ross

Blais Cunningham & Crowe Chester, LLP

150 Main Street
Pawtucket RI 02860

TELEPHONE: (401) 723-1122
FAX: (401) 726-6140
EMAIL: *rross@blaislaw.com*

Lawyers on the Move

Robert P. Brooks, Esq. named Managing Partner of **Adler Pollock & Sheehan P.C.**, One Citizens Plaza, 8th Floor, Providence, RI 02903.
401-274-7200 rbrooks@apslaw.com www.apslaw.com

Michael J. Daly, Esq. is now a partner at **Pierce Atwood LLP**, 10 Weybosset Street, Suite 400, Providence, RI 02903.
401-588-5113 mdaly@pierceatwood.com
www.pierceatwood.com

Roy D. Fowler, Esq. is now Senior Legal Counsel with the Rhode Island Department of Corrections, 40 Howard Avenue, Cranston, RI 02920.
401-462-2911 roy.fowler@doc.ri.gov

John Maxwell Greene, Esq. is now a staff advocate with the **Conservation Law Foundation's Rhode Island Advocacy Office**, 55 Dorrance Street, Suite 202, Providence, RI 02903.
401-351-1102 ext. 2013 mgreene@clf.org

Goodman, Shapiro & Lombardi, LLC has moved and expanded their Rhode Island office to 14 Breakneck Hill Road, Suite 203, Lincoln, RI 02865.
401-305-3346

Daniel K. Kinder, Esq., Sara A. Rapport, Esq. and **Timothy C. Cavazza, Esq.** joined the newly-named law firm of **Whelan, Kinder & Siket LLP**, 30 Kennedy Plaza, Suite 402, Providence, RI 02903-2319.
401-270-4500 dkinder@whelankindersiket.com
srapport@whelankindersiket.com
tcavazza@whelankindersiket.com
www.whelankindersiket.com

Christine Marinello, Esq. opened the **Law Office of Christine Marinello**, 650 Ten Rod Road, North Kingstown, RI 02852.
401-757-3968 CM_Law@me.com
www.marinellolawri.com

Julie E. McKenna, Esq. has joined the firm of **Revens, Revens & St. Pierre**, 946 Centerville Road, Warwick, RI 02886.
401-822-2900 juliem@rrsplaw.com www.rrsplaw.com

Sean T. O'Leary, Esq. announces the opening of the second office of **O'Leary Law Associates**, 4060 Post Road, Warwick, RI 02886.
401-615-8584 sto@oleary-law.net www.oleary-law.net

Lauren K. Perry, Esq. joined **Mignanelli & Associates, Ltd.**, 10 Weybosset Street, Suite 205, Providence, RI 02903.
401-455-3500 LPerry@mignanelli.com
www.mignanelli.com

Arthur M. Read, II, Esq. relocated to Jefferson Place, One Hundred Jefferson Boulevard, Suite 200, Warwick, RI 02888.
401-739-2020 amr@amresq.com

John S. Simonian, Esq. moved his Rhode Island law office to 408 Broadway, Providence, RI 02909.
401-941-4800 jslaw@cox.net

Bruce H. Tobey, Esq. is now a Partner at the law firm of **Pannone Lopes Devereaux & West LLC**, 317 Iron Horse Way, Suite 301, Providence, Rhode Island 02908.
401-824-5100 btobey@pldw.com www.pldw.com

Frederick G. Tobin, Esq. has moved his office to Jefferson Place, One Hundred Jefferson Boulevard, Suite 200, Warwick, RI 02888.
401-739-2020 fgt3600@gmail.com

For a free listing, please send information to: Frederick D. Massie, Rhode Island Bar Journal Managing Editor, via email at: fmassie@ribar.com, or by postal mail to his attention at: Lawyers on the Move, Rhode Island Bar Journal, 115 Cedar Street, Providence, RI 02903.

Elizabeth Segovis, Esq., Director of Training and Low Income Taxpayer Clinic at Rhode Island Legal Services, Inc., received the *Founders Award* from the Grayson County Bar Association in Texas.

Liz was honored for her efforts, 25 years ago, spearheading the collaboration between the Grayson County Bar, Legal Aid and United Methodist Church, which formed the Grayson Legal Clinic, continuing today to help low income residents in this area of Texas receive *pro bono* representation. For many years, Liz has been active in supporting the efforts of the Rhode Island Bar Association's Volunteer Lawyer Program (VLP), participating in planning and speaking at many of the Bar's Continuing Legal Education seminars designed to recruit new members for the VLP. To participate in the Rhode Island Bar's VLP, please contact Public Services Director Susan Fontaine: (401) 421-5740 x 101: sfontaine@ribar.com

In Memoriam

Raymond Dettore, Jr., Esq.

Raymond Dettore, Jr., 65, of Smith Street, Providence, passed away on December 15, 2012. A lifelong resident of Providence, he was the son of Christine L. DeSantis Dettore and the late Raymond Dettore. He was the loving brother of Deborah L. Angelo and her husband Donald of Smithfield. Raymond graduated from LaSalle Academy and attended St. Francis College, now University of New England, and earned a Juris Doctorate degree from Suffolk University Law School. He had a private law practice for several years before becoming Chairman of the Board of Licenses for the City of Providence. Later he became Deputy City Solicitor and retired from the city in 2005 while working in the Law Department. Raymond was active in many organizations such as the Sons of Italy where he held numerous State and National offices, including being National Historian and, most recently, National Orator. Ray was also active in The Justinian Law Society, The National Italian-American Bar Association, The Italo-American Club, and the Chairman of the Board of Directors of the Center of individualized Training and Education. He was on the Governor's Advisory Commission for the Blind and Visually Impaired, and he was recently elected to the Democratic Ward Committee. Additionally, Ray served on the board of numerous charitable organizations.

Richard A. Fairbrothers, Esq.

Richard A. Fairbrothers, 50, of Boston, passed away on January 18, 2013. He was the beloved son of Robert E. "Bobby" Fairbrothers and Marie A. Purro Fairbrothers. He graduated from the University of Rhode Island in 1985, Suffolk Law in 1988, where he was a member of the Law Review and Georgetown Law Center in 1989, where he received a degree in Labor Law. Besides his parents, he is survived by his brother, Robert E. Fairbrothers, Jr.

Morphis Jamiel, Esq.

Morphis Jamiel, 91, of Warren, passed away on January 26, 2013. He was 91. He retired last month as Warren probate judge, a post the attorney had held for 21 years. Previously, he'd served in the state legislature, on the Warren Town Council, the Town's Planning Board, was the Town Solicitor, and he also served in other Town capacities. He was known as a mentor to many aspiring young attorneys in Warren, and his last act as probate judge was to swear in his successor, Stephen Minicucci, Esq. Always proud of his country and his service to it, Major General Jamiel (retired, Rhode Island National Guard) had a long history in the military. Starting out as an Infantryman in World War II, where he fought in the Battle of the Bulge as a platoon leader, he earned a Bronze Star with three Oak Leaf clusters, the Purple Heart and the Presidential Unit Citation. In 2011, he was inducted into the Army Officers' Candidate School Hall of Fame, and in December was inducted into the Order of Saint Maurice, an award bestowed by the National Infantry Association. As a lifelong Mason, Major General Jamiel was a life member of Washington Lodge 3 and was its past Master, as well as past Most Illustrious Grand Master of the Grand Council of Rhode Island. He was an active member of the Shriners and its clown unit, where he was past First Boss Clown.

Raymond A. LaFazia, Esq.

Raymond A. LaFazia, 88, of Little Compton, passed away on December 24, 2012. After graduating from Mt. Pleasant High School, Ray enlisted in the Army Air Corps where he flew 38 combat missions as a ball turret gunner in B24s. He received the Distinguished Flying Cross, silver and gold oak leaf clusters and the Certificate of Valor. After the war, Ray attended the University of Rhode Island and earned a law degree from Boston University School of Law. He clerked for Rhode Island Legal Aid and continued to handle numerous *pro bono* cases after establishing his own law practice. Ray and Bill Gunning founded Gunning and LaFazia. In the early 1980s, Gunning and LaFazia was comprised of 25 percent women when other litigation firms had none. He served as a Bar Examiner and as a member of the Advisory Committee on Rules, United States Court of Appeals. He was a recipient of the Rhode Island Bar Association's Ralph P. Semonoff Award for Professionalism and a lifetime member of the Rhode Island Bar Foundation. At 53, Ray embraced bicycling and toured much of the continental U.S., the Baja and Great Britain. He cycled up Mount Evans, Mount Washington, and Mount Rainier. He hosted the Narragansett Bay Wheelmen's "Polar Bear" bicycle ride for 35 years. At age 75, Ray bicycled 500 miles through the mountains of Montana. Even in his last year, he could be seen riding his bicycle from home to the gym. An avid gardener and landscaper, he loved working in his yard, spending time with family and his dogs. He is survived by wife, Ellen, son Raymond Alan, daughter Jeanne and her husband George Mason. He also leaves a brother George and wife Virginia, and sisters Catherine Deion and husband Joe, and Lois Guilford and husband Earle.

Paul J. Russo, Esq.

Paul J. Russo, 75, of Land's End Drive, North Kingstown, passed away on December 14, 2012. He was married to his loving wife of 49 years, Janet. Born in Providence, he was the son of the late John and Rose Russo. He graduated from LaSalle Academy, Providence College, and Suffolk Law School with honors. He served in the U.S. Air National Guard. He was an attorney and senior partner with Kirshenbaum and Kirshenbaum for 49 years. He was a devoted fan of all things Rhode Island, Red Sox, and wine. He served as a coach for Babe Ruth League baseball for 30 years, and he served as a coach for clients, friends, and family for a lifetime. He is survived by his wife, Janet, two sons, Paul and Christopher, and daughter,

In Memoriam *(continued)*

Susan; daughters-in-law Maria and Cheryl, and son-in-law, Jeffrey Benabio, MD.

Hon. Joseph R. Weisberger

Joseph R. Weisberger, 92, of Winthrop Street, Riverside, passed away on December 7, 2012 at Rhode Island Hospital. He was the beloved husband of Sylvia Pigeon Weisberger. Born in Providence, a son of the late Samuel J. and Ann Elizabeth Meighan Weisberger, he lived in Riverside for 56 years. Chief Justice Weisberger served the Rhode Island Judiciary for 56 years on two State Courts. Justice Weisberger was initially appointed to the Rhode Island Superior Court in 1956 and served on that Court through 1978. He served as the Presiding Justice of the Superior Court from 1972 to 1978. He was elevated to the Rhode Island Supreme Court as an Associate Justice, serving in that capacity from 1978 through 1993. From August of 1993 to March of 1995, he served as the Acting Chief Justice of the Rhode Island Supreme Court. In March of 1995, he was appointed Chief Justice of the Rhode Island Supreme Court and served in that capacity through February of 2001. Upon his retirement, Chief Justice Weisberger remained active on the bench serving as a Justice under the statutory provisions of judicial recall. In addition, he helped spearhead the Supreme Court Appellate Mediation Unit. Chief Justice Weisberger graduated from Brown University Magna Cum Laude and Harvard University School of Law. He was past President Phi Beta Kappa (R.I. Alpha), past Chairman Appellate Judges Conference ABA, past Chairman National Conference State Trial Judges, past Member House of Delegates of the ABA, a past mem-

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In Memoriam *(continued)*

ber Council of Judicial Administration Division, ABA, a member of American Law Institute, a life Fellow American Bar Foundation, a past member of the Board of Directors National Center for State Courts, a faculty member National Judicial College from 1966-present, a recipient of the Erwin Griswold Award for Excellence in Teaching – National Judicial College 1989, a recipient of the Herbert Harley Award – American Judicature Society 1989, a recipient of the Goodrich Award for Service to Rhode Island Taxpayers – R.I. Public Expenditure Council 1995, a member of the Education Committee of Appellate Judges Conference, and a past member Senior Faculty N.Y.U. Appellate Seminar. He also held 12 honorary degrees. He was appointed by Pope John Paul II to the office of Knight Commander with the Star Order of St. Gregory. He received the Rhode Island Bar Association's Award for Judicial Excellence in 2007 which was named in his honor and the National Judicial College Award for the Advancement of Judicial Education in 2009. Chief Justice Weisberger served in the United States Navy from 1941 to 1946 with two years in the Pacific Theater, leaving with the rank of Lieutenant Commander. He was a 56-year communicant and member of the Board of Trustees at St. Brendan Church. He was a member of the Board of Trustees at Rhode Island Hospital and the Board of Directors at St. Joseph Hospital and Our Lady of Fatima Hospital. He was a member of the East Providence Knights of Columbus Council #1528. Besides his wife of 60 years, he is survived by a son; J. Robert Weisberger, Jr. and his wife Gail Weisberger of Smithfield, and a daughter; Judith W. Greene and her husband Gordon H. Greene II of Johnston.

Advertiser Index

You may ask yourself...

How does the Rhode Island Bar Association help me?

THE RHODE ISLAND BAR ASSOCIATION is much more than a name. Your Bar consists of people and programs dedicated to enriching and enhancing your practice and your life. Through the thoughtful, caring leadership of volunteer attorneys, the Bar develops offerings designed specifically for Rhode Island lawyers. And, with the excellent assistance of the Bar's friendly and professional staff, your Bar creates and delivers a wide range of programs and services tailored to meet your needs.

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- Wonderful Annual Meeting offerings ranging from excellent CLE seminars to profession-oriented product and service providers and more
- Powerful presence in legislative matters affecting the practice of law
- Instant client and colleague connections through the Bar website's Attorney Directory

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- Opportunities for pro bono service to those who need it the most, coupled with free training and mentoring in important practice areas
- Lawyers Helping Lawyer Committee programs including the Bar's partnership with Coastline Employee Assistance Program (Coastline EAP) offering free-to-members services for confidential help, information, assessment and referral for a wide range of personal concerns
- SOLACE (Support of Lawyers, All Concern Encouraged) allows Bar members to offer or ask for aid and assistance to or from their colleagues
- Law Related Education (LRE) volunteer opportunities to visit classrooms with judges on Law Day and assist educators throughout the year

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