



# Rhode Island Bar Journal

Rhode Island Bar Association / Volume 58, Number 3, November/December 2009

**Temporary Guardianship as Unconstitutional**

**The Rewards of Stewardship**

**Carefully Drafted Forum Selection Clause**

**Social Host Liability**

**Rhode Island ACLU Celebrates 50 Years**

**Book Reviews: *The Dark Side*, *How to Break a Terrorist*, *The Challenge***



## Articles

- 5 Ocean State Libertas:  
Temporary Guardianship as Unconstitutional**  
*Bryan W. Hudson, Esq.*
- 13 The Rewards of Stewardship**  
*Christopher S. Gontarz, Esq.*
- 17 The Importance of a Carefully Drafted Forum Selection Clause**  
*Stephen J. MacGillivray, Esq. and Raymond M. Ripple, Esq.*
- 25 Social Host Liability**  
*Robert H. Humphrey, Esq.*
- 33 Rhode Island ACLU Celebrates 50 Years**  
*Jennifer Azevedo, Esq.*
- 35 BOOK REVIEWS Three War on Terror Books**  
*Jerry Cohen, Esq.*
- 39 Live From Second City – American Bar Association Delegate Report: ABA Annual Meeting**  
*Robert D. Oster, Esq.*

## Features

- |   |   |
|---|---|
| 3 President's Message –<br>Thanksgiving Without Grapes  | 34 RWU School of Law Launches<br>Immigration Law Clinic |
| 4 Rhode Island Bar Association<br>Welcomes MCLE New England<br>Publications and Webcasts to the<br>Rhode Island Legal Community | 29 This Month In Bar History –<br>December - 1920       |
| 11 Judge and Bar President Present<br>Mock Trial Championship Trophy<br>to Saint Mary Academy-Bay View                          | 30 Lawyers on the Move                                  |
| 19 This Month In Bar History –<br>November - 1987   | 40 In Memoriam  |
| 21 Lawyers on the Move  | 42 Advertiser Index                                     |
| 23 Continuing Legal Education Update  | 43 Rhode Island Bar Association Staff                   |

**Correction** *Rhode Island Bar Journal* Volume 58 Number 2  
September/October 2009 in the article, *New Opportunities for  
IRA-Related Charitable Giving*, the name of author Marc J. Soss,  
Esq. was spelled incorrectly.

## RHODE ISLAND BAR ASSOCIATION LAWYER'S PLEDGE

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# Thanksgiving Without Grapes



**Victoria M. Almeida, Esq.**  
President Rhode Island  
Bar Association

*This Thanksgiving,  
I will listen to the  
words of Elie  
Wiesel, and I will  
break my fast with  
what Wiesel termed  
the “perils of indif-  
ference” and rejoin  
the path of the  
young woman in  
the photograph.*

My mother is cut from the same durable fabric as Mrs. Tarantino (John’s mother)! These two remarkable women are the beneficiaries of the lovingly handed-down values of their mothers and grandmothers who were masters of the art of motherhood. One of the values embraced is their unconditional love and devotion to their children. Some day, I would like Mom and Mrs. Tarantino to compare their treasure troves containing glimpses into the lives of their children, the lawyers.

I think my Mom believes that one of my initiatives as President of the Bar should be to establish the “Rhode Island Bar Association Victoria M. Almeida Presidential Library” at Bar headquarters. I think she is already preparing its exhibits and pictorial history. Mom likes John Tarantino, a lot, and I think she would

great and small. In the library, many law books, biographies, dictionaries and literature are on display. The library shelves feature various news clippings on her children’s feats, as well as ribbons awarded at riding competitions, a newspaper article on election to a class office, piano and ballet recital programs, and the like.

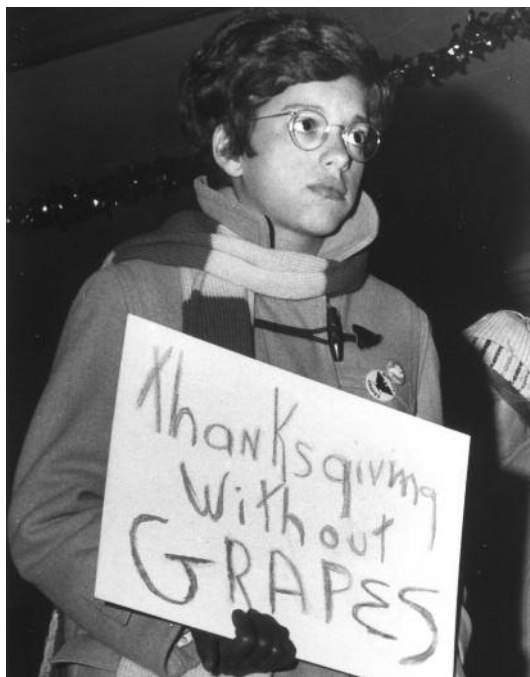
Recently, while sitting alone in Mom’s library, there, placed in front of a French dictionary, was a framed photo of someone I did not quickly recognize. A photo from Mom’s treasure trove, it was a picture taken on November 20, 1969, just before Thanksgiving, 40 years ago. The young college freshman in the photo is wearing jeans, a toggle coat with a college muffler and wire rimmed eyeglasses. She is in a picket line outside Almacs Supermarket at the Bellevue Avenue Shopping Center in Newport. She is holding a sign that reads “Thanksgiving Without Grapes.”

You see, the issue that day was the plight of migrant farm workers in California, and their struggle for fairness and dignity in the fields. Solidarity with migrant farm workers became the struggle of the young woman and her classmates at a small New England college and at a shopping plaza in Newport. The young woman’s message sought to inform others that Almacs was selling non-union grapes thereby contributing to the oppression of farm workers.

The photo reminded me of my strong convictions then and my fearlessness in demonstrating, by word and deed, my outrage at injustice inflicted on others who were deemed unimportant. The photo also reminded me of how far away I have unintentionally strayed into the comfort zone of the status quo.

We did not have grapes at our Thanksgiving table that year. The shot taken by a *Providence Journal* photographer, appeared in the *Journal* prompting a call from my Dad saying how proud he was of me, but reminding me to focus on my studies, too. I also received a call from my Mom. She, too, was proud of my actions and promised to join me at the next picket line scheduled at Almacs in East Providence the Saturday after Thanksgiving, and she did.

Today, I ask myself what will be missing at my Thanksgiving table this year as a reminder



Victoria M. Almeida, November 20, 1969, courtesy of the *Providence Journal*.

want to see an exhibit dedicated to *his* legacy in my Presidential Library.

Every now and then something appears from the past in the library at the family home. The library is Mom’s domain, an exhibit of sorts, dedicated to her children’s accomplishments,

of those who are still not welcomed at the table of plenty. Forty years ago, it was Thanksgiving without grapes, this year there is plenty of nothing for so many. Thanksgiving without a job that brings dignity, Thanksgiving without enough food for the 42 percent of children in Rhode Island who are food insecure, Thanksgiving alone, Thanksgiving with fear, Thanksgiving without good health, Thanksgiving without a forty-year-old photo to remind a lawyer why she became a lawyer in the first place.

What will you be without this Thanksgiving and this holiday season? Chances are, whatever you will be without this Thanksgiving, it won't be grapes. What will you go without this Thanksgiving to show how grateful you are? Perhaps you will go without the grudge you have held onto, perhaps you will no longer go without the family member no one else will invite to the table, perhaps you will go without the need to be right when being

right is no longer enough when your world begins to shrink, perhaps you will go without a table set exclusively for saints and invite a few sinners to your Thanksgiving table.

This Thanksgiving, I will listen to the words of Elie Wiesel, and I will break my fast with what Wiesel termed the "perils of indifference" and rejoin the path of the young woman in the photograph. I miss her. Thanks, Mom, for putting her right where I could see her. Happy Thanksgiving, dear Mom, and thanks for rescuing the wire rimmed glasses I carelessly tossed out after law school. They have now been fitted with my present prescription, and I can see more clearly now that I have retrieved my youthful perspective.

#### ENDNOTE

<sup>1</sup> You may recall Rhode Island Bar Foundation President John Tarantino shared with us how his mother had quietly kept, for over 40 years, his seventh grade essay on Martin Luther King, Jr. ♦

## Rhode Island Bar Association Welcomes MCLE New England Publications and Webcasts to the Rhode Island Legal Community

The Rhode Island Bar Association and Massachusetts Continuing Legal Education, Inc. (MCLE) announced they have entered into a collaboration to offer MCLE New England™ publications and selected MCLE™ webcasts to the Rhode Island Bar.

Rhode Island Bar Association's President Victoria M. Almeida, states:

"We are excited about introducing new resources for Rhode Island lawyers' CLE training to our Bar. Through this collaborative agreement, the Rhode Island Bar Association makes MCLE's Rhode Island-specific products more accessible and available to lawyers in our state. We are also extending our CLE reach with MCLE groupcasts Bar members can take for CLE credit."

The first MCLE New England publication released in Rhode Island will be a practice manual on divorce entitled, *A Practical Guide to Divorce in Rhode Island*, edited by Deborah Tate, Esq. of McIntyre, Tate & Lynch, LLP, Providence and Sandra Smith, Esq. of Dworkin & Smith, Warwick, and authored by more than twenty noted divorce experts from all regions of the state. Jeremiah S. Jeremiah, Jr., Chief Justice of the Rhode Island Family Court, will provide judicial commentary. The book's expected publication is in October of 2009.

In its Continuing Legal Education (CLE) Calendar, available on the Bar's website at [www.ribar.com](http://www.ribar.com), the Rhode Island Bar Association will incorporate live groupcasts, selected specifically for their practical, educational value to Rhode Island lawyers. Groupcasts, which are webcasts from MCLE's extensive offerings, will be held at the Rhode Island Bar Association at 115 Cedar Street, Providence.

## 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.

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# Ocean State Libertas: Temporary Guardianship as Unconstitutional



**Bryan W. Hudson, Esq.**  
Practices law in Providence.<sup>1</sup>

*...even though the appointment of a permanent guardian or permanent limited guardian adheres to the requirements of due process, there is no appeal from the appointment of a temporary guardian and, in many cases, no adjudication that an individual is incapacitated prior to the appointment.*

## Introduction

The probate courts in Rhode Island have the statutorily prescribed ability to appoint permanent guardianship over an adult when personal jurisdiction is appropriate.<sup>2</sup> Rhode Island law also provides for the appointment of a “temporary” guardian “[for] cause shown after notice, pending any application for the appointment of a limited guardian or guardian, or pending any appeal from a decree appointing a limited guardian or guardian....”<sup>3</sup> However, even though the appointment of a permanent guardian or permanent limited guardian adheres to the requirements of due process, there is no appeal from the appointment of a temporary guardian and, in many cases, no adjudication that an individual is incapacitated prior to the appointment.<sup>4</sup> The very nature of the interests implicated by appointment of a guardian, even if temporary, requires due process.

## Temporary Guardianship in Rhode Island

The guardianship statute is found at Title 33 Chapter 15 of the Rhode Island General Laws. This particular statute was amended in 1992 and appears to have its beginnings in the Court & Practices Act of 1905.<sup>5</sup> Guardianship was historically “[conferred] in order that the estate [of an individual] may be taken care of during [a] period of contingent incapacity...”<sup>6</sup> that included a litany of contingencies.<sup>7</sup> Today, though, guardianship has morphed into patchwork of options that include being limited to one or more specific areas—healthcare, finances, residence and relationships.<sup>8</sup>

The perceptions of Rhode Island’s legislators appear to have changed so much that, in 1992, the General Assembly recognized that “[adjudicating] a person totally incapacitated and in need of a guardian deprives that person of all his or her civil and legal rights and that this deprivation may be unnecessary.”<sup>9</sup> The General Assembly also codified its intent as:

“[promoting] the public welfare by establishing a system that permits incapacitated persons to participate as fully as possible in all decisions affecting them; that assists such persons in meeting the essential requirements

for their physical health and safety, in protecting their rights, in managing their financial resources, and developing or regaining their abilities to the maximum extent possible; and that accomplishes these objectives through providing, in each case, the form of assistance that least interferes with the legal capacity of a person to act in his or her own behalf.”<sup>10</sup>

In other words, the purpose of the guardianship statute is to protect the person and/or estate of an individual that may be incapacitated in the least restrictive way possible. A permanent guardian will not be appointed, though, until after a hearing where a respondent is statutorily guaranteed certain procedural protections.<sup>11</sup>

The standard for appointment of a “temporary” guardian is statutorily prescribed at § 33-15-10 as “for cause shown” when an application for appointment of a guardian is pending or when appeal from a decree appointment of a guardian is taken.<sup>12</sup> This particular language has remained virtually unchanged since the beginning of the twentieth century and is completely discretionary on the part of the probate court. However, following the 1992 amendments, notice is mandatory.<sup>13</sup>

As for an appeal of a temporary guardianship, unlike the procedures afforded to individuals after a permanent guardian or limited guardian is appointed, there is none. In 1908, the Rhode Island Supreme Court reasoned that an appeal would be a “[source] of confusion, unwarrantable delay, and an entirely fruitless proceeding...”<sup>14</sup> This appears to be because the appointment of the temporary guardian is typically a necessity, the appeal would be interlocutory and the probate courts have the authority to modify or revoke any order or decree of their creation.<sup>15</sup> In addition, appointment of a temporary guardian, in and of itself, “does not finally determine any rights in relation to the alleged ward or his [or her] estate” and when the final adjudication occurs it is appealable.<sup>16</sup> Therefore, it appears that the Court viewed temporary guardianship as a temporary inconvenience that eventually provided for a proper procedure for a final adjudication.



## Due Process: Preliminary Matters

To further understand the implications of § 33-15-10, a brief explanation about due process is required. The basic concept of due process is found in the Fourteenth Amendment to the United States Constitution and reiterated in Article I § 2 of the Rhode Island Constitution. This American dogma expressly provides that no State shall “deprive any person of life, liberty, or property, without due process of law.”<sup>17</sup> This phrase “predates the establishment of our institutions and is endeared to our country by antiquity and the noblest historical associations.”<sup>18</sup> But, even in its simplicity, due process embodies one of the broadest and most far reaching guarantees of personal rights.<sup>19</sup>

The general scope of the due process clause is to provide security to every person in their fundamental and inalienable rights of “life, liberty and property.”<sup>20</sup> These rights are inherent in every person, and they protect all against the arbitrary exercise of governmental powers in violation of established constitutional principles.<sup>21</sup> This has been described as a constitutional guarantee of respect for those personal immunities that are “deeply rooted” in the American history and tradition or are “implicit in the concept of ordered

liberty.”<sup>22</sup> Therefore, the essential purpose of due process is to protect the individual from arbitrary action of government.<sup>23</sup>

## Two Types of Due Process


Due process is separated into two components. First, there is a procedural component guarding the individual against arbitrary deprivation of life, liberty or property, without the proper procedural norms prior to the deprivation of the right. This procedural guarantee generally requires that before a State may deprive a person of property or liberty some form of a hearing must be held.<sup>24</sup> The essential requirement of due process is the opportunity to be heard,<sup>25</sup> in a meaningful manner at a meaningful time and that those involved are willing to listen.<sup>26</sup> However, in some circumstances, where the State cannot foreseeably control a negligent deprivation of a right, a post-deprivation hearing may be appropriate.<sup>27</sup>

And second, even though a literal reading of the Fourteenth Amendment’s due process clause “might suggest that it governs only the procedures by which a State may deprive persons of liberty, for at least 105 years,..., the clause has been understood to contain a substantive component as well, one ‘barring certain gov-

ernmental actions regardless of the fairness of the procedures used to implement them.”<sup>28</sup> This concept suggests a more comprehensive judicial perspective of the meaning of liberty<sup>29</sup> – such as a person’s right to privacy<sup>30</sup> or personal decision making<sup>31</sup> – that does not merely denote an individual’s freedom from physical or bodily restraint.<sup>32</sup> Thus, substantive due process rights protect against the government’s exercise of power without any reasonable justification behind a legitimate governmental objective.<sup>33</sup> When these rights are involved, the Court has held that limitations may be justified only by a compelling state interest and that “legislative enactments must be narrowly drawn to express only the legitimate state interest” at risk.<sup>34</sup>

## Section 33-15-10’s Constitutionality

As appointment of a temporary guardian is completely discretionary “for cause shown” and no appeal is provided, assuming *in arguendo* that guardianship is a compelling State interest, the ultimate questions about § 33-15-10’s procedural intricacies and narrowness remain. At the outset, the justification for enactment of Chapter 15 as described by the General Assembly appears to conflict with § 33-



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15-10.<sup>35</sup> The General Assembly acknowledged that guardianship deprives an individual of potentially all his or her civil and legal rights while at the same time providing a Janus-faced procedure that temporarily removes those very rights without procedural safeguards. The historical *parens patriae*<sup>36</sup> instincts of the State appear to be influencing this superfluous procedure that has been around since the statute was first enacted.<sup>37</sup> Almost one hundred years later though, our understanding of an individual's disabling limitations as well as the fundamental rights associated with personal liberties have changed dramatically due to the efforts of advocates across the country.<sup>38</sup>

Also, the implication derived from United States Supreme Court and Rhode Island Supreme Court precedent is that a post-deprivation procedure is not warranted. Due process requires that *before* a State may deprive a person of liberty some form of a hearing must be held, unless a post-deprivation hearing would be adequate when a negligent deprivation is *not foreseeable*.<sup>39</sup> However, the very fact that procedures exist, post-appointment of a temporary guardian, requiring "clear and convincing"<sup>40</sup> evidence for

appointment of a limited guardian or guardian, suggest the potential for a negligent deprivation is foreseeable. Moreover, many temporary guardianships exist in Rhode Island that never reach final adjudication.<sup>41</sup> This particular scenario suggests a post-deprivation hearing is not adequate because, without a final adjudication, there is no appellate review which results in an individual's civil and legal rights remaining in limbo. And, without appeal rights, or a final adjudication, the potential for improper conduct by a temporary guardian is amplified.<sup>42</sup>

Moreover, provision of a temporary guardianship prior to an adjudication of incapacitation without a hearing, and in many cases *ex parte* due to exigent circumstances, contradicts not only the Constitutional guarantee of due process but also the General Assembly's recognition that the guardianship process can deprive a person of his or her civil rights. It seems odd to afford an individual the opportunity to be heard *after* a temporary guardian is appointed when the deprivation of his or her civil rights has already occurred without procedural safeguards, and that person may never have been adjudicated incapacitated previously. Furthermore, the act of appointing a tem-

porary guardian effectively adjudicates a person incapacitated by creating a rebuttable presumption. This particular procedural quandary is especially interesting when viewed in light of Rhode Island Supreme Court precedent<sup>43</sup> because the presiding judge has already ruled on the person's incapacitation under the auspices of "cause shown" rather than "clear and convincing evidence."

In addition, § 33-15-10 is not narrowly drawn to protect the liberty interests of Rhode Island citizens. The standard of "for cause shown" is unduly arbitrary. This is especially true when the State of Rhode Island has thirty-nine cities and towns with different probate judges that change from year to year depending on the term limits prescribed by the city or town. This means that not only are there thirty-nine different interpretations of what is needed to show cause, but also that each year there could be thirty-nine new interpretations. And, if the probate judge must recuse himself or herself due to a conflict, the interpretation changes once again.

Ultimately, § 33-15-10 could be redrafted so that it adheres to the Constitutional protections afforded to liberty and civil rights because emergency circumstances

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can and will arise where a probate judge must act quickly so that a person or estate are protected.<sup>44</sup> And, the legislature should act to protect the rights of Rhode Island residents by identifying specific circumstances or factors that rise to a level of an emergency necessary for temporarily removing an individual's civil and legal rights. When our country's understanding of the individuals over which guardianships are sought has changed as it has over the last century and those liberty interests that are so precious to us are on the verge of retraction elsewhere due to circumstances beyond our control, it seems essential to make certain that liberty is not unnecessarily restricted for any American.

### ENDNOTES

1 *The views portrayed in this article should not be construed as the views of any group or corporate entity with which the author is associated or employed.*

2 R.I. GEN. LAWS § 33-15-3 (1992). When a "ward" is under a guardianship another individual, the guardian, retains authority to make decisions on behalf of the ward.

3 *Id.* § 33-15-10. A permanent guardianship may be "limited" to a guardianship in one or more specific areas—healthcare, finances, relationships or residence. See R.I. GEN. LAWS § 33-15-2. Thus a limited guardianship is still a permanent guardianship and should not be confused with the "temporary" guardianship discussed in this article.

4 *Id.* § 33-15-11.

5 Special thanks to Alixandra Tretter of Roger Williams University School of Law, for the research she did concerning § 33-15-10's legislative history.

6 *McKenna v. McKenna*, 69 A. 844, 845 (1908).

7 See *Id.* ("[any] idiot, lunatic, or person of unsound mind, of any habitual drunkard, or of any person who from excessive drinking, gaming, idleness or debauchery of any kind, or from want of discretion in managing his estate, so spends, wastes, or lessens his estate, or is likely so to do, that he may bring himself or his family to want or suffering, or may render himself of family chargeable upon the town for support.").

8 R.I. GEN. LAWS § 33-15-2

9 *Id.* § 33-15-1

10 *Id.*

11 *Id.* § 33-15-5 ("(1) The respondent shall have the right to be present at the hearing and all other stages of the proceedings. (2) The respondent shall be allowed to: (i) Compel the attendance of witnesses; (ii) Present evidence; and (iii) Confront and cross examine witnesses. (3) The standard of proof shall be clear and convincing evidence. (4) The Rhode Island rules of evidence shall apply. (5) Any professional whose training and experience aid in the assessment of decision making ability and who has so assessed the respondent may be permitted to provide expert testimony regarding the decision making assessment of the respondent.").

12 *Id.* § 33-15-10

13 Compare R.I. GEN. LAWS § 33-15-10 (1992)("[for] cause shown after notice...") with



R.I. Gen. Laws § 33-15-10(1905)("[for] cause shown after such notice as [the probate court] shall direct...").

14 *Estes v. Probate Court of Town of East Providence*, 88 A. 977, 977-78 (1913)

15 *Id.* See also *Gemma v. Dilibero*, 27 A.2d 842 (1942)(recognizing appointment of temporary guardianship not ultimate determination of any rights.).

16 *Gemma*, 27 A.2d at 844.

17 U.S. Const. amend. XIV; R.I. Const. Article I § 2.

18 William D. Guthrie, *Lectures on the Fourteenth Article of Amendment to the Constitution of the United States* 66 (1898)

19 *Id.* (Citing *Bank of Columbia v. Okley*, 4 Wheat. 235, 244 (1819) ("As to the words from Magna Carta, incorporated into the constitution of Maryland, after volumes spoken and written with a view to their exposition, the good sense of mankind has at length settled down to this: that they were intended to secure the individual from the arbitrary exercise of the powers of government, unrestricted by the established principles of private rights and distributive justice.")).

20 *Id.* at 67.

21 *Id.*

22 *Washington v. Glucksberg*, 521 U.S. 702, 721 (1997)(Our established method of substantive due process analysis has two primary features: First, we have regularly observed that the Due Process Clause specially protects those fundamental rights and liberties which are, objectively, 'deeply rooted in this Nation's history and tradition,' (citation omitted), and 'implicit in the concept of ordered liberty,' such that 'neither justice nor liberty would exist if they were sacrificed(citation omitted).').

23 See *County of Sacramento v. Lewis*, 523 U.S. 833, 845 (1998)(citing *Wolff v. McDonnell*, 418 U.S. 539, 558 (1974).

24 *Zinermon v. Burch*, 494 U.S. 113(1990)(holding some form of a hearing must be held before deprivation of a liberty or property interest); See also *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976)(recognizing same); *L.A. Ray Realty v. Town Council of Town of Cumberland, R.I.*, 698 A.2d 202 (R.I. 1997)(recognizing hearing must be meaningful and those involved willing to listen.).

25 *Id.*

26 *L.A. Ray Realty*, 698 A.2d at 211-212 (stating predeprivation hearings were possible, but predeprivation process was meaningless because of actions of town officials which rendered process a sham.).

27 See e.g., *Zinermon*, 494 U.S. at 128; *Parratt v. Taylor*, 451 U.S. 527, 541 (1981)(holding state cannot anticipate negligent deprivation of property by a state actor); *L.A. Ray Realty* 698 A.2d at 210-211.

28 *Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. 833, 846 (1992).

29 Howard Ball, *The Supreme Court in the Intimate Lives of Americans*, 15 (2002).

30 See e.g., *Griswold v. Connecticut*, 381 U.S. 479 (1965); *Roe v. Wade*, 410 U.S. 113, 155 (1973); *Planned Parenthood of Southeastern*

*Pennsylvania v. Casey*, 505 U.S. 833, 846 (1992).

31 See e.g., *Cruzan by Cruzan v. Dir. Of Mississippi Department of Health*, 497 U.S. 261 (1990)(holding competent person's refusal of medical treatment constitutional); *Jacobson v. Massachusetts*, 197 U.S. 11, 24-30 (1905)(stating

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individual can refuse vaccination for medical purposes).

32 *Washington*, 521 U.S. at 719 (citing *Collins v. Harker Heights*, 503 U.S. 115, 125 (1992)); See also Schopler, Ernest H. "Supreme Court's Views As To Concept of 'Liberty' Under Due Process Clauses Of Fifth And Fourteenth Amendments." 47 L. Ed. 2d 975 (2004). ("The liberty mentioned in the due process clause of the Fourteenth Amendment has been held to mean not only the right of the citizen to be free from the mere physical restraint of his person, as by incarceration, but also the right of the citizen to be free in the enjoyment of all his faculties; to be free to use them in all lawful ways; to live and work where he will; to earn his livelihood by any lawful calling.").

33 See *County of Sacramento*, 523 U.S. at 846.

34 See *Roe*, 410 U.S. at 155.

35 See R.I. GEN. LAWS § 33-15-1 ("[adjudicating] a person totally incapacitated and in need of a guardian deprives that person of all his or her civil and legal rights and that this deprivation may be unnecessary. The legislature further finds that it is desirable to make available, the least restrictive form of guardianship to assist persons who are only partially incapable of caring for their needs. Recognizing that every individual has unique needs and differing abilities, the legislature declares that it is the purpose of this act to promote the public welfare by establishing a system that permits incapacitated persons to participate as fully as possible in all decisions affecting them; that assists such persons in meeting the essential requirements for their physical health and safety, in protecting their rights, in managing their financial resources, and developing or regaining their abilities to the maximum extent possible; and that accomplishes these objectives through providing, in each case, the form of assistance that least interferes with the legal capacity of a person to act in his or her own behalf.")

36 The doctrine of *parens patriae* maintains that the state, as a "parent of his or her country," has the inherent responsibility to provide "for the commonwealth and individual welfare." Black's Law Dictionary, 1137 (7th Edition 1999)(*parens patriae*. [Latin "parent of his or her country."] The state is regarded as a sovereign; the state in its capacity, as provider of protection to those unable to care for themselves.) Essentially, as the guardian over all of its citizens, the state has the authority to protect those who are not legally competent to act on their own behalf.

37 The beginnings of § 33-15-10 correspond to a period of American history during which the United States Supreme Court was first enunciating the far-reaching implications of the substantive component of the due process clause. See *Lochner v. New York*, 198 U.S. 45 (1905)(holding the right to contract implicit in the due process clause). Though ultimately the Supreme Court would "switch" its views concerning economic substantive due process and the right to contract, *Lochner* does stand for the proposition that the substantive component does provide protection to Americans when their personal liberties are impinged by state legislation. See also *Meyer v. Nebraska*, 262 U.S. 390 (1923). Moreover, the *Lochner* era is blotted with caselaw protecting economic interests so it is not surprising to find legislation designed to protect the estate of those deemed "incapacitated."

38 See e.g., *The Rehabilitation Act of 1973*, 29 U.S.C. § 794 (1973); *The Americans with Disabilities Act*, 42 U.S.C. § 12131 (1990).

39 *Supra* note 24.

40 R.I. GEN. LAWS § 33-15-5(3)

41 Without identifying particular probate courts, mainly because the presiding judges are more than likely unaware of all of their predecessors actions, there are temporary guardianships that have far exceed their intended "temporary" nature; this author is personally aware of several cases where temporary guardianships were still valid more than ten years after appointment.

42 For instance, there are no annual reporting and/or accounting requirements for a temporary guardian. The annual reporting requirements of a permanent guardian, however, can lead to a probate court's monitoring of potential suspect actions by the guardian.

43 *Supra* note 25.

44 Though the author could offer numerous examples of circumstances that could rise to the level of an emergency—such as a comatose accident victim—as well as legislative language that could rectify this predicament, it is not the purpose of this article. ♦

## Judge and Bar President Present Mock Trial Championship Trophy to Saint Mary Academy-Bay View



Top row, left to right: Rhode Island Bar Association President Victoria M. Almeida; Bay View Principal Colleen Gribbin; Rhode Island Workers' Compensation Court Associate Judge Edward Sowa; Mock Trial Coach Amy K. Dodge, Esq.; Bay View President Sister Elizabeth McAuliffe; and Mock Trail Coach and Bay View Assistant Principal Cecilia Pate.

Second row, left to right: Mock Trial Winners Elizabeth Jones, Meredith Grace, Bianca Iannitti, Taylor Jones, Chandi Zeoli, and Stephanie Correia.

Students in the 2008-2009 Mock Trial Team from Saint Mary Academy-Bay View, in East Providence won top honors in the most recent Mock Trial Championship. On September 22, 2009, Rhode Island Workers' Compensation Court Associate Judge Edward Sowa and Rhode Island Bar Association President, and Saint Mary Academy alumna, Victoria M. Almeida, presented the championship trophy to the school's team for their legal victory in the matter of *State of Rhode Island v. Brit Reynolds*. Saint Mary Academy has previously earned three state championship titles, 1996, 2001, and 2008. Participating lawyer coaches and Saint Mary alumna included Amy K. Dodge, Esq. and Jessica Massey Esq., who were members of the 1996 championship team, and Mollie Richardson, Esq., who was part of the 2001 championship team. Mock Trial faculty advisor and coach, Cecilia Pate, noted, "Being joined by Victoria Almeida, Esq. DM, President of the Rhode Island Bar Association and a Bay View grad, is very special to us. The entire Bay View community is proud of all the women who have gone onto great success as lawyers and judges, and we welcome them back for this tribute."



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# The Rewards of Stewardship



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Partner of Updegrave & Gontarz, Ltd. in Middletown

*When I see the daily progress clients and their families are making and the dedication of Tides' staff with their limitless patience and concern for children who may never have experienced this kind of compassionate care, it inspires me to do more and to do better.*

In her inauguration speech as Rhode Island Bar Association President Victoria M. Almeida spoke about the importance of being good stewards for and to each other. She talked about the importance of civility and honorable leadership and quoted from a popular concept developed in the 1970s by Robert Greenleaf: "It is the ability of a leader to do nothing out of selfishness or vain glory, but rather to humbly regard others as more important than oneself." I was inspired by her speech and by her mission to dedicate her term in office to "ensure greater justice for all through a focus on pro bono service."

Victoria wisely chose to highlight Rule 6.1 of the Rhode Island Voluntary Pro Bono Publico Service, which states in part:

"Every lawyer has a professional responsibility to provide legal services to those unable to pay. A lawyer should aspire to render at least 50 hours of pro bono publico legal services per year. In fulfilling this responsibility, the lawyer should (a) provide a substantial majority of the 50 hours of legal services without fee or expectation of fee ...religious ...organizations in matters that are designed primarily to address the needs of persons of limited means."

Allow me to introduce you to Brother Michael Reis, FSC, founder and CEO of Tides Family Services, and liberator of lost causes. Tides motto? "We never give up on a kid...never!"

In 1983, with about \$15,000 in seed money and an office no bigger than a supply closet, Brother Michael started Tides Family Services. His objective was simple: Take these kids off the streets and return them to the community as productive citizens.

For the past 25 years, Tides has been accomplishing its mission through education – the

agency maintains three store-front schools – a highly effective and successful outreach and tracking program that provides extensive family support, non-traditional counseling and out-of-school activities.

Tides is often been referred to as the agency without walls. Its 100 outreach workers, social workers and teachers work day and night working with troubled youth, in their homes, on the streets, in the schools, in Family Court, and at the Rhode Island Training School. In short, wherever kids gather, Tides is there.

I first met Brother Michael in 1975. We found we had a lot in common. Both of us were from New York and both of us were committed to social change. When Brother Michael founded Tides, he reached out to me as a resource. We stayed in contact during my tenure as a Special Assistant Attorney General and for the last 23 years while I was in private practice.

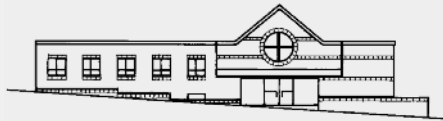
In 2005, Brother Michael nominated me to the Tides Family Services Board of Directors. I currently serve as the Board's vice chair and chair the Advocacy Committee. I work closely with Tides Board Chair Brother Edmond Precourt, FSC who supports and encourages lay people to serve on the Board. According to Brother Edmond, "It is a blessing for us to have so many experienced individuals join the Board and assist us in moving forward with the services we provide for youth and their families. Chris not only brings a great deal of legal experience to the Board, his ties with the community provide us with many fundraising and other opportunities."

My background as a police officer and prosecutor has aided me in providing legal advice to Tides. I have appeared in all Rhode Island courts on behalf of Tides' clients. Throughout the years, I have been privy to countless stories of so-called hopeless cases turned over to Tides with remarkable results.

I think about Alicia, a substance abuser who, because of Tides, sees a life beyond incarceration. Not a week goes by that Brother Michael doesn't visit her to give her hope and to counsel her on making better choices. And I remember Joanne, a rebellious teen, had her life turned



**Brother Michael Reis**



## 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.

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around with the help of Tides.

Aaron was a boy left adrift on the streets of Central Falls. His heroes were drug dealers. After educators gave up on him, he was given a choice: the training school, prison or Tides. He chose Tides. Today, Aaron has his high school diploma and holds down a full time job.

These success stories illustrate why I choose to be a steward to Tides Family Services. It is the desire to be of service to others and to make a difference. And as Brother Michael once said, "It was a golden opportunity for Tides. Chris has a perfect desire and it was a perfect match."

In 2008, I received the Rhode Island Bar Association's Dorothy Lohman Community Service Award for my volunteer work on behalf of Tides. This award resulted in a substantial contribution to Tides, given in my name, by an anonymous donor. Tides used the funds to establish The Christopher Gontarz, Esq. Scholarship Fund which helps kids to reach their career goals.

Serving on Tides Board of Directors is a position I do not take lightly. When I see the daily progress clients and their families are making and the dedication of Tides' staff with their limitless patience and concern for children who may never have experienced this kind of compassionate care, it inspires me to do more and to do better.

In her final comments during that speech to the Rhode Island Bar Association, Victoria ended with this: "I think you will agree with me that service to others, and being good to others, in and of itself, is rewarding and good for the spirit."

I couldn't agree with her more. ♦

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# The Importance of a Carefully Drafted Forum Selection Clause



**Stephen J. MacGillivray, Esq.**

Partner, Edwards Angell  
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**Raymond M. Ripple, Esq.**

Associate, Edwards Angell  
Palmer & Dodge LLP,  
Providence

Given the current economic downturn, which has been felt more acutely in Rhode Island, local companies doing business outside of the state will want to avoid the expense of litigating a dispute in a distant and unfamiliar court system more than ever. Accordingly, attorneys representing Rhode Island businesses should seek to ensure that any litigation is adjudicated on their client's home turf to the greatest extent possible. Moreover, clients will seek to avoid the costly litigation that ensues when two or more lawsuits are filed in multiple jurisdictions over the same dispute. In this scenario, the client potentially finds itself waging painfully expensive battles on multiple fronts simply to determine the appropriate venue, all prior to funding the litigation of the underlying dispute.

For these reasons, when negotiating or drafting agreements for their clients, attorneys should exercise care to ensure that the forum selection clauses are precise in their wording and take into account the currently developing case law discussed below.

The following hypothetical illustrates the importance of a carefully worded forum selection clause. Lawyer represents a mid-sized Rhode Island corporation that has entered into a sales agreement with a California corporation after lengthy negotiations with counsel for the California corporation. At Lawyer's insistence, the California corporation agrees that, in the event of litigation arising out of the agreement, the appropriate forum for resolving disputes between the parties are the courts of Rhode Island. Counsel for the California corporation prepares a draft of the sales agreement that includes the following proposed forum selection language: "It is agreed that, in the event of litigation, legal jurisdiction shall be in the courts of Providence County, Rhode Island." The parties ultimately execute an agreement that includes the forum selection clause pro-

posed by counsel for the California corporation. Approximately one year later, a dispute arises under the agreement and the California corporation brings suit against Lawyer's client in California state court and Lawyer brings suit in the United States District Court for the District of Rhode Island. Thus, the precise litigation scenario Lawyer attempted to prevent in the negotiation process has come to pass. Nevertheless, Lawyer confidently advises the client that the litigation will soon be conducted exclusively in Rhode Island due to Lawyer's negotiation of the forum selection clause. Lawyer assists the client in hiring local counsel in California and, together with this counsel, files a motion to dismiss there based on the forum selection clause. The California company objects to the motion

.....  
*...when negotiating  
or drafting agree-  
ments for their  
clients, attorneys  
should exercise  
care to ensure that  
the forum selection  
clauses are precise  
in their wording  
and take into  
account the cur-  
rently developing  
case...*  
.....

arguing that i) the forum selection clause is contrary to public policy and therefore unenforceable, and, ii) the clause is merely permissive in nature and does not mandate Rhode Island as the exclusive jurisdiction to resolve the parties' dispute. Lawyer reviews the authorities cited in support of these arguments and finds that although the intent of the proposed language may have been for Rhode Island's courts to be the exclusive forum, the language of the agreement has left the door open for the California corporation to argue otherwise.

Forum selection clauses traditionally have been enforced by courts after assessing their fundamental fairness. Rhode Island has adopted this approach.<sup>1</sup> In

*Tateosian v. Celebrity Cruise Lines, Ltd.*, 768 A.2d 1248 (R.I. 2001), the Rhode Island Supreme Court recognized that forum selection clauses are *prima facie* valid, but are subject to judicial scrutiny for fundamental fairness?<sup>2</sup> Where the forum selection clause is devoid of fraud, undue influence or overweening bargaining power, it will be enforced.<sup>3</sup> In *Tateosian*, the Court held that a forum selection clause is valid



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if it: 1) does not limit the defendant's liability; 2) there was notice of the choice of forum; and 3) there was no bad faith motive for the choice of forum.<sup>4</sup> Additionally, several Rhode Island Superior Courts also have applied numerous factors from Federal court decisions to assess the enforceability of the forum selection clause.<sup>5</sup> These factors include: 1) the identity of the law that governs the contract; 2) the place of execution of the contract; 3) the place where transactions are to be performed; 4) the availability of remedies in the designated forum; 5) the public policy of the initial forum state; 6) the location of the parties, the convenience of the prospective witnesses, and the accessibility of evidence; 7) the relative bargaining power of the parties and the circumstances surrounding their dealings; 8) the presence or absence of fraud, undue influence, or other extenuating (or exacerbating) circumstances; and 9) the conduct of the parties.<sup>6</sup>

Unfortunately for our hypothetical lawyer, the Ninth Circuit has taken a fairly aggressive approach to applying some of these factors. In *Doe 1 v. AOL LLC*, 552 F.3d 1007 (9th Cir. 2009), the Ninth Circuit encountered a dispute on appeal between AOL and a class of its members relating in part to the interpretation and enforceability of the forum selection clause in the member agreements.<sup>7</sup> According to the Ninth Circuit, a forum selection clause identifying the "courts of Virginia" as the fora for disputes limited consumers to filing suit in Virginia state court and could not be interpreted to include federal courts within the state of Virginia.<sup>8</sup> The Court then found the forum selection clause unenforceable in part because it violated California's public policy favoring class actions and consumer class actions were not available in the state courts of Virginia.<sup>9</sup> The result, the use of the single preposition "of," may have subverted the true intent of the parties with respect to their choice of forum.

Another recent case from Delaware also highlights reasoning which can result in thwarting the intent of the parties to pre-select a forum.<sup>10</sup> In *Troy Corp. v. Schoon*, the forum selection clause in question stated as follows: "Any lawsuits with respect to, in connection with or arising out of this agreement, shall be brought in a court for the Southern District of New York and the parties hereto consent to the jurisdiction and

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venue of such court for the Southern District as the sole and exclusive forum, unless such court is unavailable, for the resolution of claims by the parties arising under or relating to this agreement.”<sup>11</sup>

In ruling on a motion to dismiss the Delaware action, in favor of proceeding in the Southern District of New York, the Delaware court found itself making a determination as to whether the complaint raised an issue of federal jurisdiction. The court determined that the language provided for only one possible forum, the United States District Court for the Southern District of New York; the contract could not be read to allow jurisdiction in the state courts that are located within the Southern District to entertain the matter. Determining that there was no such jurisdiction, the court concluded that Delaware state court was a permissible forum in which to adjudicate the dispute. The Delaware court stated that although forum selection clauses are enforceable, if they are meant to be exclusive, they must clearly and unequivocally express that intent.

This distinction between mandatory and permissive forum selection clauses appears to be the growing trend in other jurisdictions.<sup>12</sup> Although the Rhode Island Supreme Court has never addressed the distinction, a review of this judicial trend provides some guidance as to how a Rhode Island court might address the issue and provides some guidance on how our hypothetical lawyer could have prevented any dispute over the mandatory nature of a clause to ensure that the Rhode Island client is not forced to litigate in a distant jurisdiction. A permissive clause, also known as a consent to jurisdiction clause, authorizes jurisdiction in a particular forum, but does not necessarily restrict the litigation from being brought in other fora. However, a mandatory clause permits an action to be brought only in the specified forum. In determining whether a clause is mandatory, courts will analyze the clause for terms limiting the forum in a specific manner.<sup>13</sup>

The U.S. Court of Appeals for the First Circuit recently focused on the distinction between mandatory and permissive forum selection clauses. In **Rivera v. Centro Medico De Turabo, Inc.**, C.A. No. 07-2657, 2009 WL 234312 (1st Cir. Jul. 31, 2009), the Court addressed whether a forum selection clause embedded in in-



## This Month In Bar History

### November - 1987

In November of 1987, during the Bar Presidency of Scott Keefer, the Rhode Island Bar Association, in cooperation with the Immigration Law Project of the International Institute of Rhode Island, Inc. launched a program aimed at enlisting volunteer attorneys to take on pro bono cases for low-income Rhode Islanders affected by the Immigration and Control Act (IRCA) of 1986. IRCA created new alien legalization programs and established sanctions against employers who knowingly hired undocumented aliens and strengthened anti-discrimination provisions of federal law. The International Institute's Immigration Law Project, funded by the Rhode Island Bar Foundation's Interest on Lawyer Trust Account (IOLTA) program, and with the participation of a network of volunteer Bar members addressed the needs of those requiring help under ICRA, but unable to afford counsel.

*Please Note: "This Month in Bar History," a new monthly feature, appearing in the Rhode Island Bar Journal, and on the Bar's web site-based scrolling news and eBulletin, is a new initiative of Rhode Island Bar Association President Victoria Almeida. The series of short pieces highlight aspects of Bar Association history and important Rhode Island legal events as a reminder of our rich and important history and the many contributions made by our Bar and our members to both the profession and the community.*

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formed consent documents presented to a patient before a medical procedure was permissive or mandatory. The clause at issue provided as follows: "In the event that by act or omission I consider that physical, emotional or economic damages have been caused to me, I expressly agree to submit to the Jurisdiction of the Court of First Instance of the Commonwealth of Puerto Rico, for any possible claim."<sup>14</sup> The Court held the clause was mandatory in nature because it required the plaintiff to assert any causes of action in a specific court system as opposed to merely consenting to jurisdiction.<sup>15</sup> In reaching this conclusion, the Court noted that there is no general rule of contract interpretation that applies to forum selection clauses. The distinction between mandatory and permissive forum selection clauses is based "on the specific language of the contract at issue."<sup>16</sup> Thus, while the First Circuit recognized the distinction between mandatory and permissive forum selection clauses, it stressed that the contract language determines whether the clause will be interpreted as mandatory or permissive.

For our hypothetical lawyer, there are certain steps that could have been taken

to reduce, if not completely eliminate, the chance that the client would be faced with defending the suit in California. When intending a particular jurisdiction to be the sole forum for resolution of a dispute between the parties, as opposed to merely consenting to the forum as an acceptable one, after making it clear that the parties consent to personal jurisdiction in the chosen forum, drafters should include obligatory language or terms, *i.e.*, "exclusive," "sole," "only" "must" with respect to the jurisdiction of the designated venue. The parties should also expressly state that they waive any and all objections to an action arising out of the agreement being adjudicated in the chosen forum and agree not to bring suit in any other jurisdiction. Counsel should also provide for an alternative court in the chosen state. The court chosen should have the jurisdiction and power to entertain any anticipated claim related to the agreement. Finally, to the greatest extent possible, the chosen courts should not deprive potential plaintiffs of significant procedural protections.

#### ENDNOTES

<sup>1</sup> *Tateosian v. Celebrity Cruise Lines, Ltd.*, 768 A.2d 1248, 1250 (R.I. 2001) (citing *M/S Bremen v.*

*Zapata Off-Shore Co.*, 407 U.S. 1, 10 (1972)).

<sup>2</sup> *Id.*

<sup>3</sup> *M/S Bremen v. Zapata Off-Shore Co.*, 407 U.S. 1, 10 (1972).

<sup>4</sup> *Tateosian*, 768 A.2d at 1250.

<sup>5</sup> See *Employers Mut. Cas. Co. v. Michael Weinig, Inc.*, No. P.C. 03-4115, 2004 WL 1351352 (R.I. Super. 2004); *Groff v. America Online, Inc.*, No. PC 97-0331, 1998 WL 307001 (R.I. Super. 1998).

<sup>6</sup> *D'Antuono v. CCH Computax Sys., Inc.*, 571 F. Supp. 708, 711-12 (D.R.I. 1983) (holding that while each of the nine factors has some degree of relevance, there are no rules or precise formulas that should be applied when analyzing the enforceability of a forum selection clause; "[t]he totality of the circumstances, measured in the interests of justice, will and should ultimately control").

<sup>7</sup> See *Doe 1 v. AOL LLC*, 552 F.3d 1077 (9th Cir. 2009).

<sup>8</sup> See *Id.* at 1082; see also, *American Soda, LLP v. U.S. Filter Wastewater Group, Inc.*, 428 F.3d 921, 926 (10th Cir. 2005) (holding that a forum selection clause that specified the courts "of Colorado" could only mean state court because "a federal court located in Colorado is not a state court of the State of Colorado but rather a court of the United States of America"); *Alliantgroup, L.P. v. Feingold*, No. H-09-0479, 2009 WL 514058, at \*5 (S.D. Tex. Mar. 2, 2009) ("When a forum-selection clause requires venue in a county with no federal courthouse, a defendant sued in state court in that county waives the right to remove"); *Mfg. & Mktg. Concepts, Inc. v. S. Cal. Carbide*, 920 F. Supp. 116, 119 (N.D. Ill. 1996) (concluding that a forum selection clause specifying venue in "an Illinois court" "plainly" meant an Illinois state court).

<sup>9</sup> See *Id.* at 1083, 1084.

<sup>10</sup> See *Troy Corp. v. Schoon*, C.A. No. 07-1959-

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VCL, 2007 WL 949441, at \*1 (Del.Ch. 2007).

<sup>11</sup> See *Id.* at \*2.

<sup>12</sup> See, e.g., *Global Satellite Commc'n v. Starmill U.K. Ltd.*, 378 F.2d 1269, 1272 (11th Cir. 2004); *Rescuecom Corp. v. Chumley*, 522 F. Supp. 2d 429, 444 (N.D.N.Y. 2007).

<sup>13</sup> See *BRC Group, LLC v. Quepasa Corp.*, C.A. No. 09-01506, 2009 WL 2424669, at \* (Aug. 7, 2009) (finding clause to be permissive where word "exclusive" was not used); *Weener Plastics, Inc. v. HNH Packaging, LLC*, C.A. No. 08-496-D, 2009 WL 2591291, at \*7 (E.D.N.C. Aug. 19, 2009) (relying on the use of "shall" and "exclusive" when identifying the courts of North Carolina); *Gen. Pump & Well, Inc. v. Laibe Supply Corp.*, No. CV607-30, 2007 WL 4592103, at \*3 n.4 (S.D. Ga. Dec. 28, 2007) (finding clause mandatory due to use of the word "exclusive"); *Rescuecom*, 522 F. Supp. 2d at 444 (holding that clause was mandatory where it provided that the courts in one specified county had "exclusive jurisdiction"); *Philips v. Audio Active Ltd.*, 494 F.3d 378, 386 (2d Cir. 2007) ("A forum selection clause is viewed as mandatory when it ... incorporates obligatory venue language").

<sup>14</sup> *Id.* at \*2.

<sup>15</sup> *Id.* at \*6.

<sup>16</sup> *Id.* ♦



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**Richard M. Bianculli Jr., Esq.** is now Legal Counsel for the Rhode Island Department of Environmental Management Office of Legal Services located at 235 Promenade Street, Providence, RI 02908. telephone: 401-222-4700, ext. 2023 email: richard.bianculli@dem.ri.gov

**Jacqueline M. Bouchard, Esq.** opened her law practice, **Law Office of Jacqueline M. Bouchard, P.C.**, located at 1239 Hartford Avenue, Johnston, RI 02919. telephone: 401-273-8808 email: jbouchard@jmblaw.necoxmail.com

**Ernest D. Humphreys, Esq.** is now partner with **Cameron & Mittleman, LLP**, located at 301 Promenade Street, Providence, RI 02908. telephone: 401-331-5700 email: ehumphreys@cm-law.com web: www.cm-law.com

**Joseph E. Marran III, Esq.** has opened his own law practice located at 255 Main Street, Suite 511, Pawtucket, RI 02862. telephone: 401-722-5100 email: Jmarran@verizon.net

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**Jane E. Morgan, Esq.** now works for the Rhode Island Office Of Health and Human Services, located at Barry Hall, John O. Pastore Complex, Cranston, RI 02920. telephone: 401-462-0524 email: JaneMorgan@ohhs.ri.gov

**Everett Petronio, Jr., Esq.** has joined the law firm of **Kalander & Shaw, Ltd.** located at 931 Jefferson Blvd, Suite 2004, Warwick, RI 02886. telephone: 401-737-9720 email: epetroniojr@kalanderlaw.com

**Thomas P. Quinn, Esq.**, partner in the Providence law firm of **McLaughlin & Quinn LLC**, was appointed to the Panel of Chapter 7 Trustees for the United States Bankruptcy Court for the District of Rhode Island.

**Charles T. Schmidt, Esq.** and **Rachelle R. Green, Esq.** have been named partners in the law firm of **Duffy & Sweeney, Ltd.** located at 1 Financial Plaza, Suite 1800, Providence, RI 02903. telephone: 401-455-0700 web: www.duffysweeney.com emails: cschmidt@duffysweeney.com rgreen@duffysweeney.com

**Bernice Stone, Esq.** is now an associate attorney with **Azzinaro, Manni-Paquette, P.C.** located at 353 Armistice Blvd., Pawtucket, RI 02861. telephone: 401-729-1600 email: amplaw@verizon.net

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**Criminal Law Practice**  
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*Tuesday*  
**Child & Medical Support – A Closer Look**  
RI Law Center, Providence  
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**November 18**  
*Wednesday*  
**Food for Thought**  
**False Testimony – Your Ethical Obligations**  
Courtyard Marriott Hotel, Middletown  
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**November 19**  
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**Advance Healthcare Directives**  
RI Law Center, Providence  
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**November 24**  
*Tuesday*  
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**Advance Healthcare Directives**  
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12:45 p.m. – 1:45 p.m., 1.0 credit

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*Tuesday*  
**An Overview of the CRMC & DEM Enforcement Process**  
RI Law Center, Providence  
3:00 p.m. – 5:00 p.m., 2.0 credits

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# Social Host Liability



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*It is clear from the Legislature's recent amendments to the criminal Social Host Laws and the Supreme Court's holdings in Martin and Willis that both the Rhode Island Legislature and Judiciary are seriously considering the issues relating to social host criminal and civil liability.*

Tragedies and near tragedies, involving alcohol, occurring throughout Rhode Island, led to the adoption of the State's Social Host Laws. The term, social host liability, refers to both criminal liability, which is a statutory prohibition enforced by the State that may lead to criminal penalties such as fines and imprisonment, and civil liability, referring to an action, by a private party against a host, seeking monetary damages for injuries and damages.

## 2006 Criminal Social Host Laws

In 2006, the Rhode Island Legislature revised the statutes prohibiting the furnishing or procurement of alcoholic beverages for underage persons,<sup>1</sup> by expanding the definitions of furnishing or procurement to include the permitting of "consumption of alcohol by underage persons in his or her residence."<sup>2</sup> Prior to this revision, police departments found it difficult to charge adults who allowed underage alcohol consumption in their residence unless it could be proven the adults purchased the alcohol for underage persons.

The 2006 version of R.I. Gen. Laws 3-8-11.1 (furnishing or procurement of alcoholic beverages for underage persons) states that "it is unlawful for any person twenty-one (21) years of age or older to purchase, to furnish, to procure, and/or to otherwise permit the consumption of alcohol by underage persons in his or her residence.... Any adult person who violates this section will be subject to the penalties provided in R.I. Gen. Laws 3-8-11.2.<sup>3</sup> The statute further states, "[t]his section does not apply to use, consumption or possession of alcoholic beverages by a minor for religious purposes; or to a parent or legal guardian procuring or furnishing alcohol to, or permitting the consumption of alcohol by, his or her minor child or ward."<sup>4</sup>

The 2006 version of R.I. Gen. Laws 3-8-11.2 states the penalties for a violation of R.I. Gen. Laws 3-8-11.1 are as follows:

**First Offense:** Any adult person who violates R.I. Gen. Laws 3-8-11.1 for a first misdemeanor violation shall be punished by a fine of not less than three hundred and fifty dollars (\$350) nor

more than one thousand dollars (\$1,000) and/or imprisoned for a period not exceeding six (6) months, or both;

**Second Offense:** Any person who violates R.I. Gen. Laws 3-8-11.1 for a second misdemeanor violation shall be punished by a fine of not less than seven hundred and fifty dollars (\$750) nor more than one thousand dollars (\$1,000) and/or imprisoned for a period not exceeding six (6) months, or both; and

**Third or Subsequent Offense:** Any person who violates R.I. Gen. Laws 3-8-11.1 for a third or subsequent offense shall be guilty of a felony and shall be punished by a fine not exceeding two thousand five hundred dollars (\$2,500.00) and/or imprisoned for a period not exceeding one (1) year. Any person convicted of a second or subsequent offense under this section shall not have any fines suspended.<sup>5</sup>

The 2006 version of R.I. Gen. Laws 3-8-10 (possession of beverage by underage persons) states the following:

Any person who has not reached his or her twenty-first (21st) birthday and has in his or her possession any beverage as defined in this title shall be fined one hundred and fifty dollars (\$150) to seven hundred and fifty dollars (\$750) for the first offense, three hundred dollars (\$300) to seven hundred and fifty dollars (\$750) for the second offense, and four hundred fifty dollars (\$450) to seven hundred and fifty dollars (\$750) for the third or subsequent offense. In addition, any person who violates this section may be required to perform community service and shall be subject to a minimum sixty (60) day suspension of his or her driver's license, and upon a second offense may be ordered to undergo a substance abuse assessment by a licensed substance abuse professional.<sup>6</sup>

A summary of cases in which the Social Host Laws were enforced since 2006 follows:

- On August 9, 2006, the Portsmouth Police responded to a reported underage drinking party at Black Point Lane. The homeowner was charged with procuring alcohol for a minor, and on April 19, 2007, the District Court Judge filed the case for one year.
- On December 1, 2006, the Lincoln Police

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charged a homeowner after discovering a drinking party at her William Street residence. On March 2, 2007 she was fined three hundred and fifty dollars and the case was filed for one year.

- On December 31, 2006, the Barrington Police arrested a homeowner after discovering a party at her Country Road residence. On February 28, 2007, she was fined three hundred and fifty dollars and placed on probation for six months.
- On June 10, 2008, a homeowner admitted to a procuring alcohol for minors charge brought by the North Kingston Police Department. The homeowner received a sentence including a five hundred dollar fine, fifty hours of community service, three months probation and court costs.
- On January 23, 2008, a Barrington couple who allowed their daughter and her friends to consume alcohol at their residence at a New Year's Eve party pled in the District Court to the charges that they illegally provided alcohol to minors. Both parents were placed on six months probation, ordered to perform one hundred hours of community service, to make a three hundred and fifty dollar contribution to the VCIF and to pay court costs. The Barrington Police became aware of the party after pictures of the party depicting underage persons playing a drinking game were posted on Facebook.com.
- On July 11, 2008, the charge of procuring alcohol for minors brought against a homeowner by the Westerly Police was dismissed. The homeowner denied providing alcohol to the underage persons and was not at home at the time of the incident.
- On May 6, 2008, a West Warwick homeowner was charged with procuring alcohol for minors after a juvenile left the house and collided with another vehicle which resulted in the death of the other operator. On May 14, 2008, the case was transferred to the Superior Court.<sup>7</sup>

### 2008 Criminal Social Host Laws

In July 2008, Rhode Island Governor Carcieri signed revisions to the Social Host Laws increasing the penalties and closing a perceived loophole. The 2006 version of R.I. Gen. Laws 3-8-11.1 prohibited any person twenty-one years of



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age or older from permitting "the consumption of alcohol by underage persons in his or her residence."<sup>8</sup> The 2008 version of the statute adds, "or on his or her real property,"<sup>9</sup> thereby prohibiting the consumption of alcohol by underage persons anywhere on the homeowner's property. This particular revision of the Social Host Laws was triggered by an outdoor beer keg party, discovered by the Barrington Police, who were unable to charge the homeowner because the alleged underage drinking was not committed within "his or her residence." These latest revisions do not affect social hosts who are under twenty-one years of age.

The current penalties for a violation of the statutes prohibiting the furnishing or procurement of alcoholic beverages for underage persons<sup>10</sup> increases the potential term of imprisonment for second and subsequent offenses and includes the following:

**First Offense:** is a misdemeanor violation punishable by a three hundred and fifty dollar (\$350) to one thousand dollar (\$1,000) fine, and/or imprisonment for a period not exceeding six (6) months, or both;

**Second Offense:** is a misdemeanor violation punishable by a seven hundred and fifty dollar (\$750) to one thousand dollar (\$1,000) fine, and/or imprisonment for a period not exceeding one (1) year, or both; and

**Third/Subsequent Offense:** is a felony punishable by a one thousand dollar (\$1,000) to two thousand five hundred dollar (\$2,500) fine, and/or imprisonment for a period not exceeding (3) years.<sup>11</sup>

Additionally, regarding the possession of alcoholic beverages by underage persons, R.I. Gen. Laws 3-8-10 was revised to read "any person who violates this section shall be required to perform thirty (30) hours of community service and shall be subject to a minimum sixty (60) day suspension of his or her driver's license,..." The revision has changed the operative word from "may" to "shall." The penalties for a violation of this statute include the following:

**First Offense:** One hundred and fifty dollar (\$150) to seven hundred and fifty dollar (\$750) fine;

**Second Offense:** Three hundred dollar (\$300) to seven hundred and fifty dollar (\$750) fine;

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## SOCIAL SECURITY DISABILITY MEDICAL MALPRACTICE



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### Civil Social Host Liability

In *Gerstenblatt v. Nordic Lodge, Inc.*,<sup>14</sup> the Superior Court Judge, relying on *Ferreira v. Strack*,<sup>15</sup> held the "R.I. Supreme Court 'has never adopted the principal that a social host owes a duty to a third person injured by an intoxicated person who has obtained intoxicating liquor at his or her home.' Furthermore, the Supreme Court ruled that 'the creation of new causes of action should be left to the Legislature.'" <sup>16</sup>

In *Volpe v. Gallagher*,<sup>17</sup> the Court, relying on *Ferreira*, noted "[t]his Court has long held that the creation of new causes of action should be left to the Legislature. In declining to create social host tort liability, this Court in *Ferreira* noted that '[t]he majority of courts in other jurisdictions faced with the question of extending common-law tort liability...have deferred to the Legislature. The reasoning for this deferral is their consideration that the question raised is one of broad public policy rather than an interpretation of the common law.' Moreover, '[t]he imposition of liability upon social hosts...has such serious implications that any action taken should be taken by the Legislature after careful investigation, scrutiny, and debate. It is abundantly clear that greater legislative resources and the opportunity for broad public input would more readily enable the Legislature to fashion an appropriate remedy to deal with the scope and severity of the problem.'" <sup>18</sup>

However, in *Martin v. Marciano*,<sup>19</sup> the Supreme Court clarified that if a "defendant provided alcoholic beverages to underage partygoers as the plaintiff alleges, or had actual knowledge of the presence and consumption of alcohol by underage drinkers on her property, then defendant was duty-bound to exercise reasonable care to protect plaintiff from



physical assault by persons expected to be in attendance or those acting at their behest.”<sup>20</sup>

In *Martin*, the Defendant hosted a high school graduation party with forty to seventy guests with most being between seventeen and twenty years of age. Two kegs of beer were available plus other alcohol supplied by other guests. During the party, the Plaintiff had an altercation with another guest, Defendant (Marciano), who left the party but returned with the third Defendant (Okere). The Defendant (Okere) struck the Plaintiff in the head with a baseball bat causing brain damage.<sup>21</sup>

In its analysis, the Supreme Court held, “[a]s a general rule, a landowner has no duty to protect another from harm caused by the dangerous or illegal acts of a third party. An exception to this rule exists, however, when a plaintiff and a defendant bear a special relationship to each other.”<sup>22</sup> The Court further stated, “[a]s a party host who is alleged to have made alcohol illegally available to underage guests, defendant owed plaintiff ‘the duty of exercising reasonable care to protect [him] from harm and criminal attack at the hands of fellow [guests] or other third persons.’ Although this duty most often has been extended to tavern and barroom operators, there is no valid justification for absolving an adult parent of this higher standard of care when she knowingly provides alcohol, or is aware that it is available, to underage individuals, for consumption on her property.”<sup>23</sup>

The Court further held the following: We conclude that burdening parent-hosts who provide alcohol to underage guests with a duty to take reasonable steps to protect their guests from injury is in accordance with the clear public policy of this state. The General Assembly has devoted considerable attention to the issue of underage drinking and has prohibited individuals under the age of twenty-one from purchasing, Gen. Laws 1956 § 3-8-6(a)(1); consuming, § 3-8-6(a)(2); possessing, § 3-8-10; and transporting alcohol, § 3-8-9. Individuals under the age of eighteen are prohibited from acting as bartenders. Section 3-8-2. Adults are prohibited from purchasing or procuring alcohol for people under the age of twenty-one. Section 3-8-11.1. These statutes demonstrate an overriding policy against not only underage drinking, but also an adult’s provision



## This Month In Bar History

### December - 1920

In 1920, Ada Lewis Sawyer became the first female member of the Rhode Island Bar Association when she joined the Bar at the age of 28. Her admission occurred in the same year that Rhode Island women achieved the right to vote. After high school graduation, Ms. Sawyer served as a stenographer, legal secretary and law firm clerk. Her three-year clerkship, from 1917 to 1920, was allowed as a substitute for law school. After successfully passing a bar exam that included over thirty subjects, Attorney Sawyer focused her practice on wills and trusts during her long and successful legal career. Among the other distinguished women who have served the Rhode Island legal profession and the Bar Association are past and present Bar Presidents including the Bar’s first woman



Ada Lewis Sawyer, Esq.  
(1892-1985)

President Beverly Glenn Long, Esq. (1981-1982); Susan Leach DeBlasio, Esq. (1989-1990); Deborah M. Tate, Esq. (1999-2000); the Bar’s first Black woman President Jametta O. Alston, Esq. (2004-2005); Marcia McGair Ippolito, Esq. (2007-2008) and current Bar President Victoria M. Almeida, Esq. (2009-2010).

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of alcohol to minors, who, by virtue of their tender age and inexperience, are presumed less capable of handling the deleterious effects of alcohol consumption. The imposition of a higher standard of care in this case may provide a valuable disincentive for adults who might otherwise be willing to provide alcohol to minors, or to turn a blind eye to its consumption on their premises.<sup>24</sup>

From the Courts holding in *Martin*, it is clear that only when a special relationship exists will the Court consider the imposition of Social Host Liability. In its recent holding in *Willis v. Omar*,<sup>25</sup> the

Court reasserted its long standing precedent of refusing to adopt Social Host Liability in most circumstances.

"[W]e decline the invitation to overturn our well-settled precedent,"<sup>26</sup> was the response of the Court to the Plaintiff's argument in *Willis* that the Court should "create a new cause of action – one that imposes a duty on a social host to protect a person from injury resulting from alcohol consumption by either a guest or a drunk driver who leaves the party and is involved in an accident that causes injury or death. Although plaintiff acknowledges that this Court never has recognized social-host liability, she implores us to

look to the Restatement (Second) of *Torts* and what she characterizes as sound public policy to 'creat[e] a new frontier that will better today's society and provide a remedy for a victim' in circumstances in which the social host's hospitality leads to 'an atmosphere of reckless driving and drinking.'"<sup>27</sup>

In *Willis*, the Plaintiff (Serapiglia) and her boyfriend (Grise) engaged in a "Friday night of drinking"<sup>28</sup> with the Defendants (Maurice Omar and Barbara Omar) first at a restaurant and then at the Defendants' home. At the Defendants' home, "Maurice produced two pitchers of Long Island Iced Tea – a concoction composed of vodka, tequila, rum, gin, and crème de menthe. He fortified the beverages with Cabo Wabo Tequila and began pouring. The record before us discloses that defendants served these drinks to plaintiff and Grise 'non-stop' for more than three hours. The plaintiff contends that Maurice encouraged her to continue drinking, telling her: 'You're Irish. You can do better than that.'"<sup>29</sup> Later in the evening, "a visibly intoxicated plaintiff"<sup>30</sup> with "the inebriated Grise at the wheel"<sup>31</sup> drove a short distance before "Grise crashed his vehicle into a utility pole"<sup>32</sup> which severely injured the plaintiff and resulted "in the amputation of her left leg."<sup>33</sup>

As a result of the accident, Grise entered into a plea agreement to both charges of operating a vehicle under the influence, resulting in serious bodily injury,<sup>34</sup> and driving to endanger, resulting in serious bodily injury<sup>35</sup> and "was sentenced to ten years at the Adult Correctional Institution, with two years to serve and the rest suspended, with probation."<sup>36</sup> In addition, "Plaintiff settled a personal-injury claim against Grise for \$300,000."<sup>37</sup>

In affirming the Superior Court trial justice's granting of summary judgment for the Defendants, the Court held the following:

[w]e consistently have refused to adopt the principal that a social host owes a duty to a third party for injuries suffered by an intoxicated guest who was imbibing at his or her home, and we have only imposed such a duty where a special relationship exists. Although we have recognized social-host liability in limited circumstances, we have done so when alcohol was illegally provided to minors and

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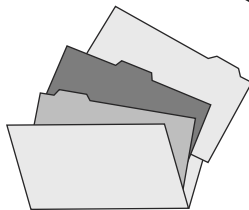
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injuries resulted. Such a special relationship is not present in the case on appeal. This Court recently set forth the elements defining a special relationship in *Martin*, in which the plaintiff was a guest at a high school graduation party at which alcoholic beverages, including keg-beer, were readily available to numerous underage partygoers. An altercation arose, fueled by alcohol, during which the plaintiff was struck in the head by a party-crasher wielding a baseball bat. We held that a party host who makes alcohol available to an underage guest owes a duty of reasonable care to protect the guest from harm, including a criminal assault. Such a duty exists as a matter of law between the host and her underage guests because allowing underage drinking gives rise to a special duty, based on both public policy and foreseeability grounds. "To avoid assuming a duty of protection, the adult property owner must simply comply with existing law and refuse to provide alcohol or condone underage drinking on his or her property." Although supplying underage people with alcohol at a high school graduation party may trigger a special relationship, serving alcohol to an adult guest does not. Furthermore, we have held that even if minors unlawfully are furnished with alcoholic beverages, this act alone is insufficient to trigger a special relationship, if the resultant risk of injury is not foreseeable. See *Selwyn*, 879 A.2d at 888-89 (in which this Court reasoned that, even though a vendor illegally sold alcohol to minors, the seller was not liable because the alcohol was used in an unforeseeable manner when another minor deliberately ignited it).<sup>38</sup>

In declining to overturn the Court's well-settled precedent, because "no special duty-triggering relationship"<sup>39</sup> existed between the hosts and the guests in this case, the Court found that the issue of liability "for social hosts whose guests cause harm is a matter that belongs in the Legislature."<sup>40</sup> The Court in noting the "public policy concerns surrounding drunk driving and the resulting carnage on our highways,"<sup>41</sup> deferred to the legislative function of the General Assembly. The reason for this deferral is that the question raised is one of broad public

policy. "The imposition of liability upon social hosts... has such serious implications that any action taken should be taken by the Legislature after careful investigation, scrutiny, and debate."<sup>42</sup>

It is clear from the Legislature's recent amendments to the criminal Social Host Laws and the Supreme Court's holdings in *Martin* and *Willis* that both the Rhode Island Legislature and Judiciary are seriously considering the issues relating to social host criminal and civil liability. Hopefully this article will be of assistance to practitioners involved in this ever evolving area of the law.<sup>43</sup>

**ENDNOTES**

- 1 R.I. Gen. Laws § 3-8-11.1 and § 3-8-11.2.
- 2 R.I. Gen. Laws § 3-8-11.1(b)(5) (2006 version).
- 3 R.I. Gen. Laws § 3-8-11.1 (b) and (d) (2006 version).
- 4 R.I. Gen. Laws § 3-8-11.1 (c) (2006 version).
- 5 R.I. Gen. Laws § 3-8-11.2 (a), (b) and (c) (2006 version).
- 6 R.I. Gen. Laws § 3-8-10 (2006 version).
- 7 Information regarding the seven (7) listed cases was obtained, in part, from the Providence Journal and the R.I. District Court section of the Judiciary of Rhode Island website.
- 8 R.I. Gen. Laws § 3-8-11.1 (b)(5) (2006 version).
- 9 R.I. Gen. Laws § 3-8-11.1 (b)(5) (2008 version).
- 10 R.I. Gen. Laws § 3-8-11.1 and §3-8-11.2 (2008 version).
- 11 R.I. Gen. Laws § 3-8-11.2 (a), (b), and (c) (2008 version).

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Roger Williams University Professor of Law and Mediation Clinic Director **Bruce I. Kogan**; Rhode Island Bar Association President **Victoria M. Almeida**; and Rhode Island Bar Foundation 2003 Thomas F. Black Jr. Scholarship Recipient, RWU School of Law Graduate and Adler Pollock & Sheehan P.C. Attorney **Nicole J. Dulude** shared a light moment at the School of Law's 2009 Orientation.

- 12 *R.I. Gen. Laws* § 3-8-10 (2008 version).
- 13 *R.I. Gen. Laws* § 3-8-6 and § 3-8-9.
- 14 *Gernstenblatt v. Nordic Lodge, Inc.* (J. Pfeiffer), No. K.C.01-0225.
- 15 *Ferreira v. Strack*, 652 A.2d 965 (R.I. 1995).
- 16 *Gerstenblatt* at 4 (internal citations omitted).
- 17 *Volpe v. Gallagher*, 821 A.2d 699 (R.I. 2003).
- 18 *Id.* at 720 (internal citations omitted).
- 19 *Martin v. Marciano*, 871 A.2d 911 (R.I. 2005).
- 20 *Id.* at 913.
- 21 *Id.* at 914.
- 22 *Id.* at 915. (internal citations omitted).
- 23 *Id.* at 915. (internal citations omitted).
- 24 *Id.* at 916.
- 25 *Willis v. Omar*, 954 A.2d 126 (R.I. 2008).
- 26 *Id.* at 129.
- 27 *Id.*
- 28 *Id.* at 127.
- 29 *Id.* at 128.
- 30 *Id.*
- 31 *Id.*
- 32 *Id.*
- 33 *Id.*
- 34 *R.I. Gen. Laws* § 31-27-2.6.
- 35 *R.I. Gen. Laws* § 31-27-1.1.
- 36 *Willis* at 128.
- 37 *Id.*
- 38 *Id.* at 130 (internal citations omitted).
- 39 *Id.* at 131.
- 40 *Id.*
- 41 *DiSalvo v. Williamson*, 106 R.I. 303, 305-06, 259 A.2d 671, 673 (1969).
- 42 *Volpe* at 720.
- 43 *The author wishes to express his deep appreciation for the assistance of Kathleen Child and Jodi Van Sprang in the preparation of this article. ♦*

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# Rhode Island ACLU Celebrates 50 Years



**Jennifer Azevedo, Esq.**

Chairperson of, and a volunteer attorney for, the Rhode Island Affiliate, American Civil Liberties Union

*Ever since its founding by legendary civil rights attorney Milton Stanzler in 1959, the Rhode Island ACLU has been a major presence in the state, winning important and precedent-setting legal victories in the areas of freedom of speech, freedom of religion, due process, privacy, equal protection of the laws, and open government.*

The Rhode Island Affiliate of the American Civil Liberties Union (ACLU) is celebrating its 50th anniversary in 2009. Ever since its founding by legendary civil rights attorney Milton Stanzler in 1959, the Rhode Island ACLU has been a major presence in the state, winning important and precedent-setting legal victories in the areas of freedom of speech, freedom of religion, due process, privacy, equal protection of the laws, and open government. Perhaps most impressive of all, the more than 600 lawsuits filed by the Rhode Island ACLU during this time have all been handled on a *pro bono* basis by many of the best and brightest attorneys in the state.

Though it may get lost in the fog of history, it is worth noting that many of the civil rights and liberties we take for granted were first vindicated by Rhode Island ACLU litigation. To give just a few examples:

- It was a Rhode Island ACLU lawsuit that won married women the right to use their birth name on their driver's license, something the Rhode Island Department of Motor Vehicles had adamantly opposed as a threat to public safety.<sup>1</sup>

- Almost every day the Rhode Island General Assembly is in session, one can find groups of all political stripes engaging in peaceful protests, rallies and speeches in the State House rotunda. Few people are aware that it took an ACLU lawsuit to vindicate that right.<sup>2</sup>

- It may seem quaint now, but it was a Rhode Island ACLU case that overturned the Little League's longstanding ban on girls' participation and helped pave the way for equal treatment for girls and women in sports activities on the fields and in the schools.<sup>3</sup>

- The Rhode Island Supreme Court had its first opportunity to interpret the state's Access to Public Records Act in a Rhode Island ACLU case which overturned the Providence Police Department's refusal to release reports of civilian complaints of police abuse.<sup>4</sup>

- One of the Rhode Island ACLU's most crucial religious freedom cases was brought on behalf of a Hmong family whose son was autopsied, merely out of scientific curiosity, over the family's strong religious objections. This case helped lead to passage of the federal

Religious Freedom Restoration Act.<sup>5</sup>

- Rhode Island ACLU's representation of a North Kingstown resident, sued for writing a letter to the Department of Environment Management, established the important principle that state residents are protected from frivolous litigation when exercising their right to petition government for the redress of grievances.<sup>6</sup>

But it is also the many other cases the Rhode Island ACLU handles every year that further make the Affiliate such a vital presence in the State: we have assisted people with disabilities who have been arbitrarily denied handicapped parking plates by the DMV; contested state policies withholding birth certificates from new parents who refused to complete a personally-intrusive, hospital birth worksheet; helped overturn the ten-day suspension imposed on two first-graders for bringing a toy ray gun to school; represented people who allege to have been victims of racial profiling; and regularly challenged state agencies that have failed to schedule timely hearings and administrative appeals.

The Rhode Island ACLU has also been involved in numerous matters of direct interest to the legal profession. As examples: we filed a brief challenging the imposition of sanctions on plaintiffs' attorneys in the Cornel Young, Jr. civil rights case; we opposed the U.S. Attorney efforts to exempt that office from a court rule requiring judicial approval before using subpoenas to obtain client information; and we submitted comprehensive testimony to revise proposed, local, federal, court rules, including one that would have barred attorneys and clients from publicly discussing anything about a pending court case other than what was in the public record.

Strictly non-partisan, we often state our only client is the Bill of Rights. As a testament to that belief and to the indivisibility of civil liberties, one need only look at the diverse roster of individuals and organizations the Affiliate has represented over the years: Planned Parenthood of Rhode Island and the Rhode Island State Right to Life Committee; the Urban League of Rhode Island and Presidential candidate David Duke; the American Friends Service Committee

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and the Rhode Island State Rifle and Revolver Association; the Moderate Party, the Libertarian Party, and the Republican Town Committee of Johnston. The list goes on.

It is probably no exaggeration to say that, in one way or another, every Rhode Islander – including every attorney – has ultimately benefited from one or more of the cases which the Rhode Island ACLU has handled over the years.

The Affiliate looks forward to performing another 50 years of important civil rights advocacy. To help us do that, we encourage attorneys interested in volunteering their time to contact the Rhode Island ACLU office and join dozens of your colleagues in significant and meaningful *pro bono* work in defense of our fundamental liberties, and in helping the ACLU make the promise of the Bill of Rights a reality for all.

### ENDNOTES

1 *Traugott v. Petit*, 404 A.2d 77 (R.I. 1979)

2 *Reilly v. Noel*, 384 ESupp. 741 (D.R.I. 1975)

3 *Fortin v. Darlington Little League*, 514 E2d 344 (1st Cir. 1975)

4 *The Rake v. Gorodetsky*, 452 A.2d 1144 (R.I. 1983)

5 *Yang v. Sturner*, 728 ESupp. 845, 750 ESupp. 558 (D.R.I. 1990)

6 *Hometown Properties v. Fleming*, 680 A.2d 56 (R.I. 1996) ♦

## RWU School of Law Launches Immigration Law Clinic

Coordinating with the Rhode Island Bar Association's Volunteer Lawyer Program (VLP) on some matters, Roger Williams University (RWU) School of Law Immigration Law Clinic responds to unmet legal needs within Rhode Island's immigrant communities. According to Professor Andrew Horwitz, RWU School of Law's director of clinical programs, "We are providing a sorely-needed service to Rhode Island's low income immigrant population while at the same time providing our students with a top-notch educational experience in a burgeoning field of law."

## BOOK REVIEWS

# Three War on Terror Books



**Jerry Cohen, Esq.**

Partner, Burns & Levinson  
LLP in Boston, MA

.....  
*The legal and moral questions regarding torture can be considered with the alternate premises that it is or is not an effective intelligence tool.*  
.....

### *The Dark Side: The Inside Story of How the War on Terror Turned Into a War on American Ideals*

by Jane Mayer

### *How to Break a Terrorist: The U.S. Interrogators Who Used Brains, Not Brutality, to Take Down the Deadliest Man in Iraq*

by Matthew Alexander

### *The Challenge: Hamdan v. Rumsfeld and the Fight over Presidential Power*

by Jonathan Mahler

Dozens of books have tried to capture this decade's remarkable ventures into enhanced Executive Branch powers, a warrior society, torture, detention, habeas corpus, intelligence gathering and a triumphalist approach to foreign policy. Jane Mayer's, *The Dark Side*, will be recognized as one of the most significant chronicles of these aspects of the decade. Mayer came to the task after many years as a staff writer at the *New Yorker*, two prior books<sup>1</sup> and thirteen articles<sup>2</sup> on Guantánamo Bay detention and other government intelligence gathering activities pre- and post- the September 11, 2001 attacks.

In addition to a prodigious bibliography of books, articles and government reports, Mayer draws on hundreds of interviews (on and off the record) with government officials, press/media colleagues and others. In the book's twelve chapters, Mayer describes the public and government panics and blame assessments arising out of the World Trade Center attacks and follow-on bioterrorism attack and related threats, warnings and zeal. She goes on to describe the evolution of a regimen of detention and torture at Guantánamo Bay and other sites and growing public resistance to the torture and Executive Branch arrogance and cover-ups. Despite the anti-administration viewpoint telegraphed in its subtitle, the book does, in fact,

give a broad historian's view with credit and blame assigned as the facts show.

Vice President Cheney, appearing on *Meet the Press* the first Sunday after the September 11, 2001 (9/11) attacks, said, "[W]e'll have to work sort of on the dark side, if you will... We've got to spend time in the shadows... quietly, without any discussion using sources and methods that are available to our intelligence agencies... That's the World these folks [the terrorists] operate in. So, it's going to be vital to use any means at our disposal..." This was the dark side manifesto. It was reasserted with a swaggering delivery a year later in the January 28, 2003 State of the Union address by then President Bush who said: "More than 3000 suspected terrorists have been arrested in many countries. Many others have met a different fate. Let's put it another way: they are no longer a problem to the United States and our friends and allies." The "no longer a problem" was delivered with the President's patented smirk.

Mayer shows the roots of post 9/11 actions in the loss of Presidential power after the abuses of the Nixon era, the long march back led by Richard Cheney (and his legal aide David Addington) and Secretary of Defense Donald Rumsfeld. Department of Defense counsels William Haynes and Jay Bybee aided by John Yoo. She also shows the perversion of the Army's long developing Survival, Evasion, Resistance, Escape (SERE) program from one for resisting torture to one for implementing torture. These high level enablers of torture developed a series of memoranda stating inapplicability of the Geneva Convention, expanding Presidential prerogatives, justifying a wide range of acceptable interrogation techniques, and providing legal cover to the Central Intelligence Agency (CIA) and military people who would implement the program and for the enablers themselves.<sup>3</sup>

Mayer also notes the actions of people in the administration who resisted the abuses of this decade including Colin Powell, Condoleezza Rice, John Bellinger III, Jack Goldsmith, Alberto Mora, Lt. Col. Steven Kleinman, William Howard Taft IV, Federal Bureau of Investigation

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(FBI) Director Robert Mueller, many Judge Advocate General's (JAG) Corps defense counsels and even prosecutors, James Comey (Deputy Attorney General) and for one bright shining moment in a hospital bed, Attorney General John Ashcroft.<sup>4</sup>

Mayer traces the convergence of: 1) a long standing agenda to restore Executive Power, much diminished in the Watergate aftermath; 2) getting tough as a path to career advancement in military and civilian agencies; and 3) the genuine panic over an expected second wave of attacks after 9/11. There was also a component of long-standing torture usage by allies for imitation or outsourcing.<sup>5</sup> The overloaded U.S. intelligence agencies made missteps in their intelligence gathering and in covering up prior missteps. The cloak of secrecy to protect sources and methods extended to protection against political embarrassment. *Dark Side* concludes, quoting Prof. Phillip Zelikow,<sup>6</sup> "Fear and anxiety were exploited by zealots and fools."<sup>7</sup>

Yet, there is another part of the still unfinished story that does not admit of such an easy conclusion. The legal and moral questions regarding torture can be considered with the alternate premises that it is or is not an effective intelligence tool. If it is not, then the legal and moral questions are moot. Much of the information enabling an answer to the question of effectiveness is classified and will remain so for a long time. One answer comes in the book, *How to Break a Terrorist*, by Matthew Alexander (pseudonym), an interrogator who led a team that used alternate lawful methods that were the opposite of a torture-centered approach. Their methods included rapport building and varieties of deception. They succeeded in getting a detainee to give up the whereabouts of Abu Masub al Zarqari, the leader of Al Qaeda in Iraq. Minutes later, the home Zarqari was visiting was bombed, and he was killed.

*How to Break* is a non-lawyer's narrative of what he experienced and observed, including a commitment of his team to abide by Geneva Convention with zero tolerance for violations. Several interrogation projects are described, some successful, some not, some bizarre, including arranging a divorce from a detainee's spendthrift second wife (and agreeing to transmit a letter to his first wife) as an inducement to tell more.



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The Administration has alleged that very useful actionable intelligence was obtained by dark side methods but failed to give examples to Congress or the public. But, in fairness to its assertion, there may be examples in later years when more secret information is declassified.

Jonathan Mahler's book, *The Challenge*, shows the legal framework of formulating the underpinnings of the Administration's detention regimen at Guantánamo Bay and the unraveling of it in the Supreme Court cases of **Rasul v. Bush**,<sup>8</sup> **Hamdan v. Rumsfeld**<sup>9</sup> and **Bourmediene v. Bush**.<sup>10</sup> Along the way Congress aided the Administration counter-attacks against a resurgent Constitution with the Detainee Treatment Act of 2005<sup>11</sup> and the Military Commissions Act of 2006,<sup>12</sup> both held in **Bourmediene** a suspension of habeas corpus in violation of Article 2, § 9 of the Constitution. The story of the legal team defending habeas petitioner Hamden and its efforts is well described in *Challenge*. It is a microcosm of many such teams and efforts in proceedings leading up to **Rasul** and **Bourmediene** and many other cases at the D.C. Circuit, U.S. District Court and other venues and in opening the Guantánamo story to Congress, foreign governments, Non-Governmental Organizations (NGO) and media to ultimately expose the Administration's attacks on the rule of law as a keystone of its dark side venture.

Debate over dark side ventures did not begin with the 9/11 attacks and will continue long after Al Qaeda has been crushed. The scope of the debate will go beyond effectiveness, legality and morality to include collateral damage. The collateral damage included loss of international goodwill and opportunities for cooperation, terrorist usage of American torture for recruitment, and a general fear in the U.S. Congress, media and people of asserting reservations against the Administration's policy not seen in this country since the 1950's era of what came to be known as McCarthyism. It is, however, commendable that, after a delay, America could come to reconsider its venture into the dark side.<sup>13</sup> It is important to study and restudy that ill fated venture to avoid repetition. We won't know the whole story of that venture until more now classified items of information are declassified. But *Dark Side*, *How to Break* and *Challenge* give us some valuable pre-

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sentations based on the events up to 2008.

#### ENDNOTES

- 1 *Strange Justice: The Selling of Clarence Thomas* (with Jill Abramson) (Houghton Mifflin Co. 1994) and *Landslide: The Unmaking of the President 1984-1988* (with Doyle McManus) (Mariner Books 1989).
- 2 *Deadly Interrogation* (11/14/05); *Contact Sport* (2/16/04); *Junior* (9/11/06); *Lost in the Jihad* (3/10/08) *Outsourcing Torture* (2/15/05); *The Black Sites* (8/13/07); *The CIA's Travel Agent* (10/30/06); *The Experiment* (7/11/05); *The Hidden Power* (7/3/06); *The Manipulator* (6/7/04); *The Memo* (2/27/06); *The Search for Osama* (8/14/03); and *Whatever It Takes* (2/19/07).
- 3 The internal memoranda of the enablers (and limited documents) are compiled in *THE TORTURE PAPERS THE ROAD TO ABU GHRAIB* (H. Greenberg & J. Dvateľ, editors Cambridge Univ. Press 2005). The November 2008 report of the Senate Armed Services Committee also shows the authorization of the detainee torture program from the top down. See <http://levin.senate.gov/newsroom/supporting/2008/detainees.121108.pdf> (executive summary)
- 4 Comey, acting Attorney General during illness of Mr. Ashcroft, refused to sign a directive re-authorizing a Terrorist Surveillance Program (TSP, a blatant violation of the Foreign Intelligence Surveillance Act) about to expire. Alberto Gonzales and Andrew Card (Chief of Staff) went to the hospital to get Ashcroft to sign. Comey got there first after a wild ride through Washington with a car siren blaring and a sprint up the stairs. After briefing by Comey (joined by Robert Mueller) Ashcroft refused to sign the re-authorization. Mrs. Ashcroft stuck out her tongue at the

retreating Gonzales and Card, capping this great moment in the annals of democracy. *Dark Side*, pp. 288-290. Subsequent tense encounters in which Comey stood his ground, led to President Bush authorizing a portion of TSR with removal of its worst features. *Dark Side*, pp. 287-291. At about that time newspaper stories about Abu Ghraib and revelation of memos authorizing torture had begun to appear. Goldsmith acted to withdraw the basic torture memo and resigned. *Dark Side*, pp. 292-94.

5 The outsourcing included extraordinary rendition, a program of recent transport of detainees to allies who would torture suspects even more than the CIA. *Dark Side*, 101-134, 148-150, 220 and 285-86. See also, Stephen, Grey, *GHOST PLANE: The True Story of the CIA Torture Program* (St. Martin's Press 2006).

6 University of Virginia, formerly Executive Director of the bipartisan 9/11 Commission.

7 The condemnation should not end with Executive Branch members. See Lincoln Chaffee, *AGAINST THE TIDE. How a Compliant Congress Enabled A Reckless President* (St. Martin's Press 2007), reviewed by Anthony F. Cottone, at 57(3) *R.I. Bar J.* (Nov./Dec. 2008)

8 542 U.S. 466 (2004)

9 548 U.S. 557 (2006).

10 128 S. Ct. 2229 (2008).

11 Pub. L. 109-148, 119 Stat. 2739 (Dec. 30, 2005).

12 Pub. L. 109-366, 120 Stat. 2600 (Oct. 17, 2006).

13 One small piece of the reconsideration from this reviewer's experience representing detainees is a transformation over the years of Guantanamo military escorts who went from early aloofness and scorn of detainees and their volunteer lawyers to understanding of the rule of law imperative and even in friendliness to the lawyers. ♦

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1. Acknowledge the differences between parties. Recognize, understand, validate, and hear the other party's point of view.
2. Let the other party express her or his feelings.
3. Identify those things that are not being disputed.
4. Identify and agree on a common goal and work backward to negotiate an agreement.

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# Live From Second City

## American Bar Association Delegate Report: ABA Annual Meeting

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**Robert D. Oster, Esq.**  
American Bar Association  
Delegate and Past President  
of the Rhode Island Bar  
Association

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*It is clear that  
unless the people  
understand our  
judicial system and  
the other branches  
of government, we,  
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---

The American Bar Association (ABA) Annual Meeting was August 3rd and 4th, 2009 in Chicago. We were treated to magnificent weather in a city known for vibrant culture, history, sports and sightseeing. The ABA House of Delegates was greeted by, now retired, United States Supreme Court Justice David Souter of New Hampshire, who exhorted the audience to pay heed to law related education and the consequent vibrancy of our democracy and rule of law principles. In Rhode Island, I have been a member and participant in a number of our own Bar's law related educational programs, and I have found my participation nicely rewarded. It is clear that unless the people understand our judicial system and the other branches of government, we, as a society, will not have respect for the rule of law.

The ABA Medal of Honor was presented to William Gates, a long time ABA member. His son, Bill, of Microsoft fame and fortune, who looked remarkably similar to his father, was on hand as his father received the Medal for tireless advocacy of access to justice programs and diversity initiatives in his native state of Washington.

We were addressed by Mayor Richard Daley, the son of the controversial Mayor of Chicago during the turbulent Democratic Convention of 1968. We were also addressed by Eric Holder, Attorney General of the United States, who spoke of the need to bring "smart sentencing" to our penal system. I met Holder years ago when he visited Roger Williams University Law School during a tribute program to the late Justice Thurgood Marshall. It was no surprise to me that he was President Obama's choice as Attorney General. Additional matters of substance addressed included proposals on immigration, bankruptcy, patents, ethics, tort and other areas of concern to the profession.

I presided over, and was elected chair of, the National Caucus of State Bar Associations which is an honor for me as this Caucus is a hotbed for issues percolating within the ABA inasmuch as it is led by bar association, as opposed to section, interests. I hope to accomplish a rejuvenation of the Caucus during my term as President.

As always, I advocate on behalf of Rhode Island Bar Association members on issues of concern arising before the ABA. Clearly, more rank and file lawyers need to be ABA members if it is truly to be the voice for lawyers nationwide. Currently only a third of all lawyers belong to the ABA, a dismal record. I have found my participation in the ABA rewarding, and, although I don't agree with every position taken by the ABA House of Delegates I find the organization's core values admirable and worthy of support.

I am happy to help any interested Rhode Island Bar Association member become involved in the ABA and to navigate the cavernous ABA committee structure, almost always represented by an impossible-to-pronounce acronym. Toward this end, please contact me if I may be of service to you. ♦

# In Memoriam

---

## **Louis B. Abilheira, Esq.**

Louis B. Abilheira passed away on September 23, 2009. He was the beloved husband of Susan Gregory Abilheira and devoted father of L. Gregory Abilheira, Becki Abilheria-Cargill and her husband Brian of Cumberland and a stepson John B. Brogan and his wife Crystal of East Providence. He was the brother of Elias, Manuel, Anthony, Richard, and Diolinda Abilheira and Theresa Blank.

He was a practicing attorney for 35 years. Louis was a Boston College alumnus and avid fan of Boston College athletics.

## **Kenneth M. Beaver, Esq.**

Kenneth M. Beaver, Esq., 90, of Barrington, passed away on August 29, 2009. He was the husband of the late Rita Fowler Beaver and Elaine Fretch Beaver and the son of the late Edward and Gladys Marquardt Beaver.

Ken was a self employed attorney who practiced law for over forty years. He was a graduate of Dennison College and received his juris doctor from the University of Virginia.

Ken was active in many civic affairs as District Governor of Rhode Island Lions International and president of the Barrington Lions Club. He was a member of the New York and Rhode Island Bar Associations and served as member of the Rhode Island Bar Association House of Delegates. Ken sang with the Barrington Men's Glee Club and was also a member of the West Barrington Men's Club, the Odd Fellows, the Bristol Lodge of Elks, the Masons and the Annawan Club in Rehoboth. Although he lived in Barrington for most of his life, his heart belonged in Cape Breton Island Nova Scotia.

He leaves a son, Edgar 'Ned' Beaver of Fairfield, CT, two daughters, Beth Davis, and Kendra Beaver, and a son-in-law David Hanrahan, all of Barrington. He is also survived by two sisters, Arlene Adams and Eleanor Beaver.

## **Thomas T. Brady, Esq.**

Thomas T. Brady, 75, of Tiverton, passed away on September 3, 2009. Mr. Brady is survived by his wife of 49 years, W. Nancy Bruneau, his son Thomas P. Brady, Ph.D., of San Diego, CA, his daughter Kate Brady Campbell and her husband, David M. Campbell, Esq., of Tiverton, his daughter Colleen Brady O'Neill, Esq., and her husband Stephen M. O'Neill.

Mr. Brady was born in Fall River, Massachusetts, the son of the late J. Frank Brady and the late Elsie Dube Brady. A graduate of De La Salle Academy, the University of Rhode Island and New England School of Law, Mr. Brady was a member of both Massachusetts and Rhode Island Bars. Mr. Brady began private practice in 1974. Mr. Brady served on the Board of Directors of St. Anne's Credit Union of Fall River, Mass. and shared a personal, as well as professional, relationship with the Board of Directors and Officers of the Credit Union in addition to serving as their general counsel. He also served in the Army and taught at B.M.C. Durfee High School.

Mr. Brady was a communicant of St. Christopher Church in Tiverton, RI, where he was a lecturer and served on the finance committee. He was Tiverton Town Clerk from 1965 to 1968 and Probate Judge from 1965 to 1973, and was a board member of the Industrial Commission and the Wastewater Commission.

Mr. Brady, an avid golfer, was a member of the Acoaxet Club for over thirty years, where he served on the Board of Directors and held several offices, including serving as President. He also enjoyed skiing, and spent many happy times with his family and friends in Bartlett, New Hampshire until he began spending his winter vacations in Bonita Springs, FL.

## **Thomas R. Merlino, Esq.**

Thomas R. Merlino of Bristol passed away on December 4, 2008.

## **Hon. Paul P. Pederzani, Jr.**

Paul P. Pederzani, Jr., 84, formerly of North Kingstown, passed away on August 19, 2009. He was the beloved husband of Marjorie L. Rodgers Pederzani for over 62 years.

He was a son of the late Paul P. and Ida Balboni Pederzani. Paul graduated from LaSalle Academy in 1943, and was a US Army World War II combat veteran. He graduated from Providence College and received his Jurist Doctorate degree from Boston College Law School. He was admitted to the Rhode Island Bar, U.S. District Court, U.S. Court of Military Appeals, and the U.S. Supreme Court. Prior to his appointment to the Rhode Island Bench, he was in private practice with Orme, Sullivan & Pederzani and a sole practitioner. He served as Legal Counsel to the Rhode Island Recreational Building Authority; Legal Counsel to the Narragansett School Committee; Exeter Town Solicitor, and Clerk and Acting Judge of the former Second District Court; Chairman of the North Kingstown Democratic Town Committee; a member of the Rhode Island Democratic State Committee; and as an alternate delegate to the Democratic National Convention. He attained the rank of Army Reserves Colonel and served as Commander of the 1021st Civil Affairs Group.

In 1980, he was appointed as a judge of the Rhode Island District Court, and, in 1984, he was appointed an Associate Justice of the Rhode Superior Court where he served until his 1995 retirement. He was a member of the American, Rhode Island and Washington County Bar Associations. He was also a member of the Reserve Officers Association, MOOFW (Military Order of Foreign Wars), the National Rifle Association and the South County Rod and Gun Club. He enjoyed boating on Narragansett Bay, his woodworking hobby and his ensuing friendships. He was a communicant of St. Bernard Church.

Besides his wife he leaves two sons, former state senator, Paul P. Pederzani III and his wife, April M. of East Greenwich



## In Memoriam

and Keith J. Pederzani and his wife, Roseanna G. of Coventry. He is survived by his brother, Kenneth C. Pederzani and sister-in-law Esther Pederzani of Laconia, NH; and his sister, Diane L. Pederzani, RSM, of North Providence.

### James Edward Sullivan, Esq.

James Edward Sullivan, 65, of Sagamore Beach, MA, formerly of Barrington, RI, passed away on September 11, 2009. He was the beloved husband of Janet Ethier Sullivan.

Born in Fall River, MA, he was the son of the late Edward and Elizabeth Touhy Sullivan. He was a graduate of Providence Country Day School, Villanova University, Suffolk University School of Law and held an LL.M. in taxation from Boston University School of Law. For 23 years, Mr. Sullivan was self employed, operating a law practice in East Providence. Prior to his career as a probate attorney, he was a senior vice president in the trust department at Rhode Island Hospital Trust Bank. He also clerked for the late Judge Powers of the Rhode Island Supreme Court. Jim was a member of

both the Rhode Island and Massachusetts Bar Associations.

He was a past president of the Sagamore Beach Colony Club. In addition to his wife, Jim is survived by his daughter, Ellen E. Banthin and son-in law Christopher Banthin and his daughter Mary A. Sullivan all of Natick, MA. He is also survived by his sisters, Patricia Sullivan of North Carolina and Barbara Quinlan of Warren, R.I., mother in law Charlotte C. Alix Ethier of Lincoln, brothers-in-law Raymond O., Robert and Steven Ethier, both of Cumberland; Thomas Ethier of N. Smithfield, David Ethier of Lincoln and Thomas Perrotto of Bristol.

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For example, for tool #1, "connect with others," **[www.LiveYourLifeWell.org](http://www.LiveYourLifeWell.org)** offers detailed suggestions on creating connections, ascertaining if you have enough support, making friends, strengthening your relationships, and getting support from a group.

Under tool #10 "get professional help if you need it," the website provides a detailed discussion on finding help, getting started and getting the most from treatment. Of course, Rhode Island Bar Association members may obtain direct, confidential, personal assistance through Resource International Employee Assistance Services (RIEAS), under contract with the Bar Association, or by contacting any member of the Bar Association's Lawyers Helping Lawyers Committee. You may contact RIEAS staff person Judy Hoffman or her colleagues via telephone: at 1-800-445-1195 or 401-732-9444. A RIEAS Case Manager will discuss your concerns and arrange an appointment at a location convenient to you.

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## Advertiser Index

Affiniscape Law Firm Merchant Account	27
Ajootian, Charles – 1031 Exchange Services	15
All States 1031 Exchange Facilitator	6
Aon Liability Insurance	12
Balsiore & Company, Ltd. – Forensic Accounting, Litigation Support	37
Boezi, Henry – Trademark/Copyright	14
Briden, James – Immigration Law	28
Caribbean Vacation	14
Coia & Lepore, Ltd. – Workers' Comp.	26
DeLuca & Deluca – Mediation & Arbitration	34
Dennis, Stephen – Workers' Comp.	8
Dumas, David – Heirs/Genealogy	36
Estate Services	9
Favicchio, Michael – Florida Legal	38
Goodman Shapiro & Lombardi LLC – Legal Services	7
Hart – Bankruptcy	31
Humphrey Law Offices	37
Keough, Joseph – Mediation & Arbitration	10
Marasco & Nesselbush – Social Security Disability/Medical Malpractice	28
MassMutual – Disability Income Insurance	10
Mathieu, Joan – Immigration Lawyer	27
Mignanelli & Associates, LTD. – Estate Litigation	16
Mink Street Self Storage	30
Newly Renovated Office Space	8
Ocean State Weather – Consulting & Witness	29
Office Space – John R. Grasso	20
Office Space – Providence	37
PellCorp Investigative Group, LLC	31
Perry Group – Strategic Communications	26
Pfiefer, Mark – Alternate Dispute Resolution	28
Piccerelli, Gilstein & Co. – Business Valuation	34
Revens, Revens & St. Pierre – Bankruptcy	18
Revens, Revens & St. Pierre – Workers' Compensation	19
Rhode Island Foundation	18
Rhode Island Private Detectives LLC	30
R. J. Gallagher – Life Insurance	21
Ross, Roger – Title Clearing	32
Salter McGowan Sylvia & Leonard – New Counsels	32
Sciarretta, Edmund – Florida Legal Assistance	9
Sjoberg & Votta – Consultation/Referral	24
Soss, Marc – Florida Estates/Probate/Documents	36
Spanish/Portuguese Interpreter Services	36
Thompson, Ronald – Immigration Law	15
West	Back Cover
Zoning Handbook – Roland F. Chase	29

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