Rhode Island Bar Journal

Rhode Island Bar Association Volume 60. Number 3. November/December 2011

Criminal Consequences of Sending False Information on Social Media

Preserving Tax Incentives for Charitable Giving

New Scarlet Letter: Are We Taking The Sex Offender Label Too Far?

Refusal Cases: Beyond the Basics

Book Review: *Constitution Day: Reflections by Respected Scholars*

Articles

Features

RHODE ISLAND Bar Association
1898

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.

Direct advertising inquiries to the Editor, Frederick D. Massie, Rhode Island Bar Journal, 115 Cedar Street, Providence, RI 02903, (401) 421-5740.

USPS (464-680) ISSN 1079-9230
Rhode Island Bar Journal is published bimonthly by the Rhode Island Bar Association, 115 Cedar Street, Providence, RI 02903.
PERIODICALS POSTAGE PAID AT PROVIDENCE, RI

Subscription: $30 per year

Postmaster
Send Address Correction to Rhode Island Bar Journal, 115 Cedar Street, Providence, RI 02903

www.ribar.com

Front Cover Photograph
Providence City Hall, by Brian McDonald

New Initiatives in the Practice and at the Bar

William J. Delaney, Esq.
President
Rhode Island Bar Association

Our new lawyers deserve all the assistance we can provide to further their professional and personal development.

Some 36 years ago, I was a sports writer at Notre Dame. I was a pretty good sports writer. In fact, my Dad was upset when I turned down a job with ABC Sports to go to law school. It was one of the few times I saw him sad from a decision I made. But for me, there was no decision because I always wanted to be a lawyer.

I was the sports editor of the *Notre Dame Scholastic*, the school's magazine. One of the issues was devoted to a recap of the football season. The *Scholastic's Football Review* was a 48-page tribute to the recently-completed season. The 1974 *Scholastic Football Review* featured a four-page color cover. It was truly an experience in which I still take great pride some 37 years later.

So what does this have to do with my President's message? With due deference to the *Providence Journal's* sportswriters Bill Reynolds, Jim Donaldson and Dan Shaughnessy, in each issue of the *Scholastic*, I wrote a column based on three or four talking points titled, *Irish Sports Shorts*. What follows is a similar, multiple topic review with a legal bent, and more particularly, with a Bar Association focus. I hope you enjoy my effort.

Our Bar's New Lawyers' Committee

I made a commitment to attend at least one meeting of the Bar Association's 26 committees this year. Most of my predecessors have undertaken this challenging task and, in the process, gained many pounds from the luncheons commensurate with some of these meetings. One of the more interesting meetings I attended was the New Lawyers Committee's. Our Bar defines new lawyers as those admitted to practice for ten years or less, regardless of the lawyer's age. This group is comprised of approximately 1,750 of the Bar Association's 6,300 members. To say this particular committee is one of the Bar Association's most important and crucial is an understatement, as the future of our Bar and our profession rests with them.

These new lawyers are an interesting group. Most are well organized, confident, quite social, and enjoy networking. During the meeting, Committee members shared their areas of legal focus and professional and personal interests. One said he was driving from Boston each day to Cranston, leaving a newborn with his law school classmate wife, a Boston government lawyer. Another, from Attleboro, wanted to know about procedures in Rhode Island District Court, as they are different from those in Massachusetts District Court. One had just started her own firm and was interested in any free seminars, as well as whether any of the other Committee members had referrals.

These young professionals deserve the means to grow into fine and competent attorneys. Passing the bar examination only confirms minimum competence. Even after 28 years of practice, I can honestly state I am still growing and developing in my profession. There is a reason why the legal profession is most often described as the *practice of law*.

Our new lawyers deserve all the assistance we can provide to further their professional and personal development. The Bar's newly-established Online Attorney Resource (OAR) program, more fully discussed below, will serve as a means to provide mentoring, guidance, and strategies to new lawyers who need and desire the relationships many of us have had the pleasure of fostering and developing during our careers. I still rely upon my mentors to guide me through tough and challenging issues. I encourage all Bar members to aid me in leaving the next generation of Rhode Island lawyers a little better off than ours. Members with less than ten years of experience comprise over one quarter of the Bar Association. They are our life's blood. Please handle them with care. I urge our more seasoned members to volunteer as information resources for the OAR Program. And, I encourage all our new members to seek the assistance of OAR volunteers and actively participate in one or more of our excellent Bar committees. This involvement and participation will benefit all of us today and in the future.

National Guard General's Visit to the House of Delegates

We had the distinct pleasure to receive Major General Kevin R. McBride, Adjutant General of the Rhode Island National Guard, who addressed the House of Delegates on September 26th. Immediate Past Bar President Victoria Almeida introduced General McBride to the House, and he gave an inspirational talk concerning the much-appreciated assistance our Bar is providing to Rhode Island service people and their families, on a myriad of legal issues,

through the Bar's United State Armed Forces Legal Service Project.

Following the General's address, I recognized Bar member and U.S. Army Captain Michael Jolin's gift to our Bar of an attractive, framed, wooden presentation case including a plaque and an American flag which had flown in Afghanistan. I invited the Delegates to view the gift following the meeting, and former Bar President Harold Demopulos cradled the case in a touching manner. Harold left Brown University during World War II and served in Europe. He returned home following the War, completed his education and has become one of our Association's elder statesmen.

House member Jim Marusak has a son, Daniel, currently serving in Afghanistan, following the completion of his freshman year at Roger Williams Law School. I have known Jim since I started practicing in Rhode Island, and he is a very sincere man. Jim ran his finger along the case and told me, "I heard from my son, Danny, via e-mail on September 11th. He said that there was no place in the world that he would rather be on that day."

We need to be aware that while these young men and women are serving overseas, they leave behind families who need to be protected. I urge all members, especially veterans among the Bar, to volunteer for a U.S. Armed Forces Legal Services Project case. Please see the related article on page 11 in this Bar Journal. I also want to acknowledge the Bar's Public Services Director Sue Fontaine on her and her staff's work on this wonderful Project. Also, please keep Mike Jolin, who remains a member of the House while temporarily serving in Afghanistan, as well as the other members of the Bar Association and the families of other members whose loved ones are serving our country every day, in your thoughts.

Attending Operation Stand Down:

I had the honor and privilege to attend the first day of *Operation Stand Down* at Diamond Hill Park in September. Attorneys Bill Trezvant from the Attorney General's Office, Peter DeSimone on behalf of the Rhode Island Coalition for the Homeless, Gretchen Bath from Rhode Island Legal Services, Rhode Island District Court Chief Judge Jeanne LaFazia and Rhode Island Family Court Magistrate Angela Paulhus, among many others, volunteered their time and energies to these veterans during that weekend.

During the proceedings, I spent some time with several of the attendees, some of whom were around my age, and discussed their issues, many of which were heartbreaking. I also spoke with two former veterans who are Bar members and asked them to join our Armed Forces Legal Services Project. They both accepted my invitation. It was a good day all around. Please be mindful of what veterans can do for veterans during these harrowing times.

Pulling for the OAR Program

New lawyers seeking guidance and support, in a range of practice areas, have a new Bar program connecting them to experienced volunteer attorneys. The unique, new Online Attorney Resource (OAR) program, developed by our Bar volunteers and staff, and available through the Member's Only section of the Bar's website, will benefit both new and experienced attorneys and, ultimately and equally importantly, our clients. I challenge both new and experienced attorneys to take advantage of this exciting new program. Further details will be forthcoming.

Roger Williams University School of Law's Entrepreneurial Clinic

Many law school graduates are currently facing the repayment of large student loans, a dearth of job opportunities, and a horrific economy. To further complicate matters, many law schools are not providing law students with the practical skills to prepare them for practice in the real world. And, over forty percent of recent Roger Williams University (RWU) School of Law graduates are members of our Bar Association.

RWU is working to provide its students with an expansive commercial law skill set with its Entrepreneurial Clinic. The Clinic's goal, with the assistance of local attorneys and other professionals, is to help RWU law students develop more effective client interaction skills, applying their academic knowledge to actual cases. Stay tuned for further information on the Clinic, aimed at an early 2012 launch.

So, that's five columns for the price of one! I hope you enjoyed this message. It brought back old times. Good times. And, one final point, happy holidays to you and yours. Here's hoping that 2012 is a great one for *all* of us! ❖

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**
telephone: **401-421-5740**

Criminal Consequences of Sending False Information on Social Media

John R. Grasso, Esq.
Law Office of John R. Grasso, Inc.

Brandon Fontaine
Roger Williams University School of Law 3L & Law Review Articles Editor

If you used a computer in Rhode Island during the last 20 years, chances are you're a criminal because Rhode Island's computer crimes law makes it a crime to transmit untruthful or exaggerated statements.

If you used a computer in Rhode Island during the last 20 years, chances are you're a criminal because Rhode Island's computer crimes law – Section 11-52-7(b) of the Rhode Island General Laws – makes it a crime to transmit untruthful or exaggerated statements.

Specifically, the use of a computer to knowingly transmit *any* false information is chargeable as a criminal offense. Knowingly posting a lie on Facebook, or any other social media, is a crime in Rhode Island punishable by up to one year in prison. Emailing information you know not be true is a crime in Rhode Island. Sending a knowingly false text message is unlawful. Section 11-52-7(b) makes what are everyday occurrences misdemeanor crimes.

Would the police investigate and charge a person with lying on Facebook? Would the police issue subpoenas, secure search warrants, and use special technology to track down a liar on Facebook? Would the State charge that liar? Would the court convict and sentence him? If the suspect was a police officer, and he purposely created a Facebook page identifying the Facebook profile as that of his police chief, the answer to every one of these questions is yes. Even if the suspect published facts on the alleged user's profile so laughable that every person who saw the profile knew it was a joke, the State of Rhode Island would hunt him down, arrest, prosecute, and sentence him. This actually happened in one recent Rhode Island case charged under the statute.

Is it really criminal conduct to create a parody profile on Facebook, a popular social networking website, where the suspected wrongdoer intentionally misspelled his chief's first and last name, listed fictitious interests to include "Haiti, SpongeBob SquarePants, Milking Cows, Quilting, Sewing, Music, Police officers, and Reggae," so that it was clear from the reactions of his friends that the profile was a joke?[1]

Yes. Following his arrest, the officer was charged under the Computer Crimes chapter of the Rhode Island General Laws with violating section 11-52-7(b) for "transmitting false data," specifically false data relating to his chief, "with the knowledge that it was false." Section 11-52-7(b) states that:

> Whoever intentionally or knowingly:
> 1) makes a transmission of false data; or
> 2) makes, presents or uses or causes to be made, presented or used any data for any other purpose with knowledge of its falsity, shall be guilty of a misdemeanor and shall be subject to the penalties set forth in § 11-52-5.[2]

"Data," as used within the statute, is further defined as:

> …any representation of information, knowledge, facts, concepts, or instructions which are being prepared or have been prepared and are intended to be entered, processed, or stored, are being entered, processed, or stored or have been entered, processed, or stored in a computer, computer system, or computer network.[3]

While individuals often do not conduct themselves in a socially acceptable manner, criminal prosecution is not always warranted.[4] In this case, by criminally charging the police officer with "transmitting false data," the State violated his First Amendment freedom of expression because the statute is unconstitutionally: 1) overbroad; 2) vague; 3) content-based; and, at the end of the day, the alleged wrongdoer's publication is nothing more than a parody.

Overbreadth

"The overbreadth doctrine arises when a statutory enactment is so broad in its sweep that it is capable of reaching constitutionally protected conduct. The overbreadth doctrine generally applies in the context of First Amendment freedoms and is intended to prevent the imposition of criminal penalties for the exercise of one's constitutional rights."[5] Section 11-52-7(b) is substantially overbroad because it criminalizes speech protected by the First Amendment and Article I, Section 21 of the Rhode Island Constitution, which ensures that "no law abridging the freedom of speech shall be enacted."

Statutory challenges on overbreadth grounds

are unique in that the defendant is not required to hold standing in order to attack the statute.[6] Therefore, even if a court finds that a particular defendant's speech is not protected by the First Amendment, he is still able to challenge section 11-52-7(b) on overbreadth grounds. The rationale is that "the possible harm to society in permitting some unprotected speech to go unpunished is outweighed by the possibility that protected speech of others may be muted… because of the possible inhibitory effects of overly broad statutes."[7]

There exists no basis on which the restrictions set forth in section 11-52-7(b) can be justified, as the statute is substantially overbroad on its face. To determine whether the statute reaches too far, "the first step in overbreadth analysis is to construe the challenged statute."[8] A simple reading of the statute is all that is required to imagine the infinite scenarios of expressive speech that section 11-52-7(b) criminalizes.

The statute encompasses a vast amount of protected speech because it provides no limitation to its scope.[9] For example, it does not require anyone to be harmed by the transmission of false data, nor does it require that anyone receiving the data actually mistakenly believe it to be true. In fact, to the contrary, everyone reading it could clearly understand its falsity, but it would still be a crime.

While section 11-52-7(b) punishes falsity, "the First Amendment recognizes no such thing as a 'false' idea."[10] The fact that hyperbole, white lies, sarcasm, humor, and exaggeration (all of which are protected forms of speech) are all criminalized under section 11-52-7(b) demonstrates exactly why it is so substantially overbroad. To make matters worse, consider that many of the cellular phones on the market today would easily satisfy the statutory definition of a "computer,"[11] which could have the profound effect of criminalizing every half-truth or falsehood ever transmitted, perhaps in conversation and almost definitely by text message, when sent through a cell phone.

In effect, every Rhode Island resident who has ever used a computer has likely committed a misdemeanor offense under the overly broad language of this statute.

Of course, this is not to say that the State is actually going to begin prosecuting every untrue statement that the State's citizens transmit using computers. For example, entering an Internet chatroom and stating, "The sky is purple," is undoubtedly a crime under a literal reading of the statute, but it is fair to presume that the offender would be safe from prosecution. However, the fact that the State would never actually punish the conduct does not matter in overbreadth analysis. As the United States Supreme Court has made clear, "We would not uphold an unconstitutional statute merely because the Government promised to use it responsibly.…The First Amendment protects against the Government; it does not leave us at the mercy of *noblesse oblige*."[12]

The serious concern that section 11-52-7(b) evokes becomes even greater when the speech in question involves issues at the heart of public concern, such as those of political, social, or religious value. Exaggerated statements, satirical works, or parodies based on political, social, or religious figures or issues could all be classified as illegal conduct under section 11-52-7(b) if they contained any false information, even though the United States Supreme Court has continually asserted that these are all protected forms of speech.[13] This presents serious consti-

tutional concerns because "the threat of enforcement of an overbroad law may deter or 'chill' constitutionally protected speech—especially when the overbroad statute imposes criminal sanctions."[14] "[E]ven minor punishments can chill protected speech."[15]

For a concrete illustration of how this would work, consider the well-known First Amendment case of **Hustler Magazine v. Falwell**, 485 U.S. 46 (1988). The *Hustler* parody, consisting of a crude fake interview with Pastor Jerry Falwell, clearly stated false information portraying Falwell and his mother as drunk and immoral, even though it was clear to most readers that the interview was fake. The Court held that *Hustler's* fake interview was protected speech under the First Amendment, and *Hustler* was not liable for any harm it may have caused.

Now, take the exact same facts in **Hustler**, but instead of printing the parody interview in a magazine, *Hustler* uploads the interview to their website from a computer in Rhode Island. Because the fake interview contains false data – namely that Jerry Falwell drinks alcohol to excess and had an incestuous relationship with his mother – the transmission of the interview onto the *Hustler* website would violate section 11-52-7(b). However, the United States Supreme Court has already held that the *Hustler* interview is constitutionally protected from regulation. Therefore, the fact that *Hustler's* protected speech would be illegal under section 11-52-7(b) proves the statute is overly broad and inhibits protected speech. Placing criminal penalties on that conduct, including up to one year in prison or a $500 fine, could substantially chill the free expression of constitutionally protected speech over the Internet.

As overbroad as section 11-52-7(b)(1) is, section 11-52-7(b)(2) is far worse. Section 11-52-7(b)(2) imposes criminal liability when one "knowingly… makes, presents or uses or causes to be made, presented or used *any data for any other purpose* with knowledge of its falsity."[16] Thus, in its broadest form, section 11-52-7(b)(2) proscribes conduct where false data is merely made on a computer for *any purpose* (even private use only), without that data ever being transmitted to anyone else.

The statutory definition for "data" is exceptionally broad in its own right and, thus, contributes substantially to the overbreadth of section 11-52-7(b)(2). In its broadest sense, the following would qualify as data: "any representation of… knowledge, facts [or] concepts… which are being prepared… and are intended to be entered… or stored in a computer."[17] Inserting that definition of "data" into section 11-52-7(b)(2) (in place of the word itself) demonstrates just how disturbingly overbroad it truly is. Essentially, when one knowingly prepares inaccurate facts and intends to enter them into their own personal computer, a crime has been committed, even before the facts are actually entered or stored. Therefore, while section 11-52-7(b)(1) criminalizes "the sky is purple" once it is transmitted over a network, section 11-52-7(b)(2) criminalizes the inaccurate fact the moment the first letter is typed on the computer screen, or sooner, with no intent on ever sharing the message with others. This raises not only First Amendment concerns with the statute, but also concerns with the constitutional right to privacy.

Although it does not explain all of the statutory defects, the history of this statute may bring some understanding as to why the General Assembly drafted it

with such undeniably overbroad language. Section 11-52-7 was enacted in 1989 and has not been amended since. The definition of "data" in section 11-52-1 has not been amended since 1989 either. These facts are significant because the World Wide Web, which made the Internet easily accessible to the general public for the first time, was not launched until August 1991. In 1989, lawmakers also probably never imagined that telephones would one day qualify as "computers" under the statute's definition. There is no doubt that technological advancements over the past twenty years have significantly expanded the conduct covered by the statute, well beyond the original legislative intent.

By criminalizing any false statement any person makes while using the Internet, the General Assembly has made virtually every Rhode Island resident potentially guilty of a misdemeanor. The statute's main problem is that it puts no limitation on what "false statements" amount to a criminal offense. As it stands, it is clearly substantially overbroad.

Vagueness and Arbitrary Enforcement

The attack on section 11-52-7(b) does not end with overbreadth. This law is unconstitutional because it is vague and susceptible to arbitrary enforcement. "The void-for-vagueness doctrine requires that a penal statute define the criminal offense with sufficient definiteness that ordinary people can understand what conduct is prohibited and in a manner that does not encourage arbitrary and discriminatory enforcement."[18] "Nobody questions the fundamental principle which says that the state may not hold an individual 'criminally responsible for conduct which he could not reasonably understand to be proscribed.'"[19] "This constitutional mandate is founded upon our system's concept of fairness."[20] The vagueness inherent in section 11-52-7(b) violates this concept of fairness and forms a valid basis for declaring this statute unconstitutional.

Section 11-52-7(b) fails to put the public on proper notice of what offenses it prohibits.

Section 11-52-7(b) is unconstitutional because it fails to adequately put the public on notice of what conduct it proscribes. "The standard employed to gauge whether a particular statutory term reasonably

informs an individual of the criminality of his conduct is whether the disputed verbiage provides adequate warning to a person of ordinary intelligence that his conduct is illegal by common understanding and practice."[21] It is not the responsibility of Rhode Island citizens to decipher the legislative intent of the General Assembly. The literal meaning of section 11-52-7(b) is that lying or misstating facts on the Internet is a misdemeanor crime, with no exceptions. There is no other way to construe this statute based on its plain language – it clearly criminalizes any form of untruth spoken while using a computer.

The Internet contains billions of users and millions of websites. Millions of people use Facebook, and thousands of fictitious and joke profiles are created on the site every day. The public is constantly told not to believe what they read on the Internet because it may be filled with lies and inaccuracies. Therefore, there is no way for Rhode Island residents to be on notice that the "transmission of false data" is a misdemeanor when it occurs within the state, especially when most likely encounter false information on the Internet every day. Even if the public was on notice, they would be continually left to question whether the criminalization of false information when using a computer really stretches as far as it sounds, and where exactly it ends, such that the free expression of ideas would be substantially chilled.

Additionally, "in testing whether a statutory term provides a defendant with fair warning of what the state forbids, we look to its common law meaning, its statutory history, and prior judicial interpretations."[22] Unfortunately, none of these factors provide much assistance in interpreting section 11-52-7(b). The common law provides little guidance on the newly-emerging issues of computers and the Internet and their associated terminology. In addition, the statute has never been mentioned in any prior Rhode Island judicial opinion, nor does any other state have a similar statute with which to draw analogies. It is telling in itself that no other state broadly bans all transmissions of false data/information.

continued on page 36

The Aon Attorneys Advantage online application process offers a convenient way for small firms to get a professional liability coverage quote –

Quick. Easy. Online!

We don't think all the extra work required to secure professional liability coverage should keep you from addressing your clients' pressing needs. That's why we streamlined our application process. Simply log on to **www.attorneys-advantage.com/online**.

Depending on the size and location of your firm, you may qualify to obtain a real-time quote and the option to purchase online; or you'll be able to submit an application online for further review. Either way, we think you'll find our streamlined online application process more convenient than ever.

It's As Simple As: QUOTE. CLICK. DONE.

At **www.attorneys-advantage.com/online** you'll find immediate access to dependable coverage plus useful tools and information to help you manage your firm's risk and reduce the chance of claims. And, while visiting the site, you can also register your email address to receive additional information about the program.

Apply online today! Visit **www.attorneys-advantage.com/online**

The Aon Attorneys Advantage Professional Liability Program is Sponsored By

RHODE ISLAND BAR ASSOCIATION 1898

AON

Aon Attorneys Advantage online process is brought to you by Affinity Insurance Services, Inc., in association with Liberty Insurance Underwriters Inc. (a member company of Liberty Mutual Group). Affinity Insurance Services, Inc. is the program administrator of the Aon Attorneys Advantage program.

Rhode Island National Guard General Praises Bar's Volunteer US Armed Forces Legal Service Project

(l-r): Bar President William J. Delaney; Lieutenant Colonel Vivian Caruolo; Bar Public Services Director Susan Fontaine; Past Bar President Victoria M. Almeida, and Major General Kevin R. McBride.

Major General Kevin R. McBride, Adjutant General and Commanding General of the Rhode Island National Guard and Lieutenant Colonel Vivian Caruolo, Staff Judge Advocate of the Rhode Island National Guard came to the Rhode Island Bar Association's September House of Delegates meeting to thank the Bar for its excellent volunteer member and Bar staff efforts on behalf of those serving in the military and their families.

The Rhode Island Bar Association's unique United States Armed Forces Legal Services Project (Project), initiated by Past Rhode Island Bar Association President Victoria M. Almeida, launched in late 2009, and directly administered by the Rhode Island Bar's Public Services Department is specifically designed to provide a wide range of civil law legal services and assistance to those serving in the military and their families. Qualifying individuals include: active and reserve military personnel; reserve component members undergoing pre-mobilization legal preparation; veterans (including those receiving disability); and family members and surviving family of the aforementioned groups. There are no income limitations for legal assistance. However, requests for help are primarily received from personnel whose income would qualify for pro bono or reduced fee representation. Requests are received from all branches of the military including the Rhode Island National Guard and the United States Army, Navy, Marines, Air Force, Coast Guard, and war veterans.

Participating volunteer attorneys are recruited through: all-member email appeals; *Rhode Island Bar Journal* articles with corresponding sign-up invitations; through the Bar's website's Members Only section; during the Bar's Annual Meeting; and through related Bar Continuing Legal Education (CLE) workshops and programming. Many participating volunteer attorneys are affiliated with the military either through their previous service or that of a family member.

Coordinated with the Attorney-Advisor at the Office of the Staff Judge Advocate, volunteer attorneys directly represent military personnel, accepting civil law cases including family law, probate issues, landlord/tenant, real estate, contracts, consumer, bankruptcy, collections, employment, immigration/naturalization, and income tax. Direct referrals are received, and cases are also referred through, the Judge Advocate General, recruiting offices, the local United States Veterans Administration, the Rhode Island Veterans, Home, Rhode Island social service agencies, and the Rhode Island Homeless Legal Clinic.

With the first case placed on August 18, 2009, the Project currently has over 80 participating volunteer attorneys, and over 200 cases placed in areas including: veterans' benefits; consumer issues; family law; probate; real estate; and other legal

> ***Resolving legal issues before heading into harm's way provides soldiers with peace of mind so they can focus on what they have to do to come home safe. Similarly, the services you provide to our troops at home lifts a burden…Keep doing what you are doing. It means so much to us.***
>
> Captain Michael P. Jolin

issues. The Project's volunteer lawyers serve members of the: US Army; Rhode Island National Guard: US Navy: US Marines; US Air Force; US Coast Guard; as well as war veterans.

The Project does not have separate funding and is administered through the Bar's Lawyer Referral Service, supported by a generous award in April 2011 from the Foundation of the American College of Trial Lawyers.

Bar members interested in learning more about or volunteering for the Bar's United States Armed Forces Legal Services Project may contact Public Services Director Susan Fontaine, by email: sfontaine@ribar.com, or telephone: 401-421-5740. ❖

Captain Michael P. Jolin, Rhode Island National Guard Judge Advocate and Rhode Island Bar member (far right) with his comrades in arms in Afghanistan.

Preserving Tax Incentives for Charitable Giving

James S. Sanzi, Esq.
Rhode Island Foundation
Senior Development Officer

…during a time when many families and charitable causes are as vulnerable as ever, to what extent should this long-standing financial incentive to give to charity be under such scrutiny?

Remember the National Commission on Fiscal Responsibility and Reform, otherwise known as the President's deficit commission? One of the many proposals in its December, 2010 final report was to eliminate the charitable deduction and replace it with a 12-percent credit, available only for contributions beyond 2 percent of a taxpayer's adjusted gross income. Although the commission's report was not ultimately adopted, the charitable deduction has certainly come under heightened scrutiny ever since (along with basically the entire tax code, given the economic times). Make no mistake, it is an understatement to say that times are tough and, as many of our political leaders opine, virtually nothing should be off the table. However, during a time when many families and charitable causes are as vulnerable as ever, to what extent should this long-standing financial incentive to give to charity be under such scrutiny? These issues are ripe for discussion since proposals to reform the charitable deduction have gained momentum in the White House and on Capitol Hill. This article highlights some of the pros and cons of the debate.

President Obama has criticized the current charitable deduction as favoring the wealthy, while providing no benefit to the typical middle-class family that doesn't itemize. He has repeatedly argued for a cap on itemized deductions. In fact, at the time of this writing, the President's recently-proposed jobs creation plan intends to finance the measure, in part, by reducing the tax benefit wealthier taxpayers receive from their itemized deductions, including the charitable deduction, to 28 percent. Furthermore, in Congress as recently as July, a bi-partisan group of Senators (remember the self-styled "Gang of Six"?) called for reform of the charitable deduction consistent with the recommendations made by the deficit commission. You may also recall that, although ultimately spared, the charitable deduction was again on the chopping block during the recent debt ceiling negotiations. When the new 12 member purported "super" committee meets over the next couple months to explore another $1.5 trillion in cuts, don't be surprised to see the charitable deduction under fire again.

Let's first look at the commission's particular proposal of eliminating the charitable deduction and replacing it with a non-refundable 12% tax credit available for all taxpayers for giving above 2% of their adjusted gross income. Proponents of this reform primarily argue that applying the same credit percentage to all eligible taxpayers will treat taxpayers more equally than our current system of itemized charitable deductions. They may have a point. First, high earners are more likely to itemize, and, obviously, one must itemize in order to take advantage of our current system of itemized deductions. Second, higher earners currently get a bigger tax deduction for their charitable contributions. A donor in the top federal tax bracket can get a 35% deduction for their gifts (35% being the top federal income tax rate). Therefore, the after deduction cost of a donor's $100 gift would be $65, assuming the donor itemizes. Compare this to a less wealthy donor in the 25% federal income tax bracket whose $100 gift effectively costs $75 after the deduction. An even lower earning donor who gives the same $100 might have an after deduction cost as high as $90. Fair? Maybe not if the wealthy and not so wealthy make the same size gift. However, given that larger gifts are typically made by wealthier donors, maybe the current system best encourages the potential for their larger gifts. Let the debate wage on.

Now, what about the commission's proposal that the credit would only be available for amounts beyond 2% of a taxpayer's adjusted gross income (AGI)? Let's look at one measure of giving in Rhode Island to assess this. Tax returns from 2007 show that, on average, Rhode Islanders contribute 1.54% of their AGI to charity (By the way, this measure puts our state 46th in the nation in charitable giving.). Therefore, under the commission's proposal, the average taxpayer in Rhode Island wouldn't even get to claim the tax credit. In fact, using this Internal Revenue Service (IRS) data, the average taxpayers from 17 other states would also not be able to claim the credit (Illinois, Washington, Pennsylvania, Iowa, Massachusetts,

Louisiana, Ohio, Wisconsin, New Jersey, Nevada, New Mexico, Alaska, Vermont, Maine, New Hampshire, North Dakota, and West Virginia). Perhaps this proposal simply deprives too many people (albeit, many of them smaller givers) from receiving any tax benefit for their charitable giving. Maybe the commission's proposal isn't fair on these grounds? Furthermore, the commission's proposal is non-refundable, meaning that only taxpayers who owed income tax could claim it, again eliminating the tax benefit for charitable giving by all people who get a tax refund. For these reasons, many argue the commission's proposal and variations simply do not provide enough economic incentive to enough tax payers to encourage their charitable giving.

This leads us to the biggest question, the so-called "elephant in the room." Are tax incentives for charitable giving effective in motivating giving in the first place? Aren't individual values and belief systems the true motivators for giving, especially in tough times? As a charitable fundraiser, I can tell you that the statistics, survey results, and literature offer a mixed bag as to what actually motivates giving. It should come as no surprise that the motivations are as diverse as the donors themselves. From my experience, most donors are motivated (or inspired) by something when they choose to give (what motivates them differs from person to person) and, once motivated, they generally want to know how to give in the most cost effective manner (requiring an analysis of the tax and other financial benefits). Also, tax incentives can certainly influence the size of a particular charitable gift. For example, someone interested in a larger tax deduction may choose to make a larger gift, at least in part, for the greater deduction. Therefore, charitable giving tax breaks may not always motivate donors, but they usually *matter* to them…and certainly motivate some.

Overall, I like the itemized charitable deduction as we have it (not that it can't be improved). It helps many donors, but it especially attempts to motivate wealthier donors by decreasing their post-deduction gift cost the most. Although all philanthropy is valued and important, wealthier donors have the capacity to make the large gifts that are especially hard to come by when budgets are tight and strapped governments turn to the nonprofit sector to fill the gaps they cannot close. Furthermore, there have been some smart developments in the field of giving

recently that help to resolve some of the inequities against those taxpayers who do not itemize. For example, the Charitable IRA Rollover allows donors age 70½ and older to distribute up to $100,000 directly from their IRA to public charities without having to count the distributions as taxable income. For taxpayers who do not itemize, taking advantage of this would finally give them some financial benefit for contributing to charity. At the time of this writing, bills are pending in both houses of Congress to extend and expand the Charitable IRA Rollover so more potential donors can take advantage of it.

As unemployment remains high and confidence in a quick recovery low, governments will justifiably tighten their collective belts and more people will inevitably turn to charities for help (In fact, this has been happening for some time now). These people, our communities, and our economic base need a vibrant and effective charitable sector. Certainly, there are many varieties of legal and tax reform that can still achieve the primary goal of maintaining some kind of incentive for charitable giving. Policies (smart tax breaks or otherwise) that help motivate private individuals to give to important causes during difficult times are not just helpful to people in need. They will ultimately help governments save money by leveraging the transformative power of philanthropy. ❖

How to Help Clients and Colleagues Find >>>> YOU <<<<

One easy and economical way to help clients and colleagues connect with you is through the Bar's online **Attorney Directory**. To view your current listing, go to the Bar's website at **www.ribar.com**. On the left side of the **Home** page, double click on the blue and white **Attorney Directory** icon, type in your name and click on **Search**, then click on **View Details**. Please ensure all your contact information is correct including your practice name or business, postal, email and website addresses, and telephone and fax numbers. And, if you don't have your photograph, please send one to the Bar for posting. Contact Bar Communications Program Coordinator Kathleen Bridge at: **kbridge@ribar.com** or **401-421-5740**.

The New Scarlet Letter: Are We Taking The Sex Offender Label Too Far?

Katherine Godin, Esq.
The Law Office of Katherine Godin, Inc.

…the proposed implementation of the federal Adam Walsh Act is not only costly and unconstitutional, but also damaging and unnecessary for all parties involved.

Every reasonable person would agree that such sex crimes as child molestation and rape are deplorable, and that those who commit such crimes should be punished. Sadly, our practical judgment as a society has become clouded due to the emotional reaction to sex offenders. States, as well as the federal government, are quick to enact incredibly harsh, costly and mostly ineffective pieces of legislation in an attempt to assure the public that the government is not soft on sex offenders.

The following provides a brief overview of the history of sex offender registration and community notification, as well as a short summary of Rhode Island's current system, before discussing proposed legislation to implement the federal Adam Walsh Act (AWA). This article also highlights the major concerns with enacting sex offender registration and community notification legislation in general and, more specifically, the implications of enacting the AWA, not just for the individual sex offender, but also for the general public.

History

Stories about pedophiles lurking in the bushes and attacking children have led to increasingly restrictive requirements on those deemed sex offenders. Nationwide sex offender registration was enacted in the early 1990s to keep track of and inform citizens about the risk sex offenders pose to the community. Since then, various states and the Federal Government have imposed increasingly severe restrictions on sex offenders in the hope that restricting almost every aspect of an offender's life will prevent the offender from re-offending.

In 1994, the Jacob Wetterling Act went into effect, which required each state to create and maintain a database of all sex offenders living in the state.[1] The legislation was named after an eleven year-old boy who went missing in Minnesota in 1989 and remains missing to this day.[2] Two years later, Megan's Law was enacted, requiring the states to not only maintain their databases (registries), but also notify the community of the sex offenders' existence.[3] This piece of legislation was named after Megan Nicole Kanka, a seven year old who was raped in murdered in 1994 in New Jersey.[4]

In 2006, President Bush signed the Adam Walsh Act (AWA) into law, named after the son of America's Most Wanted Host John Walsh.[5] Instead of once again tightening the requirements of the Jacob Wetterling Act, the AWA replaces the system entirely. In addition to increased penalties for sex offenses charged in federal court, the AWA required all states to implement the new registration and community notification system or risk losing 10% of federal Byrne Grant money.

Since that time, the federal government has been granting states extensions to comply, and the Department of Justice has been collaborating with local prosecuting agencies and law enforcement to resolve some local government's concerns with implementing the act. Bills have been introduced to the Rhode Island House and Senate Judiciary Committees for the last several years but, each year, the bills have failed to become state law for several good reasons.[6]

Rhode Island's Sex Offender Registration and Community Notification Act

Presently, Rhode Island's Sex Offender Registration and Community Notification Act (SORCNA) classifies an offender after considering over a dozen factors including: the facts of the offense(s); static risk assessment test(s); the offender's prior criminal history; his or her employment, educational and social stability; and whether the offender participated in sex offender treatment.[7]

The Rhode Island Parole Board Sexual Offender Community Notification Unit (SOCNU) *interviews the offender without his or her attorney present*, performs an assessment of the offender's risk assessment and classifies the offender as a Level 1, 2 or 3. The offender then receives notification of his level and, if the level is a 2 or 3, his or her opportunity to appeal the classification in Superior Court.[8]

At the hearing, the State must present a *prima facie* case that the SOCNU used a valid risk assessment tool and reasonable means to collect the information used in the risk assessment.[9] Once the State has presented its case, the Court must affirm, unless the offender proves,

by a preponderance of the evidence, that the SOCNU did not comply with statutory law or its own guidelines to classify the offender.[10]

The current registration and community notification law has been challenged on constitutional grounds. In **State v. Germane**, the Rhode Island Supreme Court ruled that, as applied, the law did not deprive that particular offender of due process.[11] However, the Court went on to explain:

> While the present appellant was not deprived of his constitutional right to procedural due process since he was *in fact* permitted to present a multifaceted case in the Superior Court, it is nonetheless our opinion that, under different circumstances, the discretion that § 11-37.1-15(a)(2) accords to the reviewing court could result in infringement of a sexual offender's constitutional rights.[12]

Generally, all registered sex offenders must register each year with their local police department. This duty will continue for 10 years following the completion of the offender's sentence. Additionally, those required to register must do so once every three months for the first two years unless the offender is found to be a "sexually violent predator" or is considered a recidivist or "aggravated crime offender", in which case the offender will be subjected to lifetime registration.[13]

Any sex offender who: 1) fails to register; 2) fails to verify his/her address; 3) fails to notify the police of a change in address or additional residence; or 4) fails to provide accurate information could be punished by up to 10 years imprisonment and/or up to a $10,000 fine.[14]

Proposed Legislation to Implement the Adam Walsh Act

Megan's Law was enacted in 1996 to warn/inform citizens about the risk sex offenders pose to the community. The AWA sadly takes affirmative steps to undermine the effectiveness of sex offender registration and community notification. Most importantly, the AWA makes it less likely to accurately predict sex offense recidivism.

Under this year's State Senate and House bills, the proposed implementation of the AWA would eradicate the current classification and registration system for sex offenders and would replace the system with a classification process in which sex offenders are classified based *solely* by the offense of which the offender is convicted.[15]

As an example, someone convicted of third-degree sexual assault (i.e., statutory rape) would be classified as a Tier III offender, the same as someone convicted of first-degree child molestation or first-degree sexual assault (i.e., rape).[16] That would mean that an 18-year old who has sex with his 15-year old girlfriend will be branded a sex offender for the rest of his life, and will be seen as posing the same threat to the community as someone who forces a woman to have sex or molests a child.

Moreover, under the AWA, factors such as age, mental health issues, psychological profiles (such as pedophilia) and participation in sex offender treatment, which have all been suggested to have an affect on an offender's risk of recidivism, will be irrelevant to an offender's classification level.[17]

The AWA would also eliminate the ten year, once per year registration requirement for most sex offenders and would replace it with the following registration requirements:

Tier I – 15 years, once ever year
Tier II – 25 years, once every 6 months
Tier III – life, once every 3 months[18]

The reality of sex offenders, sex offenses and sex offender registration in the U.S.

The reality of sex offenders and their offenses has been drastically distorted in the media. Society has been frightened with tales of sex offenders who are constantly re-offending. Yet recidivism rates for sex offenders are *far* lower than recidivism rates for non-sex offenders. According to the most recent recidivism rates collected by the U.S. Department of Justice, 43% of sex offenders in state prisons were re-arrested within three years of release from incarceration, compared to 69.5% of non-sex offenders. As for re-convictions, sex offenders had a 24.8% recidivism rate, whereas non-sex offenders came in at 48.9%.[19] Some researchers have found that recidivism rates are actually higher for registered sex offenders than for unregistered sex offenders.[20] Others have found no statistically significant difference between the recidivism rates for registered sex offenders and unregistered sex offenders.[21]

More importantly, 95-96% of sex offenders arrested have no prior sex offense convictions. Therefore, there seems to be no effective way to predict who, or when someone, will commit a sex offense.[22]

The public perception of the typical sex offender is the scary man lurking in the bushes or luring children into cars with candy. The reality is that **97%** of child sex abuse victims up to 5 years old knew the offender (as a family member, family friend) prior to the offense. For those victims 6-11 years old, 95% knew the offender previously. For those 12-17 years old, the statistic is 90%. In general, for sexual assault victims under 18 years of age, 93% knew their offender before the incident.[23] The same study also found that over 72% of adult victims knew their offender prior to the incident.[24]

Up until now, sex offender registration and community notification laws have created significant negative implications for offenders. More stringent registration requirements, including longer registration periods, will lead to even more difficulty finding employment, housing and stable social connections, and will make it more likely that sex offenders will be harassed and/or assaulted.[25] In some cases, these excessively stringent registration requirements have encouraged sex offenders to re-offend because they are left with little to no incentive to rehabilitate.[26]

Constitutional, fiscal and societal defects of the AWA

1. The AWA is unconstitutional on several grounds

Last summer, the Supreme Court of Ohio[27] ruled that the AWA violated the separation of powers doctrine. The Court found that the executive branch was unconstitutionally allowed to open final judgments of the Superior Court in order to re-classify sex offenders.[28] The same problem will occur in this state. Under the proposed AWA, the executive branch will be allowed to vacate judgments from the Superior Court and re-classify those sex offenders. Such tampering with final orders of the court is unconstitutional and violates separation of powers.

The AWA would most certainly also deprive offenders of their procedural due process rights to a meaningful hearing before being labeled a sex offender. An essential element of one's due process rights is the opportunity to be heard "at a meaningful time and in a meaningful manner."[29] As noted previously, in 2009, the Rhode Island Supreme Court considered the current registration and community notification system in **State v. Germane.**[30] In their decision, our Supreme Court found that sex offenders

have a protected liberty interest in being classified, and noted *in dicta* that denying sex offenders the opportunity to challenge their classification levels would deprive them of procedural due process.[31]

There is also a question as to whether the AWA would constitute a violation of offenders' substantive due process rights. While courts have been hesitant to find a substantive liberty or privacy interest in not being subjected to sex offender registration and notification requirements,[32] and they have not yet found the requirements to constitute an *ex post facto* law,[33] given the U.S. Supreme Court's recent decision of **Padilla v. Kentucky**, in which the Court found that a criminal defendant has a constitutional right to be advised of the immigration consequences of a conviction,[34] courts may find that the AWA requirements are so invasive, stringent and unnecessary that they violate an offender's substantive due process rights and constitute an *ex post facto* punishment.

The AWA also contains elements that are arguably overbroad. In the proposed bills, kidnapping, with no sexual element, as well as "failure to file factual statement about an alien individual," are listed as sex offenses triggering registration.[35] With no way of differentiating between a sexually-related kidnapping and a non-sex related kidnapping, as the current system theoretically does, the inclusion of these non-sex offenses constitutes an unconstitutionally broad portion of the AWA.

2. The Adam Walsh Act is being introduced to prevent the loss of federal grant money, yet will be far more costly to implement

During the House and Senate Judiciary Committee hearings, a major selling point to implement the AWA has been the argument that implementing the legislation will prevent the loss of 10% of federal Byrne Grant money. Arguments have also been made that the costs of implementing the legislation will be minimal.

Yet recent estimates have placed Rhode Island Byrne Grant funds at approximately $100,000 per year, with the costs the costs estimated at $1,715,760 for the first year.[36]

Under the AWA 's provisions, the State's executive branch would have to look into the criminal history of *every single person* incarcerated at the Adult Correctional Institution and Wyatt Detention Center, as well as *every person* convicted of a felony to determine whether he or she qualifies as a sex offender required to register, even if the triggering offense was from 30 or 40 years ago.[37] Under the retroactive registration, anyone currently incarcerated or on parole/probation who has previously been convicted of a sex offense, even if the individual is currently under no obligation to register and is not currently incarcerated for a sex offense, must be identified and classified as a sex offender.[38]

The State would have to spend money on: training employees to enforce and maintain the new registration and community notification system; installing and maintaining the required electronic database; additional prison space for all those charged with failing to register; court and administrative costs involved with litigating the constitutionality of the legislation; as well as litigating failure to register cases, law enforcement costs involved with stricter monitoring of all sex offenders and, presumably, legislative costs involved with amending the unconstitutional elements of the legislation. While the State has suggested that the federal government would provide partial funding to help cover the costs of the required software, it has yet to provide a specific accounting of all of the projected costs.

Our current sex offender registration and community notification system is far from perfect, and there is certainly an unanswered question as to whether the system fulfills its intended purpose of preventing sexual re-offending. Yet, it is clear the proposed implementation of the AWA is not only costly and unconstitutional, but is also damaging and unnecessary for all parties involved. Instead of more accurately informing the public of the risk each sex offender poses to the community, the AWA will unnecessarily alarm, and scare, citizens for no reason. Hopefully, Rhode Island will continue to reject the proposed legislation and will one day start to focus more on educating the public about the reality of sex offenders than implementing unnecessary and harmful legislation.

ENDNOTES

1 ***See*** *Tewksbury, Richard & Matthews Lees,* Perceptions of Sex Offender Registration: Collateral Consequences and Community Experiences, *26 Sociological Spectrum 309-334, 310 (2006).*

2 *42 U.S.C. § 16901.*

3 *Tewksbury & Lees (2006),* ***supra****, at 311.*

4 *42 U.S.C. § 16901.*

5 *http://www.msnbc.msn.com/id/28257294/ns/us_news-crime_and_courts/t/police-killing-adam-walsh-solved/#*

6 ***See*** *H 8152 (R.I. 2010); S 2897 (R.I. 2010); H 5129 (R.I. 2011); S 0833 (R.I. 2011);* ***see also*** *Katie Mulvaney, R.I. GETS EXTENSION ON COMPLYING WITH SEX OFFENDER LAW, PROVIDENCE JOURNAL (September 22, 2009) (discussing the extensions and the problems involved with implementation).*
7 *Rhode Island Parole Board Sex Offender Community Notification Unit, SEXUAL OFFENDER COMMUNITY NOTIFICATION GUIDELINES, Appendix Addendum 1 (2010).*
8 ***Id.*** *at 9-13; R.I. Gen. Laws § 11-37.1-14.*
9 *R.I. Gen. Laws § 11-37.1-16.*
10 ***Id.***
11 ***State v. Germane****, 971 A.2d 555, 579 (R.I. 2009).*
12 ***Id.*** *at 579-80.*
13 *R.I. Gen. Laws § 11-37.1-4.*
14 *R.I. Gen. Laws § 11-37.1-10.*
15 *H 5129 (R.I. 2011); S 0833 (R.I. 2011).*
16 ***Id.***
17 ***Id.***
18 ***Id.***
19 ***See*** *U.S. Dept. of Justice, Bureau of Justice Statistics, "Prisoner Recidivism," available at http://bjs.ojp.usdoj.gov/index.cfm?ty=datool&surl=-/recidivism/index.cfm; Matthew R. Durose, Patrick A. Langan, Erica L. Schmitt, RECIDIVISM OF SEX OFFENDERS RELEASED FROM PRISON IN 1994, BJS No. NCJ 198281 (Nov. 2003).*
20 ***See*** *Prescott, JJ & Jonah Rockoff, DO SEX OFFENDER REGISTRATION AND NOTIFICATION LAWS AFFECT CRIMINAL BEHAVIOR? (2008), available at http://www.law.virginia.edu/pdf/olin/0708/prescott.pdf*
21 ***See*** *Adkins, G., D. Huff, and P. Stageberg, THE IOWA SEX OFFENDER REGISTRY AND RECIDIVISM (2000); Schram, Donna and Cheryl D. Milloy, COMMUNITY NOTIFICATION: A STUDY OF OFFENDER CHARACTERISTICS AND RECIDIVISM (1995).*
22 ***See*** *Sandler, Jeffrey et al., DOES A WATCHED POT BOIL?: A TIME-SERIES ANALYSIS OF NEW YORK STATE'S SEX OFFENDER REGISTRATION AND NOTIFICATION LAW 14 Psychol. Pub. Pol'y & L. 284, 297 (2008); Prescott & Rockoff (2008),* ***supra****.*
23 *Howard N. Snyder, Ph.D., SEXUAL ASSAULT OF YOUNG CHILDREN AS REPORTED TO LAW ENFORCEMENT: VICTIM, INCIDENT, AND OFFENDER CHARACTERISTICS 10 (July 2000), National Center for Juvenile Justice, NCJ 182990.*
24 ***Id.***
25 ***See State v. Krieger****, 163 Wis.2d 241, 257-58 (1991) (A survey of the Wisconsin prison system revealed that sex offenders were at a greater risk for various forms of physical, sexual and psychological abuse than inmates not convicted of sex offenses);* ***see also*** *42 U.S.C. §§ 15601-02 (the Prison Rape Elimination Law); 103 DOC 519.01-11 (the Dept. of Corrections' Sexually Abusive Behavior Prevention and Intervention Policy);* ***Farmer v. Brennan****, 511 U.S. 825, 833 (1994) ("Being violently assaulted in prison is simply not part of the penalty that criminal offenders [should] pay for offenses against society"); NO ESCAPE: MALE RAPE IN U.S. PRISONS, Human Rights Watch, p. 59 (April 2001) (prisoners convicted of sexual offenses against minors are more likely to be targeted for sexual assault in prison than other offenders); see also* ***Doe v. Attorney General****, 426 Mass. 136, 144 (1997) (noting the possible harm of public dissemination to the offender's earning capacity); Tweksbury (2006),* ***supra*** *(discussing the social stigma and collateral consequences endured by registered sex offenders).*
26 ***See*** *Tewksbury, Richard & Lees, Matthews, PERCEPTIONS OF SEX OFFENDER REGISTRATION: COLLATERAL CONSEQUENCES AND COMMUNITY EXPERIENCES, 26 Sociological Spectrum 309-334 (2006) (Stringent sex offender laws have been found to actually create an incentive not to conform because of the social stigma and collateral consequences of being labeled a sex offender).*
27 *It should be noted that Ohio was the first state to implement the AWA.*
28 ***State v. Bodyke****, 933 N.E.2d 753 (Ohio 2010).*
29 ***Mathews v. Eldridge****, 424 U.S. 319, 333 (1976) (quoting* ***Armstrong v. Manzo****, 380 U.S. 545, 552 (1965).*
30 ***Germane****, 971 A.2d at 578.*
31 ***Id.*** *at 580.*
32 ***See Connecticut Dept. of Public Safety v. Doe****, 538 U.S. 1, 7-8 (2003) (in which the U.S. Supreme Court avoided a determination of whether Connecticut's sex offender registration and community notification law violated substantive due process).*
33 ***See Smith v. Doe****, 538 U.S. 84 (2003) (in which the U.S. Supreme Court upheld Alaska's law against an* ***ex post facto*** *challenge in a divided decision).*
34 ***Padilla v. Kentucky****, 130 S. Ct. 1473 (2010).*
35 *H 5129 (R.I. 2011); S 0833 (R.I. 2011).*
36 *See Justice Policy Institute, WHAT WILL IT COST STATES TO COMPLY WITH THE SEX OFFENDER REGISTRATION AND NOTIFICATION ACT?, available at http://www.justicepolicy.o-rg/images/upload/08-08_FAC_SORNACosts_JJ.pdf*
37 *H 5129 (R.I. 2011); S 0833 (R.I. 2011).*
38 ***Id.*** ❖

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

Ray LaFazia came of age during the Great Depression. After graduating from Mount Pleasant High School in Providence in 1941, he served four years in the Army Air Corps during World War II.

Raymond A. LaFazia, Esq.

Following the war, Mr. LaFazia returned to Rhode Island, and attended Rhode Island State College (later renamed University of Rhode Island) for two years before heading to Boston University to obtain his law degree.

Mr. LaFazia clerked for the Legal Aid Society of Rhode Island, and continued handling cases for Legal Aid even after starting his own private practice. Early in his career, he locked horns with Bill Gunning in a workers' compensation case, and the two eventually established Gunning & LaFazia.

At Gunning & LaFazia, Mr. LaFazia earned a reputation as one of Rhode Island's best trial lawyers and, perhaps equally important, as one of the bar's most influential mentors. Under Mr. LaFazia's stewardship, Gunning & LaFazia produced numerous preeminent lawyers and judges, male and female alike. In fact, at one point in the early 1980s, when other firms had one token female, Gunning & LaFazia employed a, then shocking, 25 percent ratio of female attorneys. His daughter, The Honorable Jeanne E. LaFazia, Chief Judge of the District Court, noted, "For my father, it was always a matter of fairness and open-mindedness, and it was a big door that he opened."

We recently sat down with Mr. LaFazia to learn about the plethora of successes in his distinquished career. As a measure of his powerful impact in the Rhode Island bar, Chief Judge LaFazia, Workers' Compensation Court Chief Judge George E. Healy, Jr., and Superior Court Justice Netti C. Vogel – just a small sampling of his many distinguished mentees – also participated in the conversation.

Below are excerpts from our interview.

Why has mentoring been such an important part of your practice? Well, because I learned from it too, and it makes the practice of law enjoyable to share something. If you've got something you could share and receive from a fellow lawyer…it's like belonging to the same club; you understand each other better.

What advice would you give to newer members of the bar?
Be trustworthy. I think that's the biggest thing. Because in recent years I've seen untrustworthiness, that some of your opponents will win at any price. And that's always happened, but I think it's more frequent in recent years.

What do you think has been the single biggest change in the legal profession and the practice of law since you first started back in the '50's? There are a couple of things. When I started practicing law we had eleven judges in the Superior Court and they handled all the calendars. Domestic relations, workers' compensation, everything was in the Superior Court.

[Another] big thing [was] when they changed the Rules of Civil Procedure. We had very simple rules. You could ask some interrogatories, but depositions were not widespread like they are today…and you kind of tried cases by the seat of your pants…you didn't get the discovery that you get today. On the other hand, that's become very expensive. So today to have a lawsuit is a big expense.

What is one of your most memorable legal experiences?
[S]ometime in the '60s, I got involved in politics and we went up against the endorsed candidates in the Town of Johnston. And we were pretty successful in our efforts to get our candidates known and so forth. But, when it came toward election time, we had voting machines and the endorsed candidates were all listed vertically and our candidates were listed across. And somehow I found out that as you go across, for older people particularly, the levers get harder and harder to push, and when you get out to that sixth lever or seventh lever, some people can't do it. And I don't know how I got in touch with them but I got in touch with the manufacturer of the voting machine, and he agreed. And we brought it to trial before Judge Perkins, and he explained that everybody should be listed vertically. We won that case. And we had them all listed vertically.

Would you do this all again? I can't think of anything better to do.

A great lawyer indeed, but also, as Judge Healy and Judge Vogel remark, "From our standpoint, [Ray] never stopped being a teacher."

CLE Publications Order Form

NAME _____

FIRM or AGENCY _____

MAILING ADDRESS _____
Cannot be a P.O. Box

CITY & STATE _____

ZIP _____ PHONE _____

EMAIL ADDRESS _____

BAR ID # _____

☐ Check enclosed (made payable to RIBA/CLE)
Please do not staple checks.

☐ Please charge to my credit card checked below

☐ MasterCard ☐ VISA ☐ AMEX ☐ Discover

Exp. Date _____

Card No. _____

Signature _____

Please make check payable to:
Rhode Island Bar Association/CLE
and mail with order form to: CLE Publications, Rhode Island Bar Association, 115 Cedar Street, Providence, RI 02903.

Please do not staple checks.

SHIPPING/HANDLING INFORMATION
Please allow 2-3 weeks for delivery.
All books are sent by FedEx Ground.

Publication Total	Shipping and Handling Cost
Up to $45.00	$6
$45.01 - $75.00	$9
$75.01 - $100.00	$12
$100.01+	$15

OFFICE USE ONLY

Check No._____ Amount _____

Date Rec'd _____ Date Sent_____

Title	Book #	Price	Qty.	Total
BANKRUPTCY				
Avoiding Foreclosure/Loan Modifications	10-14	$40		
BUSINESS				
Practical Skills - Organizing a Rhode Island Business (available after 12/7/11)	11-18	$45		
Commercial Law 2011: Update on Recent Developments	11-13	$40		
Practical Skills - Basic Commercial & Real Estate Loan Documentation	11-02	$70		
ENVIRONMENTAL LAW				
Responding to DEM & CRMC Enforcement Actions	09-17	$30		
FAMILY LAW				
Practical Skills - Domestic Relations Practice	11-09	$50		
Child and Medical Support	09-16	$35		
QDRO Practice in RI from A-Z	09-13	$40		
LAW PRACTICE MANAGEMENT				
Establishing a Law Firm in RI	09-19	$25		
Planning Ahead	09-14	$39.95		
PROBATE/ELDER LAW				
Medicaid 101	11-15	$35		
Practical Skills - Planning for and Administering an Estate	11-06	$40		
Medicare Claim Settlements	09-12	$30		
Administrative Local Rules	PR-10	$65		
REAL ESTATE				
The Ins & Outs of Landlord Tenant Law	11-11	$15		
Practical Skills - Residential Closings	11-07	$65		
RI Title Standards Handbook (through 10/09)	TS-09	$35		
RECENT DEVELOPMENTS				
Recent Developments in the Law 2011 (available after 11/18/11)	RD-11	$55		
TRIAL PRACTICE				
Practical Skills - Criminal Law Practice in RI (available after 11/4/11)	11-16	$50		
Soft Tissue Injuries Explained	11-12	$35		
DWI Update	11-05	$35		
Practical Skills - Civil Practice in Superior Court	11-04	$40		
Practical Skills - Civil Practice in District Court	11-01	$40		
Social Host Law	09-11	$25		
The Elements of a Trial - The Expert Witness	07-13	$45		
HIPAA Explained	04-08	$35		
Model Civil Jury Instructions	03-02	$49.95		
WORKERS' COMPENSATION				
Practical Skills - Workers' Compensation Practice in Rhode Island	11-10	$40		

Books $ _____

Shipping & Handling $ _____

Sub-Total $ _____

7% R.I. Sales Tax $ _____

Total $ _____

Detach Here

Continuing Legal Education Update

To register for CLE seminars, contact the Rhode Island Bar Association's CLE office by telephone: 401-421-5740, or register online at the Bar's website: www.ribar.com by clicking on CONTINUING LEGAL EDUCATION in the left side menu.
All dates and times are subject to change.

November 1
Tuesday
Food For Thought – Avoiding Liability to Medicare
Casey's Restaurant, Wakefield
12:45 pm – 1:45 pm
1.0 credit

November 3
Thursday
Food For Thought – Fair Housing & Reasonable Accommodations
RI Law Center, Providence
12:45 pm – 1:45 pm
1.0 credit

November 4
Friday
Practical Skills – Criminal Law Pre-Trial Practice
RI Law Center, Providence
9:00 am – 3:00 pm
4.0 credits + 1.0 ethics

November 8
Tuesday
Advocating for Veterans
Sponsored by the Rhode Island Bar Association US Armed Forces Legal Services Project
RI Law Center, Providence
1:00 pm – 4:00 pm
3.0 credits

November 9
Wednesday
Food For Thought – Fair Housing & Reasonable Accommodations
Holiday Inn Express, Middletown
12:45 pm – 1:45 pm
1.0 credit

November 10
Thursday
Food For Thought – Avoiding Liability to Medicare
RI Law Center, Providence
12:45 pm – 1:45 pm
1.0 credit

November 17
Thursday
Food For Thought – Debts, Harrassment & the FDCPA
RI Law Center, Providence
12:45 pm – 1:45 pm
1.0 credit

November 18
Friday
Recent Developments 2011
Crowne Plaza Hotel, Warwick
9:00 am – 4:30 pm
6.0 credits + 1.0 ethics

November 29
Tuesday
Food For Thought – Exit Strategies for Businesses
Casey's Restaurant, Wakefield
12:45 pm – 1:45 pm
1.0 credit

November 30
Wednesday
Food For Thought – Debts, Harrassment & the FDCPA
Holiday Inn Express, Middletown
12:45 pm – 1:45 pm
1.0 credit

December 1
Thursday
Dodd-Frank – Consumer, Banking and Mortgage Lending Provisions
RI Law Center, Providence
2:00 pm – 5:00 pm
2.5 credits + .5 ethics

December 7
Wednesday
Practical Skills – Organizing A Rhode Island Business
RI Law Center, Providence
9:00 am – 3:00 pm
4.0 credits + 1.0 ethics

December 8
Thursday
Food For Thought – Exit Strategies for Businesses
RI Law Center, Providence
12:45 pm – 1:45 pm
1.0 credit

SAVE THE DATE

2012 ANNUAL MEETING

June 14 & 15, 2012
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.

LIMITED TIME OFFER:
3 FREE MONTHS
of Business Internet or Phone Service.

"Whether it involves a formal telecommuting arrangement or employees extending their workday by checking e-mail on an iPhone or remotely downloading a document from a "cloud" or via software that connects their home computer to their employers' network -- an increasing number of 21st-century employees conduct a portion of their duties in this virtual environment." - *CT Law Tribune*

A day in court doesn't have to mean a day away from the office.

Cox Business VoiceManager℠ goes where you go, with 3 FREE MONTHS of Business Internet or Phone, you can forward your calls to the phone of your choice and manage your calls and features from any internet connection. We understand the business challenges you face in the legal profession.

You need a provider that offers you the very latest in technology, efficient systems and trusted data security – all with the ability to go everywhere you go, from the door of your office to the steps of the courthouse.

Scan this code for a chance to win an iPad 2*!

*Offer valid until 12/31/2011 to new commercial subscribers of Cox Business Internet℠ and/or Cox Business VoiceManager℠ in Cox serviceable locations of Rhode Island, Connecticut and Ohio. Minimum 2-year service contract required. Offer includes monthly service fees for the first 3 months of Cox Business Internet with download/upload speeds of up to 50 Mbps/5 Mbps and up to 8 Cox Business VoiceManager lines. Offer does not include installation, construction, inside wiring, usage, equipment, applicable taxes, surcharges or fees. Telephone modem equipment is required. Modem uses electrical power to operate and has backup battery power provided by Cox if electricity is interrupted. Telephone service, including access to e911 service, will not be available during an extended power outage or if modem is moved or inoperable. Telephone services are provided by Cox Connecticut Telcom, LLC, Cox Rhode Island Telcom, LLC or Cox Ohio Telcom, LLC. Cox cannot guarantee uninterrupted or error-free Internet service or the speed of your service. Actual speeds vary. Rates and bandwidth options vary and are subject to change. Discounts are not valid in combination with or in addition to other promotions and cannot be applied to any other Cox account. Services not available in all areas. Other restrictions apply. To enter to win iPad 2, entrant must be 18 years or older. No purchase necessary. 1 entry per business. Must enter online at www.getcoxbiz.com. Contest information available at www.getcoxbiz.com. 1 monthly winner will be selected at random from all eligible entries for a period of 4 months. Chances of winning depend on number of entries received. Winner will be notified by phone.

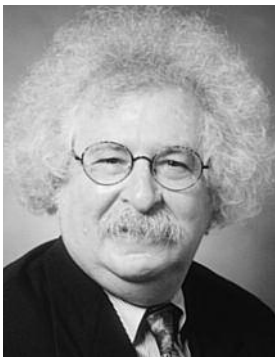
COX Business®

Call the Cox Business team at **877-903-5930** or visit us at **www.CoxBizLegal.com** for more information.

BOOK REVIEW

Constitution Day: Reflections by Respected Scholars

edited by Patrick T. Conley, Esq.



Jay S. Goodman, Esq.
Professor of Political Science, Wheaton College

For those who like a good evening's reading on historical constitutional issues, serious, but not law review heavy, this book satisfies.

Between 2000 and 2009, Patrick T. Conley sponsored an annual Constitution Day event, on or around September 17th, at his Bristol, Rhode Island home, *Gail Winds*. He invited between 100 and 250 guests and, along with various rituals including colonial militia re-enactors and patriotic bands, there was a speech on the Constitution by a prominent, visiting scholar. Attorney Conley describes these events as part scholarly exercise and part social spectacle. This published volume contains twelve commentaries on the Federal Constitution, each with an afterword by Conley providing a Rhode Island focus to the federal issue. There is a lot here that is self-referential, including his event sponsorship and gracious hosting with his wife, as well as photographs with his six former dissertation students from Providence College and of his 7,000 volume private library. The published remarks also contain the informal complements and little jokes of participants who know each other very well. But, at its core, the volume is a serious *festschrift*, with the honoree being the Constitution of the United States.

Among the chapter authors are: retired Brown Professor Gordon S. Wood, a Pulitzer Prize winner; retired John Hopkins British empire scholar Jack P. Greene; John P. Kaminski, who has worked on the documentation of the Constitution project at Madison for forty years; Brown University Bancroft Prize winner James T. Patterson; longtime Stanford constitutional history professor Jack N. Rakove; Hunter College and CCNY historian of women in the colonies, Carol Ruth Berkin; MIT Professor Pauline Maier, a scholar of the politics of the American Revolution; 18th and 19th constitutional scholar, William M. Wiecek; retired Rhode Island Supreme Court Chief Justice Joseph R. Weisberger; retired Connecticut State Historian Christopher Collier; University of Kentucky historian of mid-19th century populist movements Ronald P. Formisano; and Conley himself.

Most of commentaries are on 18th and 19th century constitutional cases and issues, but two cover 20th century constitutional cases or processes. The topics are: an interpretation of **Marbury v. Madison**; the 18th century pursuit of an independent judiciary; the three stages of the American Revolution; the creation of the 1787 constitution; the drive to change the Articles of Confederation and the resistance to the new stronger Constitution; the argument of the opponents of the Constitution, the anti-federalists, sympathetically revisited; the contributions of Rhode Island to national constitutional issues; the step-by-step incorporation of the Bill of Rights to the states; the early constitutional land case of **Van Horne's Lessee v. Dorrance**; the unsuccessful 19th century push for broadened suffrage in Rhode Island leading to the "Dorr War;" and the rejection of suffrage for unpropertied Irish immigrants in Rhode Island after the Civil War.

Some of the collected speeches are informal and undocumented, while others are scholarly, complete with footnotes and references. As examples of the contents, I present the following overviews of two essays concerning, respectively, valid objections to the United States Constitution during its creation and the struggle for individual voting rights in Rhode Island.

Most of us have never devoted much thought to the issues surrounding the 1787 ratification of our Constitution. It's just there, and, certainly, if we know anything at all about its original opponents, the anti-federalists, they are seen as rural rubes who tried to keep the emerging government in the former colonies weak and decentralized. Simple passage of time, plus our continued veneration of the founding fathers, blurs what were legitimate controversies at the time. Pauline Maier's contribution, *Take This or Nothing: Did the Anti-Federalists Have a Case?*, calls our easy assumptions into question. She points out that our understanding of the period is pro-federalist. We see the story as the Federalists themselves saw it. And, there is justification for the Federalists' contemporary view of their sophistication and their success, including that their version of the document is still in place.

Maier revisits original documents and press commentaries. She finds that many good ideas were rejected at the Convention. Anti-Federalist

speeches and arguments were not published or they were suppressed. And, the Federalists employed what we would call hardball tactics. They resisted amendments, refused the idea of a second convention, and rejected any ratification process that brought local communities and ordinary citizens into the process. At every stage, they controlled the available information. The Convention, which was mandated to revise the failing Articles of Confederation, instead met in tight secrecy and produced an entirely new document. The country had no idea what was coming and was presented with a take-it-or-leave-it choice. Two serious objections were to the small size of the House of Representatives (sixty-five) and to the equal representation of the states in the Senate. The most important objection was the delegates' refusal to attach a Bill of Rights to the original document and to thus guarantee individual protections against government. In a counterfactual argument, Maier suggests that we could have gotten a better constitution.

Her argument is about government structure and clearly has a point that emerges from the fog of history and time. We see now, for example, that for all that the Constitutional Convention delegates did achieve, they kicked down the road the emerging nation's two most deadly problems. The Constitution strengthened slavery in several ways, putting off the eventual reckoning on the peculiar institution. And, it achieved no resolution on the claims of Native Americans, thus setting the stage for another hundred years of fighting on the ever-shifting frontier.

Author Ronald P. Formisano points out the Revolutionary Era was one of populist constitutionalism. The idea of the people's sovereignty was widespread, and Rhode Island, while in many ways an outlier among the states, nonetheless "nowhere else were the rights of local communities and individuals more jealously guarded." He states: "The popular assembly, the popular initiative referendum, frequent election of officials, as well as the preponderating influence of the legislature, all bear witness of (Rhode Islanders') solicitude." But, by the 1840s all this was gone. A cohesive elite of wealthy landowners, merchants and manufacturers dominated politics and resisted any reform. Suffrage was limited to white male landowners, and there was no secret ballot, so employers could monitor their employees voting and, when they disapproved of employee votes, to take coer-

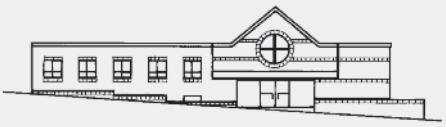
cive action. This rule by oligarchy in a period of extensive Irish Catholic immigration gave rise to the Dorr Rebellion.

Thomas Wilson Dorr was a prince of the gentry but he turned against his class and supported the so-called "People's Constitution" which gave the vote to adult white males who had lived in the state for a year. The establishment held a Landowners' Convention which drafted its own new constitution in 1843, keeping the property qualification for naturalized citizens. Competing elections were held, and Dorr was chosen the People's governor while the incumbent Samuel Ward King was elected by the landholders. After various maneuvers, including an unsuccessful appeal to President Tyler and support from Tammany Hall, Dorr led an abortive military raid on an armory. Another restrictive constitution was put in place, and Dorr was arrested and sentenced to life imprisonment for treason. He was released after twenty months but, his health broken, he died in 1854 at the age of forty-nine. The dominant, nativist Rhode Islanders won again when, in 1849, the United States Supreme Court upheld their position, in **Luther v. Borden**, by refusing to adjudicate the substantive issues and first enunciating the doctrine of "political questions." Thus Rhode Island remained dominated by a malapportioned, rural-centered legislature into the 1960s.

And the Dorr feud is with us today. The contemporary movement to pardon the last person hanged in Rhode Island, John Gordon in 1845, derives from the biased and unfair process that occurred at the height of the Dorr controversies. Gordon's attorneys and supporters were colleagues of Dorr and the Governor and the Judge were from the Law and Order landowner party. (See Patrick T. Conley, "The Origins of the Governor's Pardoning Power," *Rhode Island Bar Journal*, Vol. 59, No. 6, May/June 2011 at 31.) On a related note, this past summer, Rhode Island Governor Chafee posthumously pardoned Gordon, based, on the arguments noted in Attorney Conley's piece referenced above.

Reading tastes differ, of course. But for those who like a good evening's reading on historical constitutional issues, serious, but not law review heavy, this book satisfies.

The reviewed book is a 2010 publication of the Rhode Island Publications Society, Providence. ❖



The 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. The Foundation invites you to join in meeting the challenges ahead by contributing to the Foundation's Tribute Program. The Foundation's Tribute Program honors the memory, accomplishments, or special occasion of an attorney, a friend, a loved one, his or her spouse, or another family member. Those wishing to honor a colleague, friend, or family member may do so by filling out the form and mailing it, with their contribution, to the Rhode Island Bar Foundation, 115 Cedar Street, Providence, RI 02903. You may also request a form by contacting the Rhode Island Bar Foundation at 401-421-6541. All gifts will be acknowledged to the family.

RHODE ISLAND BAR FOUNDATION TRIBUTE PROGRAM GIFT

To contribute to the Rhode Island Bar Foundation in memory of someone who has died or in honor of a special occasion, please complete this form and mail it with your contribution. We will send a card to the person honored or to the family member of the deceased.

PLEASE PRINT

I am enclosing a special gift in the amount of $ _____

In Memory of _____

In Honor of _____

To celebrate his/her/their _____

SEND ANNOUNCEMENT OF GIFT TO:

Name _____

Address _____

City/State/Zip _____

INDICATE ON ACKNOWLEDGMENT THAT GIFT IS BEING MADE BY:

Your Name(s) _____

Address _____

City/State/Zip _____

Phone (in case of questions) _____

Email: _____

Rhode Island Bar Foundation, 115 Cedar Street, Providence, R.I. 02903
telephone: (401) 421-6541

All gifts are acknowledged in the Foundation's annual report.

Refusal Cases: Beyond the Basics

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

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

For the successful prosecution and defense of refusal cases, prosecutors and defense attorneys need to move beyond basic case components and to consider recent decisions.

Recent cases significantly impact the prosecution and defense of refusal to submit to a chemical test case before the Rhode Island Traffic Tribunal (RITT). In every refusal case, the State must prove, by clear and convincing evidence, four key elements to sustain a refusal charge, these are that:

1. The law enforcement officer who submitted the sworn report to the RITT had reasonable grounds to believe the defendant had been driving a vehicle within the State while under the influence of intoxicating liquor or drugs;
2. The defendant, while under a lawful arrest, refused to submit to a chemical test upon the request of the law enforcement officer;
3. The defendant had been informed of his or her rights in accordance with R.I. Gen. Laws 31-27-3;
4. The defendant had been informed of the penalties incurred as a result of non-compliance with R.I. Gen. Laws 31-27-2.1.[1]

The recent decisions of the RITT at trial level, the Appeals Panel, and the 6th Division District Court address the four above-referenced elements. For the successful prosecution and defense of refusal cases, prosecutors and defense attorneys need to move beyond the basic case components and to consider these recent decisions.

I. Rule 27(a) Dismissal by Municipal Prosecutors

In **State v. Healy**,[2] the State appealed the trial judge's decision dismissing the refusal charge pursuant to Rule 27(a) of the Rules of Procedure of the Traffic Tribunal. The town's prosecutor, as part of a plea disposition agreement before the District Court, signed a Rule 27(a) Dismissal by Prosecution form for submission to the RITT. As grounds for its appeal, the State argued, "that only the Attorney General may dismiss a charged violation of § 31-27-2.1, as the Attorney General is the only official with the statutory authority to prosecute refusal cases."[3] The Appeals Panel, in upholding the trial judge's decision and denying the State's appeal, held that, "[w]hile this Panel fully acknowledges the inherent tension between the Attorney General's prosecutorial role under § 42-9-4 and the role of cities and towns contemplated by Rule 27(a), we nevertheless conclude that Rule 27(a) controls our disposition of the State's appeal."[4]

II. Refusal Statute Requires Compliance with R.I. Gen. Laws 31-27-3

In **State v. Soulliere**,[5] the arresting officer began to administer the field sobriety tests at the scene, but the suspect became uncooperative. The suspect was then arrested on suspicion of driving under the influence of alcohol and transported to the Burrillville Police Department. The arresting officer testified, "that 'about halfway back to the station, [he] realized that [he] did not read [Appellant] his rights for use at scene.'… Before the Officer took Appellant out of the cruiser and into the police station, he read Appellant his rights from a card entitled 'Rights for Use at Scene.'"[6] Upon reviewing the requirements of R.I. Gen. Laws 31-27-3, that a person be immediately informed of their rights, the Appeals Panel held that, "time was 'unreasonably [and] unnecessarily wasted'"[7] and the Appeals Panel overturned the trial magistrate's decision sustaining the refusal charge.

Two older Appeals Panel cases also addressing the requirements of R.I. Gen. Laws 31-27-3 are **State v. Ciccione** and **State v. Joyce**.[9] In **Joyce**, the Appeals Panel held that the refusal statute, "requires compliance with section 31-27-3. To satisfy the requirements of section 31-27-3, the actual Rights for Use at the Scene Card must be admitted into evidence unless the police officer is capable of reciting the language of the Rights for Use at the Scene Card from memory."[10] The Appeals Panel went on to hold, "a bare assertion without introducing the Rights for Use at the Scene Card into evidence does not comply with the statutory mandates required by sections 31-27-2.1 and 31-27-3."[11]

In **Ciccione**, the Appeals Panel held that, "[t]he magistrate noted that the officers were obligated to arrest and immediately Mirandize appellee at the scene in accordance with

§ 31-27-3 if they had probable cause to believe he was driving under the influence."[12]

In **Huntley v. State**,[13] as a result of a tragic automobile accident, the appellant was charged and subsequently convicted of driving under the influence – death resulting and refusal to submit to a chemical test. His conviction for refusal to submit to a chemical test was affirmed by the RITT Appeals Panel and the District Court. As the District Court Magistrate noted "the investigation which led to his being charged…with the civil offense of refusal did not follow the customary course. For instance, he was never asked to submit to field sobriety tests and he was never read the standard 'Rights for Use at the Scene.'"[14]

The District Court Magistrate made the following findings regarding the three issues the appellant raised on appeal. First, the arresting officer had reasonable grounds to believe that the appellant was operating under the influence, as required by R.I. Gen. Laws 31-27-2.1, based on "his admission that he had been driving, together with his presence at the scene of the accident in a bloodied condition."[15] The Court further held that the arresting officer had reasonable grounds to believe the appellant had been driving under the influence of intoxicating liquor despite the absence of field sobriety tests.[16] The Court also held that the arresting officer did not violate the requirements of 31-27-3 (the right to an independent physical examination) when he failed to read the appellant his Rights for Use at the Scene.[17] Finally, the Court held that the arresting officer had not failed to arrest the appellant prior to requesting him to submit to a chemical test.[18]

III. Extraterritorial Arrest Results in Refusal Case Dismissal

In **Jamestown v. White**,[19] the Appeals Panel upheld the trial magistrate's decision to dismiss the refusal charge and the refusal to submit to a preliminary breath test charge based on the non-emergency arrest of the appellee outside of the arresting officer's territorial jurisdiction despite the existence of a mutual aid agreement. In this case, a Jamestown police officer travelling westbound on Rt. 138 observed the appellee's vehicle approaching him from behind at a high rate of speed. The arresting officer, "observed the following while both vehi-

cles were located within the territorial jurisdiction of Jamestown: the suspect vehicle, traveling at a speed in excess of the posted speed limit, drift[ing] over the center dividing line on one occasion and over the fog line on two occasions. Officer Sullivan waited until his cruiser and the speeding vehicle had reached the North Kingstown side of the Jamestown Bridge before activating his cruiser's emergency lights and attempting to initiate a traffic stop."[20] In upholding the trial magistrate's decision, the Appeals Panel stated, "that there are only two recognized exceptions to the bright-line rule established by **Page** and its progeny: the so-called 'hot pursuit' exception and the 'emergency police power' exception."[21] The Appeals Panel found that neither exception existed in the case at bar.

A recent Massachusetts Appeals Court decision in **Commonwealth v. Limone**,[22] also addresses the issue of an unlawful extraterritorial arrest in the context of a drunk driving case and supports the Appeals Panel's holding in **White**. In **Limone**, the Massachusetts Appeals Court reversed the defendant's conviction for a fourth or subsequent drunk driving offense and held that "[a] police officer's power to make a warrantless arrest is generally limited to the boundaries of the jurisdiction in which the officer is employed, and, absent fresh pursuit for an arrestable offense, a police officer is generally without authority to make an arrest outside of his jurisdiction. Outside his jurisdictional boundaries, a police officer stands as a private citizen, and, if not in fresh and continued pursuit of a suspect, an arrest by him is valid only if a private citizen would be justified in making the arrest under the same circumstances. In this case, the defendant was suspected only of a misdemeanor motor vehicle offense. It was subsequent investigation that disclosed the defendant had been convicted on at least six prior occasions of operating while under the influence of liquor. Thus, the seizure of the defendant was unlawful. The remedy for such an unlawful stop and arrest is exclusion of the evidence under the 'fruit of the poisonous tree doctrine.' In this case, since the only evidence would have not been obtained but for the unlawful stop and subsequent arrest, the judgments are reversed, the verdicts are set aside, and judgments are to enter for the defendant."[23] (citations omitted)

IV. Sworn Reports

In **Cohen v. RITT,**[24] the District Court Judge reversed the decision of the RITT Appeals Panel, which previously reversed the trial magistrate's decision dismissing the refusal charge. The District Court Judge, in reversing the Appeals Panel's decision, stated "the evidence in the instant case goes beyond the facts and holding of **Link** regarding the introduction of the sworn report (or defects contained therein): there is no evidence that officer Geoghegan ever produced a report or if such a report was prepared on the date in question or whether that report was properly sworn before a notary. While the court in **Link** held that the technicalities of the report are not an element of the 'hearing' case, it insisted that each of the elements of the 'hearing' case must be proven, one of these is that the 'officer making the sworn report' had reasonable grounds to believe the operator had been driving under the influence. See Section 31-27-2.1(c)(1) and **Link**, *supra*, 633 A.2d at 1349. Because this element was not proven, the motorist's conviction must be set aside. To overlook this omission would completely distil the plain language of Section 31-27-2.1. Accordingly, the decision of the Traffic Tribunal is hereby REVERSED."[25]

V. Discovery Violation Results in Refusal Charge Dismissal

In **Warwick v. Cianci,**[26] the District Court Judge reversed the decision of the Appeals Panel which had upheld the trial magistrate's decision sustaining the refusal charge. The District Court Judge stated "[t]he gravamen of the case is whether the Prosecution, (Police department and Attorney Generals department) acted in bad faith by not affording the appellant her basic rights as a citizen. Also, did this 19 month delay in discovery cause substantial and prejudice prior to and during her trial."[27] In reviewing the history of the case, the District Court Judge determined that the day after the appellant's arrest, her attorney "forwarded a written discovery request to the Warwick Police Department that closely tracked the language of Rule 11 of the Traffic Tribunal Rules of Procedure (Rule 11). After a month had elapsed and without a response, counsel forwarded a second, more explicit discovery request to the headquarters of the Warwick Police…"[28] Eventually, when the Warwick Police Department would not produce the potentially exculpatory evidence, the appellant's counsel filed a motion to compel which was granted by the RITT Trial Magistrate. The District Court Judge held "[i]t is abundantly clear from the record before this Panel that counsel for Appellant did everything that he was required to do pursuant to Rule 11 of the Traffic Tribunal Rules of Procedure to obtain the videotape evidence in possession, custody, and control of the Warwick Police Department. As such, the trial magistrate erred in denying Appellant's dismissal motion on the grounds that counsel should have taken the additional – and completely unwarranted – step of subpoenaing the Warwick Police Department to produce the videotape pursuant to Rule 12."[29] As a result, the decision of the Appeals Panel was reversed.

VI. Silence is Not Golden and Constitutes Refusal

In **North Providence v. Exarchos,**[30] the police asked the motorist to submit to the chemical test and the motorist refused to answer. The police made the request a few times and each time the motorist was

silent. At trial, the magistrate ruled "I don't think it, [the] [refusal] needs to be verbal. I think his actions certainly indicated to this officer that he's refusing a test."[31] The Appeals Panel agreed holding the "silence [w]as a constructive, or conditional refusal, which we have held to have the same legal effect of an actual refusal."[32]

VII. Questioning By Court

In **State v. DiPrete**,[33] the police stopped the motorist based on information from dispatch regarding a possible hit and run accident. A witness to the accident called dispatch and relayed information (make, model, license plate number and location of the vehicle) to the police, including the motorist might be intoxicated. The officer never observed the motorist commit any traffic violations before stopping the vehicle. The motorist was never charged in connection with the accident, but he was charged with DUI and Refusal. At trial, the magistrate asked questions of the officer including detailed information he received from dispatch and why the motorist was stopped. On appeal, the motorist alleged the Trial Magistrate violated the Rules of Evidence, and there was a lack of evidence regarding his alleged impairment. The Appeals Panel held "that Magistrate Goulart's questions clarified previous testimony and is wholly consistent with Rule 614 and the proposals enumerated in **Nelson**."[34] With regards to the reasonableness of the stop, the Appeals Panel looked at the totality of the circumstances known to the officer at the time of the stop. The Panel determined the stop was reasonable because the witness observed the accident and continued to follow the vehicle while talking to dispatch, the officer verified/corroborated aspects of the tip before stopping the motorist's vehicle and the informant was trustworthy by providing a statement to police.[35]

VIII. Confidential Telephone Calls (R.I. Gen. Laws 12-7-20)

In **State v. Quattrucci**,[36] Judge McLoughlin affirmed the decision of the Appeals Panel which upheld the decision of Magistrate DiSandro to dismiss the Refusal charge based on the lack of a confidential telephone call. When asked by the Warren Police if he wanted to make a confidential telephone call, the motorist responded that he "didn't care" and made several phone calls in the presence of the officer. The presence of the officer violated his rights pursuant to R.I. Gen. Laws 12-7-20.[37]

However since **Quattrucci**, there seems to be a shift in the motorist's right to a confidential telephone call pursuant to R.I. Gen. Laws 12-7-20 in the context of refusal cases as demonstrated in the following three cases.

In **DeCorpo v. State**,[38] the Refusal charge was sustained despite the presence of the police during the motorist's telephone call. On appeal to the 6th Division District Court, Magistrate Ippolito held "the right to a confidential telephone call found in § 12-7-20 does *not* apply to those charged with civil violation – 'Refusal to Submit to a Chemical Test.'"[39] (emphasis added). He reasoned that proof the defendant was not afforded a confidential telephone call is not an element of the Refusal statute (31-27-2.1) that must be proven by clear and convincing evidence.[40] In addition, 12-7-20 is part of the criminal procedure/arrest statute which does not include civil violations.[41] Its purpose is to provide a phone call to arrange

continued on page 42

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.

Criminal Consequences

continued from page 9

Section 11-52-7(b) fails to properly guide law enforcement and, instead, encourages arbitrary and discriminatory enforcement.

Section 11-52-7(b) is also unconstitutionally vague because it fails to establish proper guidelines for law enforcement and allows for discriminatory and arbitrary enforcement. The case against our police officer is a clear example of selective enforcement. After all, the police efforts to ferret out the party responsible for creating a false Facebook page of the chief, using search warrants, subpoenas, high-tech wireless Internet access detectors, and other techniques, are more like law enforcement efforts to locate and arrest a dangerous drug dealer.

Although the vagueness doctrine focuses on both actual notice to citizens and arbitrary enforcement, "the more important aspect of vagueness doctrine 'is not actual notice, but the other principal element of the doctrine which requires the legislature establish minimal guidelines to govern law enforcement.'"[23] "[W]ithout explicit standards to guide those who administer the law, there is always the threat of arbitrary and discriminatory enforcement and the inhibiting of the exercise of basic freedoms."[24] "Where the legislature fails to provide such minimal guidelines, a criminal statute may permit 'a standardless sweep [that] allows policeman, prosecutors, and juries to pursue their personal predilections.'"[25]

Just like the general public, police are forced to speculate what constitutes a "transmission" and "false data" under the statute. The police are forced to draw their own line of when they believe an offense is arrestable under section 11-52-7(b), rather than being properly guided by the statute. Here, the police decided that creating a false Facebook page for the chief was criminal whereas, let's say, creating a false Facebook page for a criminal defense lawyer might not be.

Most interesting, and to many most offensive, is the discriminatory effect of the law is further illustrated by the fact that the police are sometimes guilty of violations. Police departments commonly create fake Facebook profiles to investigate criminal suspects and screen their recruits during pre-employment background checks. Some police departments also set up sting operations online where they falsely represent themselves as a minor to seek out pedophiles and sex offenders. Competent investigators engage in this sort of deception regularly to secure useful information in both criminal prosecution and defense. Yet, these actions by the police and others are illegal under section 11-52-7(b).

Countless fake profiles exist on Facebook falsely purporting to be real or fictitious persons. The reality is that prosecuting every person who creates a fake profile on Facebook would be impossible. Even if it was possible, society would likely strongly oppose the criminalization of that conduct. Here, though, our police officer has been charged criminally for doing something that thousands of other Rhode Islanders are guilty of and for

which none would ever be prosecuted.

Without question, our police chief's concern about the fake Facebook profile made in his likeness could be reasonable. However, when a person in a position of power or authority is able to direct the police to investigate a matter that they would not investigate for an ordinary citizen, it is the very definition of arbitrary and discriminatory enforcement. If anything, the chief's position as a public official should make him less protected than the ordinary citizen. Section 11-52-7(b) is so vague it gives law enforcement unfettered discretion to arbitrarily and discriminatorily choose when to enforce the law and, therefore, it is unconstitutional.

Content-Based Restrictions

Section 11-52-7(b) of the Rhode Island General Laws unconstitutionally places a ban on all speech with "false" content, which creates a content-based restriction on speech that cannot survive strict scrutiny. As the Rhode Island Supreme Court has stated, "singular focus on the content of an expressive activity rings First Amendment bells and places the statute squarely within the category of a content-based regulation meriting strict scrutiny."[27] Section 11-52-7(b), therefore, warrants a three-part analysis requiring: 1) an "expressive activity;" 2) a focus on content; and 3) strict scrutiny analysis if the first two points are met.

1. Section 11-52-7(b) Regulates an "Expressive Activity"

The "expressive activity" regulated by the statute is the transmission of data. The term data, by its statutory definition, includes information, knowledge, facts, concepts, and instructions.[28] The primary means by which these are expressed is through speech. For example, if information, knowledge, or facts were transmitted through a computer it would almost certainly be transmitted in some form of written speech or other expressive means (like a chart, illustration, or diagram). As a result, an "expressive activity" is at issue and First Amendment analysis is implicated.

Lawyers on the Move

Christine Borzilleri, Esq. has opened the **Borzilleri Law Office**, 986 Hartford Avenue, Johnston, RI 02919.
401-274-3331 borzillerilaw@gmail.com
www.borzillerilaw.com

Robert Clark Corrente, Esq., partner in the **Burns & Levinson LLP** Providence office, received the *Common Cause Excellence in Public Service Award* from Common Cause Rhode Island.

Matthew S. Dawson, Esq., Pamela Chin, Esq. and **Maria F. Deaton, Esq.** have joined the **Patrick Lynch Law Firm**, One Park Row, 5th Floor, Providence, RI 02903.
401- 274-3306 mdawson@patricklynchlaw.com
pchin@patricklynchlaw.com mdeaton@patricklynchlaw.com
www.patricklynchlaw.com

Michael DiLauro, Esq., Assistant Public Defender and Director of Training and Legislative Liaison, **Rhode Island Office of the Public Defender**, was awarded the National Association of Criminal Defense Lawyers' first *Champion of State Criminal Justice Reform Award*.

Cynthia M. Fogarty, Esq., of **Fogarty Law Office**, Calart Tower, 400 Reservoir Avenue, Suite 1A, Providence, RI 02907, was sworn in as 2011-2012 President of The Rotary Club of Cranston.

Katherine Godin, Esq. notes **The Law Office of Katherine Godin, Inc.** moved to 615 Jefferson Blvd., Warwick, RI 02886.
401-274-2423 kg@katherinegodinlaw.com
www.katherinegodinlaw.com

William J. Lynch, Esq. has joined the Providence law firm of **Adler Pollock & Sheehan P.C.** One Citizens Plaza, 8th Floor, Providence RI 02903.
401-274-7200 wlynch@apslaw.com

Donald A. Migliori, Esq. was elected and installed as President of the Rhode Island Association for Justice.

David G. Morowitz, Esq. is now practicing at **The Law Office of David Morowitz, Ltd.**, 155 South Main Street, Suite 304, Providence, RI 02903.
401-274-5556 david@morowitzlaw.com
www.morowitzlaw.com

Stefanie A. Murphy, Esq. announces the opening of the **Law Offices of Stefanie A. Murphy, LLC**, East Greenwich, RI.
401-316-9423 samurphy@samurphylaw.com
www.samurphylaw.com

Charles W. Normand is now a Partner in the law firm of **Robinson & Cole LLP**, One Financial Plaza, Suite 1430, Providence, RI 02903.
401-709-3328 cnormand@rc.com www.rc.com

Teri E. Robins is now an Associate in the the law firm of **Robinson & Cole LLP**, One Financial Plaza, Suite 1430, Providence, RI 02903.
401-709-3357 trobins@rc.com www.rc.com

Anne E. Sharrard, Esq., has been appointed a United States Administrative Law Judge with the Social Security Administration in Lawrence, MA.

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.

2. The Regulation Set Forth in Section 11-52-7(b) is Focused on Content

A statute is content-based, as opposed to content-neutral, when it "could not be enforced without first determining whether the content of a particular work fell within the regulated category."[29] Section 11-52-7(b)'s regulation on the transmission of data is clearly content-based because it draws a distinction between "false data" and "true data."[30] Section 11-52-7(b) cannot be enforced without first determining whether the content of a transmission falls within the regulated category of *untrue* speech. Specifically, the State must actually determine if the offending content is true or false before it can enforce the statute. Therefore, the statute is based on content.

3. Because Section 11-52-7(b) is Content-Based, It Must Be Strictly Scrutinized

Because of its content-based restriction on expression, section 11-52-7(b) must be reviewed under strict scrutiny. To survive strict scrutiny "the State must show that its regulation is necessary to serve a *compelling state interest and is narrowly drawn* to achieve that end."[31] This burden is overwhelmingly difficult to meet, such that the United State Supreme Court "time and again has held content-based or viewpoint-based regulations to be *presumptively invalid*."[32] The burden is on the State to rebut that presumption.

Section 11-52-7(b) fails strict scrutiny analysis because there exists no compelling state interest in support of the statute, nor is the statute narrowly tailored to meet any conceivable state interest. It is true that the state could validly assert a compelling interest in protecting the public from select types of false speech, such as fraud, defamation, or false and misleading spam email sent from commercial entities. However, section 11-52-7(b) extends further than these unprotected forms of speech. It bans information, knowledge, and facts just for being false. Therefore, the only plausible goal of the statute is to protect the public from "false" information in general being transmitted to them. Considering that some false information is expressly permitted by the First Amendment,[33] it is obvious there is no *compelling* interest served by the statute.

Furthermore, the statute broadly places its restrictions on all computer use and most cell phone use, whether it is on

an open network or in private. The public is so dependent on computers and cell phones today, both at work and in their personal lives, a permanent and absolute ban against all false content transmitted in Rhode Island would clearly be well outside the bounds of what constitutes narrow tailoring to meet the state's interest. As a result, the presumption that section 11-52-7(b) is unconstitutional cannot be rebutted.

Parody

Our police officer's false Facebook profile was clearly intended to be a parody. Parody, satire, and humor have long been recognized as protected First Amendment speech.[34]

Internet profiles, like the one made by our police officer, have been protected under the First Amendment in several other cases. **In Layshock ex rel. Layshock v. Hermitage School District**, a student created a MySpace profile using the actual name and photograph of his high school principal.[35] In the profile, the student posted information that made the principal out to be a drunk, smoker of marijuana, and homosexual.[36] The profile was termed a "parody profile," and it was protected from regulation by the school under the First Amendment.[37] The same result occurred in **J.S. ex rel. Snyder v. Blue Mountain School District**, where a middle school student created a far more vulgar and profane MySpace profile making fun of her middle school principal.[38]

The Facebook profile at issue here is a parody in the same regard. It created a caricature of the police chief. A caricature, as defined in **Hustler**, is "the deliberately distorted picturing or imitating of a person, literary style, etc. by exaggerating features or mannerism for satirical effect."[39] **Hustler** held that caricatures of a person are protected by the First Amendment no matter how outrageous and offensive they may be to the person caricaturized or the public.[40] Under that rationale, an online caricature should be protected in the same regard.

Conclusion

Like the technology it was based on in 1989, section 11-52-7(b) is now archaic and obsolete, no longer capable of carrying out its originally intended purpose. With over twenty years of technological advancement since its enactment, it is difficult to look back now and determine

what, exactly, section 11-52-7(b) was used for in 1989, or how we can get it to work at all in 2011. The failure to provide limitations or qualifications to the language drafted in the statute has resulted in a law that grows broader and more vague with each successive advancement in technology.

Section 11-52-7 is ripe for a visit by our Legislature. Until it does, any misstatements or falsities contained in this article, prepared on a computer, and transmitted as the statute construes that term, were made without knowledge or intent!

ENDNOTES

1 *By the way, if you do not know what a Facebook profile is or who your Facebook friends are, do not despair. After all, neither did the Legislature when it enacted this criminal statute in 1989.*

2 *R.I. Gen. Laws § 11-52-7(b) (2010).*

3 *R.I. Gen. Laws § 11-52-1 (2010).*

4 ***See State v. McKenna**, 415 A.2d 729, 732 (R.I. 1980) (holding that "distaste for indelicate language" does not alone permit the court to sanction its prosecution).*

5 ***State v. Russell**, 890 A.2d 453, 459 (R.I. 2006) (citations omitted).*

6 ***In re** Advisory From the Governor, 633 A.2d 664, 674 (R.I. 1993) (citing **Broadrick v. Oklahoma**, 413 U.S. 601, 612 (1973)).*

7 ***Broadrick**, 413 U.S. at 612.*

8 ***United States v. Williams**, 553 U.S. 285, 293 (2008).*

9 ***See United States v. Alvarez**, 617 F.3d 1198 (9th Cir. 2010) ("All previous circumstances in which lies have been found proscribable involve not just knowing falsity, but additional elements that serve to narrow what speech may be punished").*

10 ***Hustler Magazine v. Falwell**, 485 U.S. 46, 51 (1988).*

11 *Although the public does not usually consider cell phones to be computers in the traditional sense, the definition of "computer" stated in section 11-52-1 would clearly apply to most cell phones, and perhaps many other instrumentalities of speech as well beyond just what we traditionally think of as a "computer." Per section 11-52-1, "'Computer' means an electronic, magnetic, optical, hydraulic or organic device or group of devices which, pursuant to a computer program, to human instruction, or to permanent instructions contained in the device or group of devices, can automatically perform computer operations with or on computer data and can communicate the results to another computer or to a person. The term 'computer' includes any connected or directly related device, equipment, or facility which enables the computer to store, retrieve or communicate computer programs, computer data or the results of computer operations to or from a person, another computer or another device." R.I. Gen. Laws § 11-52-1 (2010).*

12 ***United States v. Stevens**, 130 S. Ct. 1577, 1591 (2010).*

13 *E.g., **Hustler Magazine**, 485 U.S. at 56; **Garrison v. Louisiana**, 379 U.S. 64, 74 (1964) ("Truth may not be the subject of either civil or criminal sanctions where discussion of public*

affairs is concerned").

14 ***Virginia v. Hicks**, 539 U.S. 113, 119 (2003).*

15 ***Ashcroft v. Free Speech Coalition**, 535 U.S. 234, 244 (2002).*

16 *R.I. Gen. Laws. § 11-52-7(b)(2) (emphasis added).*

17 ***See** R.I. Gen. Laws § 11-52-1 (2010).*

18 ***Kolender v. Lawson**, 461 U.S. 352, 357 (1983).*

19 ***State v. Authelet**, 385 A.2d 642, 643 (R.I. 1978) (quoting **State v. Levitt**, 371 A.2d 596, 598 (R.I. 1977)).*

20 ***Id.** at 644.*

21 ***Id.***

22 ***Id.***

23 ***Kolender**, 461 U.S. at 358 (quoting **Smith v. Goguen**, 415 U.S. 566, 574 (1974)).*

24 ***Authelet**, 385 A.2d at 644.*

25 ***Kolender**, 461 U.S. at 358 (quoting **Goguen**, 415 U.S. at 574).*

26 ***See Gertz v. Robert Welch, Inc.**, 418 U.S. 323, 345 (1974) (Public officials "have voluntarily exposed themselves to increased risk of injury from defamatory falsehood concerning them. No such assumption is justified with respect to a private citizen.").*

27 ***Bouchard v. Price**, 694 A.2d 670, 676-77 (R.I. 1997).*

28 *R.I. Gen. Laws § 11-52-1 (2010).*

29 ***Bouchard**, 694 A.2d at 676.*

30 ***See United States v. Alvarez**, 617 F.3d 1198, 1217 (9th Cir. 2010) (analyzing truth and falsity as content-based distinctions warranting strict scrutiny review).*

31 ***Id.** at 677 (quoting **Simon & Schuster, Inc. v. Members of the New York State Crime Victims Bd.**, 502 U.S. 105, 118 (1991)) (emphasis added).*

32 ***Hill v. Colorado**, 530 U.S. 703, 769 (2000) (emphasis added).*

33 ***E.g., Gertz v. Robert Welch, Inc.**, 418 U.S. 323, 341 (1974) ("the First Amendment requires that we protect some falsehood in order to protect speech that matters"); **New York Times Co. v. Sullivan**, 376 U.S. 254, 271-72 (1964) ("erroneous statement is inevitable in free debate" and "[e]ven a false statement may be deemed to make a valuable contribution to public debate, since it brings about 'the clearer perception and livelier impression of truth, produced by its collision with error'").*

34 ***See, e.g., Hustler Magazine v. Falwell**, 485 U.S. 46 (1988).*

35 *No. 07-4465, 2011 WL 2305970, at *1 (3rd Cir. June 13, 2011).*

36 ***Id.** at *2.*

37 ***Id.** at *1.*

38 *No. 08-4138, 2011 WL 2305973, at *1 (3rd Cir. June 13, 2011).*

39 ***Hustler Magazine**, 485 U.S. at 53 (quoting* WEBSTER'S NEW UNABRIDGED TWENTIETH CENTURY DICTIONARY OF THE ENGLISH LANGUAGE *275 (2d ed. 1979)).*

40 *Id. at 55-56.* ❖

Refusal Cases

continued from page 35

for bail and secure an attorney. Bail is a non-issue in a civil violation, and, although motorists are permitted to retain counsel, the "Supreme Court ha[d] ruled that a drunk driving arrestee has no right to consult with an attorney prior to deciding whether to take or refuse a chemical test."[42] The Rhode Island Supreme Court has stated that "misdemeanor and civil alcohol charges are separate and distinct offenses"[43] although they arise out of factually interrelated events. Finally, Magistrate Ippolito stated that even if the motorist could show prejudice due to a lack of a confidential telephone call, the remedy of dismissing the Refusal charge is inappropriate.[44]

A follow-up to the **DeCorpo** case were Magistrate Ippolito's holdings in **Nicholas v. State**[45] and **Eldridge v. State**.[46]

IX. Timeliness of Telephone Calls

In **North Kingstown v. Beiber**,[47] the Appeals Panel analyzed the confidential telephone statute, R.I. Gen. Laws 12-7-20. In this case, the motorist was arrested and, while still at the scene, two different vehicles collided with the police cruiser. As a result, the motorist was transported to the hospital for evaluation. At the hospital, he was given the opportunity to make a confidential telephone call pursuant to R.I. Gen. Laws 12-7-20. However, he made the telephone call three hours after his arrest. The Trial Magistrate dismissed the Refusal charge, holding that "prejudice" resulted for the motorist because he was not given a confidential phone call within one (1) hour of his detention.[48] The Appeals Panel in overturning the Trial Judge's decision reasoned that the purpose of a confidential telephone call is "to ensure that the motorist is not unreasonably detained within the course of his or her arrest without access to counsel or to arrange for bail."[49] The motorist was given the chance to make a telephone call as soon as possible given the circumstances and the purpose of R.I. Gen. Laws 12-7-20 was fulfilled. Furthermore, the "delay in the present case was unintentional and no substantial likelihood of a miscarriage of justice resulted from the 'technical noncompliance' with § 12-7-20."[50] The Appeals Panel held "that 12-7-20 only requires that the defendant be afforded a reasonable opportunity to make a confidential phone call but its own language and intent allows for exigent circumstances to satisfy the requirement."[51]

X. Effect of Preliminary Breath Test (PBT) After Arrest

In **Haley v. State**,[52] the motorist was arrested, placed in a police cruiser and read her Rights for Use at the Scene. The officer requested, and the motorist submitted to, a PBT. At the station, the motorist refused to submit to a chemical test.[53] The motorist argued that her submission to the PBT precluded her from being charged with Refusal because she never "refused" to submit to a chemical test. Both the Trial Magistrate and Appeals Panel found the motorist guilty of Refusal. On appeal to the 6th Division District Court, Magistrate Ippolito found the fact that the motorist was arrested *prior* to the administration of the PBT test crucial. This case is unusual because the police did not follow the usual procedure of administering the PBT test prior to arresting the motorist. He held that the motorist agreed to the PBT after she had been arrested and, therefore, she fulfilled "her obligation under the implied-consent law" and "she had no duty to agree to further chemical tests at the station."[54] His reasoning was based on the definition of a chemical test under the Refusal statute and that the PBT could be a defined as a chemical test if the PBT is based on the 'principle of infrared light absorption.'[55] Since there was no evidence on the record regarding the scientific basis of the PBT, the case was remanded back to the Appeals Panel on that issue alone.

XI. Conclusion

These recent decisions of the trial level of the RITT, the Appeals Panel, and the 6th Division District Court address the fundamental elements of refusal cases. Hopefully, the decisions in these cases will provide guidance to prosecutors and defense attorneys involved in the prosecution and defense of these challenging cases.[56]

ENDNOTES

1 *R.I. Gen. Laws 31-27-2.1.*
2 ***State v. Healy**, T08-0110 (RITT Appeals Panel 1/20/09).*
3 ***Id.** at 3.*
4 ***Id.** at 5.*
5 ***State v. Soulliere**, T08-0045 (RITT Appeals Panel 11/5/08).*

6 ***Id.*** *at 2.*
7 ***Id.*** *5.*
8 ***State v. Ciccione****, T02-0076 (RITT Appeals Panel 10/10/02).*
9 ***State v. Joyce****, T05-0158 (RITT Appeals Panel 1/31/06).*
10 ***Id.*** *at 14.*
11 ***Id.***
12 ***Ciccione*** *6.*
13 ***Huntley v. State of Rhode Island****, A.A. 10-0157 (6th Division District Court 3/17/11).*
14 ***Id.*** *at 1-2.*
15 ***Id.*** *at 11-12.*
16 ***Id.*** *at 13-14.*
17 ***Id.*** *at 14-15.*
18 ***Id.*** *at 21.*
19 ***Jamestown v. White****, T08-0141 (RITT Appeals Panel 2/19/09).*
20 ***Id.*** *at 1-2.*
21 ***Id.*** *at 5.*
22 ***Commonwealth v. Limone****, 09-P-252 (Massachusetts Appeals Court 6/22/10).*
23 ***Id.*** *at 2.*
24 ***Cohen v. RITT****, A.A. 09-00084 (6th Division District Court 11/19/09).*
25 ***Id.*** *4.*
26 ***Warwick v. Cianci****, A.A. 09-202 (6th Division District Court 6/9/10).*
27 ***Id.*** *3.*
28 ***Id.***
29 ***Id.*** *4-5.*
30 ***North Providence v. Exarchos****, T09-0119 (RITT Appeals Panel 10/13/10).*
31 ***Id.*** *at 4.*
32 ***Id.*** *at 8-9.*
33 ***State v. DiPrete****, T09-0072 (RITT Appeals Panel 8/31/10).*
34 ***Id.*** *at 8.*
35 ***Id.*** *at 11-12.*
36 ***State v. Quattrucci****, A.A. 09-153 (6th Division District Court 1/26/10).*
37 ***Id.*** *at 3-4.*
38 ***DeCorpo v. State of Rhode Island****, A.A. 10-0052 (6th Division District Court 2/22/11).*
39 ***Id.*** *at 9.*
40 ***Id.*** *at 10.*
41 ***Id.*** *at 11.*
42 ***Id.***
43 ***Id.*** *at 12.*
44 ***Id.*** *at 15-16.*
45 ***Nicholas v. State of Rhode Island****, A.A. 10-0208 (6th Division District Court 4/4/11).*
46 ***Eldridge v. State of Rhode Island****, A.A. 10-0221 (6th Division District Court 4/14/11).*
47 ***North Kingstown v. Beiber****, T08-0098 (RITT Appeals Panel 6/4/10).*
48 ***Id.*** *at 4.*
49 ***Id.*** *at 10.*
50 ***Id.*** *at 13.*
51 ***Id.*** *at 17.*
52 ***Haley v. State of Rhode Island****, A.A. 10-132 (6th Division District Court, 2/18/11).*
53 ***Id.*** *at 3.*
54 ***Id.*** *at 10.*
55 ***Id.*** *at 14.*
56 *The authors express their deep appreciation for the assistance of Kathleen Child and Jodi Van Sprang in the preparation of this article.* ❖

In Memoriam

Charles Gurney Edwards, Esq.

Charles Gurney Edwards of Providence and Westport, Massachusetts passed away on August 20, 2011. He was the son of the late Gurney and Elizabeth Edwards and husband for 60 years of Beverley Flather Edwards. He was the father of Kate Mullen, Mark Edwards and Amy Edwards and brother of George D. Edwards. Charles attended Moses Brown and graduated from The Loomis School, Brown University, and Harvard Law School. He served in the U.S. Navy as a lieutenant on the USS Fletcher, DDE 445. He practiced law at Edwards & Angell in Providence from 1959 to 1989 with a brief interval as Assistant Attorney General of Rhode Island in charge of the civil division. Thereafter, he maintained a private practice in Little Compton until he retired in 2000. He worked primarily as an estate attorney but was most proud of his pro bono work with the American Civil Liberties Union, defending such rights as pro-choice, Indian land rights, fair housing, and free speech. He served on many boards including Hospice Care of Rhode Island, Providence Players, the Charitable Fuel Society, Little Compton Historical Society and the Sakonnet Preservation Association. He particularly enjoyed amateur sports car racing, acting in amateur theater, and travel.

Jeffrey J. Greer, Esq.

Jeffrey J. Greer, 54, a resident of Providence for over 20 years, passed away on August 10, 2011. He was the beloved husband of Nancy Smith Greer. Born in Chicago, IL, he was the son of Dr. David and Marion Clarich Greer of Fall River. Mr. Greer was a graduate of Case Western Reserve University in Cleveland, Ohio and Northeastern University School of Law in Boston. As an attorney, Jeff held several legal positions within state government including Chief of the Appellate Division of the Office of the Attorney General, Associate Director and State Liquor Control Hearing Officer, Department of Business Regulation, Deputy Executive Counsel, Office of the Governor, and Hearing Officer, Administrative Adjudication Division, Department of Environmental Management. He was a member of the RI, MA, FL, & DC Bar Associations. Along with his wife and parents, he is survived by his sister Linda Greer and her husband Michael Tilchin.

Jennifer L. Madden, Esq.

Jennifer L. Madden, 33, of Pepin Street, West Warwick, passed away on August 27, 2011. Born in San Diego, Ca, she was the daughter of Richard E. Madden of West Warwick and Judith Reilly Madden of East Greenwich. Jennifer was an attorney with the law offices of Kirshenbaum and Kirshenbaum in Cranston; and Cetrulo & Capone LLP in Providence. She graduated from St. Xavier Academy in Coventry, Boston University and Roger Williams University School of Law. She was a member of the Rhode Island Bar Association and the Massachusetts Bar Association. Besides her parents, she is survived by her two daughters, Juliana and Mya Madden of West Warwick, a brother, Joseph Madden of West Warwick and her paternal grandmother, M. Elizabeth Madden of West Warwick.

Charles H. McLaughlin, Sr., Esq.

Charles H. McLaughlin, Sr., 85, passed away on Sept 6, 2011. Charles was the husband of Marguerite M. Mournighan McLaughlin and the son of the late William Sr. and Albina Dragon McLaughlin. He was a graduate of Brown University and also received a MAT degree from there. He graduated from Boston University with an LLB degree and practiced law in Providence for 52 years. He was a member of the RI Bar Association, American Bar Association, the Rhode Island and American Trial Lawyers Association. He was a lecturer in Law at Roger Williams College. He was a communicant of St. Raymond's Church and served on the Finance Committee. He was a founding member of St. Michael's Council #4847, Knights of Columbus. He was Secretary for many years for the Boy Scout Troop #82. Mr. McLaughlin is survived by his wife, Marguerite, and his children Charles McLaughlin and his wife Belinda of Cranston, Paul R. McLaughlin and his wife Victoria of Round Rock, TX, Marguerite McLaughlin of Cumberland, John McLaughlin and his wife, Tracy and his daughter, Lucianna, all of East Providence, and Mary McLaughlin Ono and her husband Tracy Ono of Honolulu, HI and his sister-in-law Adelaide McLaughlin.

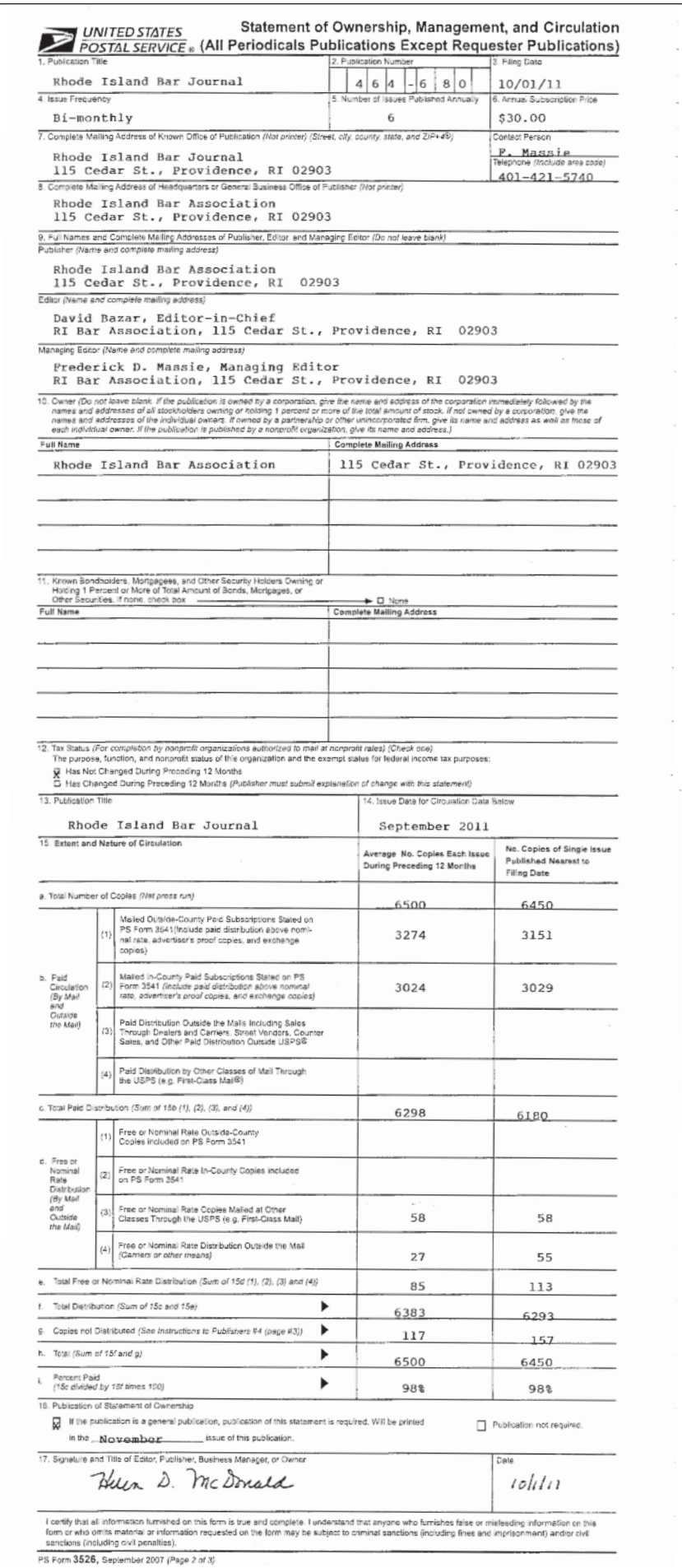
James L. Taft, Jr., Esq.

James L. Taft, Jr., age 80, of Wakefield and former Mayor of the City of Cranston, passed away on September 5, 2011 family. He was the beloved husband of Sally Anne Fitzpatrick Taft and formerly resided in Cranston and Saunderstown. Born in Providence, he was the son of the late Honorable James L. Taft and Katherine McGrath Taft. A practicing attorney for over fifty years, he was educated in Cranston public schools before graduating from LaSalle Academy. He graduated from the College of the Holy Cross and from Boston College Law School. Mayor Taft was admitted to the Rhode Island Bar and to the United States District Court for the District of Rhode Island, United States Court of Appeals for the First Judicial Circuit, United States Tax Court and the United States Supreme Court. He was a member of the Rhode Island and American Bar Associations. He began the practice of law with his late father James L. Taft in Providence and later practiced with his late brother-in law Bernard F. McSally. He led the firm of Taft & McSally as it operated in Providence before its move to Cranston where he later formed the partnership of Taft & McSally LLP. Mayor Taft is remembered for his many years of appointed and elected service to the people of Rhode Island. He began his elective service as member of the Cranston City Council 1959 and 1960. He was later elected to the Rhode Island Senate from Cranston for eight years from 1962-1970. He

In Memoriam (cont.)

served as Senate Minority Leader from 1968-1970. He served as Cranston's Mayor from 1971-1979. Mr. Taft also served as Probate Judge and Town Solicitor of North Kingstown. He served on the Governor's Advisory Commission on Judicial Appointments from 1985-1990 and was a contributing member of the Rhode Island Bar Association Probate and Trust Committee. He served as Bond Counsel Rhode Island and numerous municipalities and quasi-public agencies. Mayor Taft also served as Director for the Federal Home Loan Bank of Boston. He was a former member of the Quidnessett Country Club and Point Judith Country Club. He was a member of The Dunes Club and The University Club. A former candidate for Governor of Rhode Island, Taft served as a delegate to the Republican National Convention in 1972. He was an Elector for President and Vice President of the United States in 1972. Besides his wife of 56 years, he leaves four daughters: Hon. Sarah Taft-Carter and her husband John C. Carter; Mary T. Rochford and Glenn F. Graf, Eleanor W. Taft and Jamie T. Costello and her husband J. Michael Costello. He was also the brother of Reverend Robert F. Taft of Rome, Italy, Eleanor T. McSally of Wakefield and David W. Taft of Cranston.

Please contact the Rhode Island Bar Association if a member you know passes away. We ask you to accompany your notification with an obituary notice for the Rhode Island Bar Journal. Please send member obituaries to the attention of Frederick D. Massie, Rhode Island Bar Journal Managing Editor, 115 Cedar Street, Providence, Rhode Island 02903. Email: fmassie@ribar.com, facsimile: 401-421-2703, telephone: 401-421-5740.



UNITED STATES POSTAL SERVICE ®

Statement of Ownership, Management, and Circulation
(All Periodicals Publications Except Requester Publications)

1. Publication Title	2. Publication Number	3. Filing Date
Rhode Island Bar Journal	464-680	10/01/11
4. Issue Frequency	5. Number of Issues Published Annually	6. Annual Subscription Price
Bi-monthly	6	$30.00

7. Complete Mailing Address of Known Office of Publication (Not printer) (Street, city, county, state, and ZIP+4®)
Rhode Island Bar Journal
115 Cedar St., Providence, RI 02903
Contact Person: P. Massie
Telephone (Include area code): 401-421-5740

8. Complete Mailing Address of Headquarters or General Business Office of Publisher (Not printer)
Rhode Island Bar Association
115 Cedar St., Providence, RI 02903

9. Full Names and Complete Mailing Addresses of Publisher, Editor, and Managing Editor (Do not leave blank)
Publisher (Name and complete mailing address)
Rhode Island Bar Association
115 Cedar St., Providence, RI 02903
Editor (Name and complete mailing address)
David Bazar, Editor-in-Chief
RI Bar Association, 115 Cedar St., Providence, RI 02903
Managing Editor (Name and complete mailing address)
Frederick D. Massie, Managing Editor
RI Bar Association, 115 Cedar St., Providence, RI 02903

10. Owner (Do not leave blank. If the publication is owned by a corporation, give the name and address of the corporation immediately followed by the names and addresses of all stockholders owning or holding 1 percent or more of the total amount of stock. If not owned by a corporation, give the names and addresses of the individual owners. If owned by a partnership or other unincorporated firm, give its name and address as well as those of each individual owner. If the publication is published by a nonprofit organization, give its name and address.)

Full Name	Complete Mailing Address
Rhode Island Bar Association	115 Cedar St., Providence, RI 02903

11. Known Bondholders, Mortgagees, and Other Security Holders Owning or Holding 1 Percent or More of Total Amount of Bonds, Mortgages, or Other Securities. If none, check box → ☐ None

Full Name	Complete Mailing Address

12. Tax Status (For completion by nonprofit organizations authorized to mail at nonprofit rates) (Check one)
The purpose, function, and nonprofit status of this organization and the exempt status for federal income tax purposes:
☒ Has Not Changed During Preceding 12 Months
☐ Has Changed During Preceding 12 Months (Publisher must submit explanation of change with this statement)

13. Publication Title	14. Issue Date for Circulation Data Below
Rhode Island Bar Journal	September 2011

15. Extent and Nature of Circulation			Average No. Copies Each Issue During Preceding 12 Months	No. Copies of Single Issue Published Nearest to Filing Date
a. Total Number of Copies (Net press run)			6500	6450
b. Paid Circulation (By Mail and Outside the Mail)	(1)	Mailed Outside-County Paid Subscriptions Stated on PS Form 3541(Include paid distribution above nominal rate, advertiser's proof copies, and exchange copies)	3274	3151
	(2)	Mailed In-County Paid Subscriptions Stated on PS Form 3541 (Include paid distribution above nominal rate, advertiser's proof copies, and exchange copies)	3024	3029
	(3)	Paid Distribution Outside the Mails Including Sales Through Dealers and Carriers, Street Vendors, Counter Sales, and Other Paid Distribution Outside USPS®		
	(4)	Paid Distribution by Other Classes of Mail Through the USPS (e.g. First-Class Mail®)		
c. Total Paid Distribution (Sum of 15b (1), (2), (3), and (4))			6298	6180
d. Free or Nominal Rate Distribution (By Mail and Outside the Mail)	(1)	Free or Nominal Rate Outside-County Copies included on PS Form 3541		
	(2)	Free or Nominal Rate In-County Copies included on PS Form 3541		
	(3)	Free or Nominal Rate Copies Mailed at Other Classes Through the USPS (e.g. First-Class Mail)	58	58
	(4)	Free or Nominal Rate Distribution Outside the Mail (Carriers or other means)	27	55
e. Total Free or Nominal Rate Distribution (Sum of 15d (1), (2), (3) and (4))			85	113
f. Total Distribution (Sum of 15c and 15e)			6383	6293
g. Copies not Distributed (See Instructions to Publishers #4 (page #3))			117	157
h. Total (Sum of 15f and g)			6500	6450
i. Percent Paid (15c divided by 15f times 100)			98%	98%

16. Publication of Statement of Ownership
☒ If the publication is a general publication, publication of this statement is required. Will be printed in the November issue of this publication. ☐ Publication not required.

17. Signature and Title of Editor, Publisher, Business Manager, or Owner: Helen D. McDonald — Date: 10/1/11

I certify that all information furnished on this form is true and complete. I understand that anyone who furnishes false or misleading information on this form or who omits material or information requested on the form may be subject to criminal sanctions (including fines and imprisonment) and/or civil sanctions (including civil penalties).

PS Form 3526, September 2007 (Page 2 of 3)

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.

Your Bar helps you **professionally** through…

- Fully interactive Bar website connecting you to your free law library, latest news, seminar information and registration, committee meeting schedules and more at www.ribar.com
- Superb Continuing Legal Education (CLE) seminars offered live and online throughout the year
- Free, 24-hours-a-day, 7-days-a-week, online law library services with Casemaker
- Terrific avenues for working with other members of the Bar and the Bench on a wide range of Bar Committee efforts
- Outstanding Lawyer Referral Service (LRS) connections to clients in search of representation
- Myriad membership benefits offering preferential products and services negotiated for you by your Bar leaders
- Respected forums for sharing your knowledge and opinions in every issue of the *Rhode Island Bar Journal*
- Informed answers to legal questions through the Bar's Online Attorney Resource (OAR) center's volunteer attorneys.
- 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

Your Bar helps you **personally** through…

- 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 Resource International Employee Assistance (RIEAS) 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

Same as it ever was...

...Only better

Take advantage of these benefits today through the Bar's website at www.ribar.com, or telephone the Bar today at 401-421-5740