Rhode Island Bar Journal

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The Case of *Trevett v. Weeden*: 1786 – 2004

Five Things the Rhode Island Supreme Court Wants You to Know About Civil Trial and Appellate Practice

You're fired! Voter recall of elected officials in Rhode Island

RHODE ISLAND Bar Association
1898

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Features

GONDOLA BOAT FROM *LA GONDOLA PROVIDENCE* ON THE PROVIDENCE RIVER

The Providence River is an 8-mile tidal river in Rhode Island. Gondola rides on the river are popular among residents and tourists alike, especially during WaterFire, a free, seasonal festival where numerous fires are lit on the River alongside vendors and performances by various artists.

Cover Photograph by Brian McDonald

RHODE ISLAND BAR ASSOCIATION LAWYER'S PLEDGE

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

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Defunding the Legal Aid Budget is Denying Equal Access to Justice

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President
Rhode Island Bar Association

This column is the final one of my term as president. Traditionally, the final column features extensions of gratitude to those who have helped during the preceding year. Those thank yous follow below. However, one current issue is of such moment that it deserves comment prior to recognizing all of the great people who have lent a hand in assisting the Bar Association over the last year.

President Trump's proposed budget includes defunding the Legal Services Corporation. Congress established the LSC in 1974 to provide legal representation to persons of limited means. LSC currently funds over 100 civil legal-aid programs throughout the country, including Rhode Island Legal Services. Current federal funding for LSC is $385,000,000, or, by my math, roughly 0.01% of the total federal budget of approximately $3.854 trillion.

"…defunding the Legal Services Corporation would be catastrophic to those who would no longer receive representation through Rhode Island Legal Services, but also our judicial system, which would be faced with an onslaught of *pro se* litigants ill-equipped to represent themselves."

LSC helps the most vulnerable among us. LSC -funded programs directly aid people with annual incomes at or below 125% of the federal poverty guidelines, which in 2015 was $14,713 for an individual and $30,313 for a family of four. Rhode Island Legal Services, specifically, provides critical legal representation in the high-need areas of family law and housing. I do not suppose to speak for Rhode Island Legal Services, but defunding LSC would jeopardize Rhode Island Legal Service's ability to continue to provide these services. That result would be catastrophic to those who would no longer receive representation through Rhode Island Legal Services, but also our judicial system, which would be faced with an onslaught of *pro se* litigants ill-equipped to represent themselves.

If LSC is not funded, other pro bono legal service providers will have to fill the gap. As the largest source of volunteer pro bono services in Rhode Island, the Bar Association will have a large share of this responsibility. Given the volume of cases that Rhode Island Legal Services handles, the Bar Association would have to consider radical changes to the manner with which it provides pro bono legal services. Those changes would unavoidably impact other Bar Association services and fee structure.

I hope that we never have to face these issues and, that by the time you read this article, defunding LSC is no longer an issue. However, programs that aid the poor and disadvantaged are increasingly under attack in the current political environment, so even if LSC is funded in the current budget cycle, this issue will likely repeat itself. I have consequently drafted letters to our Congressional delegation as part of a broader effort by the ABA to encourage our political leaders to maintain funding to LSC. I encourage all Bar Association members to do the same.

Notwithstanding the foregoing, I have had a terrific year serving as your Bar President. A lot of credit for this fact goes to the Bar Association staff and Executive Director Helen McDonald. Chief Justice Joseph Weisberger, for whom I clerked, liked to say that a U.S. Navy ship could run without its officers, but would never get off the pier without its crew. He would know. His father was a Chief Petty Officer, and he served with distinction as a naval officer in World War Two. Like a naval ship, the Bar Association could run without its president (at least when I filled the office), but would never function without its excellent, dedicated staff.

A special word about Helen is in order. We have a well-run and fiscally disciplined Bar Association because of her. The Bar Association staff has very little turn-over, and when senior staff members have retired, those positions are generally filled from within – all hallmarks of a healthy organization.

I also want to thank all of the volunteer attorneys who participate in Bar activities, and especially those who serve on the Executive Committee, House of Delegates and as Bar committee chairs. These persons are fellow lawyers who give of their time to improve the practice of law in Rhode Island.

I especially want to recognize Tom Lyons, Michael Goldberg and Lynda Laing. Tom and Michael are co-chairs of the Bar's Technology in the Practice Committee, and formed a working group to address issues as they arise with respect

to the Court's conversion to e-filing. Lynda also assisted in addressing e-filing issues, particularly with the District Court system, along with chairing the Annual Meeting Committee this year. All three have spent countless hours so that the e-filing system is better for everyone, and deserve our collective gratitude. I would be remiss if I did not add that our partners in the judiciary have also been wonderfully cooperative and supportive of the Bar Association.

Finally, to all of the members of the Rhode Island Bar, I am deeply grateful for the trust that you have shown in allowing me serve as your president. Your encouragement, support and friendship over the last year have been awesome. Thank you. ❖

Rhode Island Bar Association Annual Meeting June 15th and 16th

The Rhode Island Bar Association Annual Meeting is on Thursday, June 15th and Friday, June 16th, 2017 at the Rhode Island Convention Center. Featuring **38 Continuing Legal Education seminars, great keynote and workshop speakers, Bar Awards, many practice-related product and service exhibitors**, and the chance to get together with your colleagues socially, the Bar's Annual Meeting, traditionally drawing over 1,500 attorneys and judges, is an event you'll want to attend and enjoy!

RHODE ISLAND BAR JOURNAL

Editorial Statement

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

Article Selection Criteria

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

Direct inquiries and send articles and author's photographs for publication consideration to:
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The Case of *Trevett v. Weeden*: 1786 – 2004

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School of Law

It is the duty of judges to determine whether an act of the legislature is consistent with the constitution or, in the absence of a written constitution, with the fundamental laws of the land. If an act of the legislature is contrary to applicable law, then it is void. This is judicial review in a nutshell. It requires judicial independence.

In September 1786, John Trevett tried to buy meat in John Weeden's butcher shop in Newport. He tendered payment in paper money, but Weeden refused to accept paper money because it was worthless. Instead he demanded hard cash – gold or silver. Trevett then brought a complaint against Weeden under a recent Rhode Island statute making it a crime to refuse paper money. The statute also required trial within three days in a special court, denied the accused a trial by jury and prohibited an appeal from any sentence.[1]

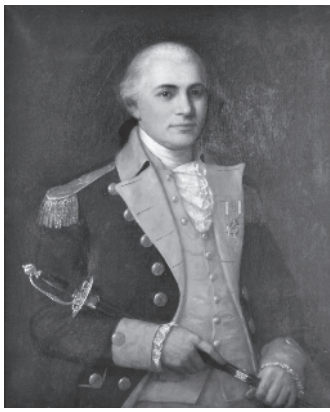
Weeden's attorney was James Mitchell Varnum. Educated at both Brown and Harvard Universities, Varnum had served as a general in the Continental Army directly under George Washington. Later he represented Rhode Island in the Continental Congress. He was a skilled lawyer and a superb orator. His successful defense of Weeden attacked the statute as unlawful and, thus, void. He raised questions of legislative and judicial power that were not definitively settled in Rhode Island until 2004.

Trevett had filed his complaint during the regular term of the court, thus obviating the necessity of convening a special court as provided in the statute. Instead, it was heard by a panel of five judges. Varnum opened his oral argument by stating that he was appearing not so much as a lawyer, but as a "citizen, deeply interested in the constitutional laws of a free, sovereign, independent state." He thanked the judges for sitting in their "supreme judicial capacity" rather than "the new-fangled jurisdiction erected by the General Assembly" which removed from him "the painful necessity of considering your Honours as individually composing so dangerous a tribunal."[2]

The core of his defense of Weeden was that the criminal statute "is contrary to the laws of the State, and therefore...[is] a mere nullity, ab initio." To support this proposition, he would discuss "with decent firmness" the nature, limits and extent of legislative power and thus deduce that "this act ... can only be considered as an act of usurpation." He tactfully gave the legislators the benefit of any doubt by paying homage to their integrity, virtue and good intentions, even though the statute was a "hasty resolution, inconsiderately adopted, and subject to legal reprehension."[3]

He told the court that some legislators "were apprehensive" that jurors would not convict a person charged with refusing to accept paper money. Thus, he said, they thought the best way to get convictions would be to eliminate trial by jury for that offense.[4] He then raised the more fundamental question of legislative control over the judiciary and judicial independence itself. At that time, the General Assembly elected judges annually.

He declared, "They [the legislators] aimed therefore at a summary process, flattering themselves, that the Judges being elected by the Legislators would blindly submit to their sovereign will and pleasure."[5] However, he assured the Court, "…happy for the State, Courts in general are not intimidated by the dread, nor influenced by the debauch of power."[6] He flattered the judges that Rhode Island had an independent judiciary in fact, if not by design. Post-trial events would illustrate the legislature's great displeasure with the eventual ruling of the judges.



A copy of an original portrait of James Mitchell Varnum by Ethan Allen Greenwood which is owned by the Varnum Continentals, Inc., and is displayed at the Varnum House Museum, 57 Pierce Street, East Greenwich, RI, built by Varnum in 1773 as his home (and owned since 1929 by the Varnum Continentals, Inc.).

Varnum then turned to the three main arguments of his defense of Weeden: First, trial by jury is a fundamental right of all citizens. It is part of "our legal constitution." Second, the legislature cannot deprive the citizens of this right. Third, judges should determine whether the laws of the legislature are consistent with or are repugnant to the constitution. He called on the judges to "so determine."[7]

He dealt first with the constitutional issue. In 1786, Rhode Island, unlike many other states, had no written constitution. The Royal Charter of 1663 signed by King Charles II was the only

Letter to the Editor

Mr. Morse:

I am writing to you in your capacity as editor-in-chief of the *Rhode Island Bar Journal*, in the hopes that the *Journal,* in its next issue, can issue a correction as to a mis-statement of the law in David J. Strachman's article entitled, "The Right to Bear Arms in Rhode Island." This article appears in the March/April 2017 issue of the Journal.

Mr. Strachman's article explicitly represents that there is a constitutional right in Rhode Island to carry a concealed weapon. In fact, the law is exactly the opposite. In **Mosby v Devine**, 851 A2d 1031 (R.I. 2004), which is cited in the article, our Supreme Court ruled in agreement with the wealth of authority elsewhere that the right to "bear arms" relates to military service and the common defense, and that while there may be a constitutional right to "keep" or carry a firearm at one's home, place of business or upon one's land, that right does not extend to carrying firearms elsewhere. Mr. Strachman cites the dissent in that decision and a law review article authored by a law student to lead the reader to believe otherwise, but these authorities are hardly dispositive of the issue. Rather, the decision in **Mosby** is the law in this jurisdiction.

I would appreciate your publishing this correction.

—

Michael F. Kraemer, Esq.

Providence, R.I.

written basis for the state government. It guaranteed to all inhabitants "all liberties and immunities of free and natural subjects ... as if they ... were born within the realm of England. In this way the Magna Carta "and other fundamental laws of England were confirmed to the people of Rhode Island.[8] In 1663, after receiving the Royal Charter, the General Assembly enacted legislation that guaranteed to freemen lawful judgment by his peers."[9] That is, trial by jury.

Varnum argued that the act of 1663 did not create any new rights. It was only "declaratory of the rights of all the people, as derived through the Charter from their progenitors, time out of mind." The act of 1663 exhibited "the most valuable part of ... [the] political constitution, and formed a sacred stipulation that could never be violated."[10]

There was little dispute in America at that time that the applicable law was English law, which included trial by jury. (In the 18th century, juries not only decided factual questions as they do today, but they decided legal questions as well.[11])

Varnum continued by asking if the citizens of Rhode Island had ever entrusted their legislators with the power of altering their constitution. Clearly, they had not. He asked why did the people endure "a long, painful and bloody war, but to secure inviolate and to transmit unsullied for posterity, the inestimable privileges they received from their forefathers?"[12] The right to trial by jury was one of those privileges. He drove his point home with, "They who have snatched their liberty from the jaws of the British lion amidst the thunders of contending nations, will they basely surrender it to...a body that is elected annually?"[13]

The fact that Rhode Island, in 1786, did not have a written constitution made a constitutional argument difficult. Varnum admitted as much and then pointed out that the General Assembly convened to make laws and to levy taxes by virtue of another form of a constitution, "which, if they attempt to destroy, or in any manner infringe, they violate the trust reposed in them and so their acts are not be considered as laws or binding upon the people."[14]

Varnum's second major argument was that "...without a system of laws defining and protecting the rights of the people, there can be no fixed principles or rules of decision."[15] He noted that in "despotic

countries" where there are no limits to the power to enact laws, "the subjects groan under perpetual servitude."[16] Clearly, political power must be limited in order to preserve the liberties of the citizens. By inference, Rhode Island's unwritten constitution limits the power of the legislature while guaranteeing the rights and liberties of the people. The legislature does not have a free hand to enact any law it wishes. The right to trial by jury is embedded in the constitution. For this reason, the legislature lacks the legal authority to deprive any citizen of that right.

He was really arguing that the legislature is not sovereign and that its powers are limited by the constitution, which guarantees the right to trial by jury. If the powers of the legislature are limited, the question remained as to whom should rule on whether or not the legislature had exceeded its powers.

Varnum's third major argument made an excellent case for judicial independence. He asked rhetorically, who is to judge whether the legislature has "violated the constitutional rights of the people?"[17] He asserted that the power of the legislature to make laws is derived from the constitution, and therefore, this power is subordinate to it. The duty and function of judges is to state what the law is, even to the extent of ruling that the legislature has exceeded its powers.[18] By inference, an independent judiciary would be required to discharge this duty. If the legislature were to dictate to the judiciary, tyrannical laws would be executed in a tyrannical manner. "Servility" of the courts to the legislature "would render them totally subservient to the will of their masters, and the people must be enslaved or fly to arms."[19]

Varnum's task was made more difficult by the constitutional structure of Rhode Island's government in 1786. Briefly, the legislature was the governing body. Its upper house included the governor and the deputy governor. The lower house was elected twice annually in April and August. Among its duties was the annual appointment of judges for one year terms.[20] The legislature saw judges more as enforcers of the legislative will than as arbiters of legal and constitutional questions. In short, there was no separation of powers as we know it today. Judges had only short terms and each judge had to be guided by his conscience

and sense of duty.

He stressed the necessity of judicial independence by claiming that "if this Court feels itself dependent upon the Legislature in the exercise of its judicial powers, there will be an end of political liberty" because the "Legislature are [sic] guided by the general impulse" and not by fixed principles of fundamental law.[21] Here he was referring not only to the necessity of a constitution, but also to the then prevailing concept that equated "fixed law with liberty and changeable law with arbitrary rule and tyranny."[22]

His conclusion was that trial by jury was a constitutional right; that the legislature derived its powers from the constitution and, therefore, was subordinate to it; that the statute in question was unconstitutional; and that the court had power to determine what acts of the legislature are agreeable to the constitution. He concluded with, "…this Court is under the most solemn obligations to execute the laws of the land and therefor cannot, will not, consider this act as a law of the land."[23]

The judges retired to consider this matter. Their decision the next day was an ante climax. They did not rule that the act of the legislature was unconstitutional. They simply dismissed the complaint.[24] Nevertheless, **Trevett v. Weeden** stands for the proposition that an act of the legislature contrary to the constitution is void. It was an act of judicial review, which requires judicial independence.

The immediate reaction of the spectators in the courthouse was joyful.[25] But the supporters of the paper money statute were enraged. A resolution was introduced into the House of Deputies, the lower house of the General Assembly, which demanded that the judges appear before them to explain the reasons for their ruling "if any they have...." This resolution was toned down in its final form, but the legislators demanded that the judges appear before them to defend and explain their ruling which was "absolutely unprecedented in this state and may tend to directly abolish the legislative authority thereof."[26] The leaders in the General Assembly sought first to rebuke the judges for their decision in **Weeden** and then to dismiss them from their judicial positions. The judges appeared twice before the legislature.

A few days later, in early October 1786, three of the five judges who had

dismissed Trevett's complaint appeared pursuant to this summons. Judge David Howell told the legislators that not only were judges not responsible to any other branch of government, but he openly and fervently defended judicial review. According to the *Newport Mercury*, he stated "··· the General Assembly making laws is bound by certain lines drawn by the constitution; – one of the most capital of which is [trial] by jury ... when the General Assemblies attempt to overleap the bounds of the constitution by making laws contrary thereto, the Superior Court have power and it is their duty to refuse to carry such laws into effect."[27] He told the legislators to their dismay and anger that the "Judiciary Power should be as independent as the Legislative" and, therefore, "the judges cannot be answerable for their opinions unless charged with criminality."[28] Nevertheless, the movement in the legislature to remove the judges continued.

In early November 1786, Judges Joseph Hazard and Thomas Tillinghast joined Judge David Howell in a memorial to the Governor and to the Speaker of the Lower House with the request that it be communicated to both houses. They "utterly protested(ed) against the exercise of any power in the Legislature by summary vote to deprive them of their right to exercise the functions of their office without ... due process." They requested a hearing with counsel.[29] Their counsel was James M. Varnum.

Varnum's argument at the second appearance of the judges before the legislature was based on sound legal precedent starting with the Magna Carta, which guaranteed due process. If judges were appointed to serve at the pleasure of the legislature, then they might be removed without the formalities of a trial.[30] However, in this case, the judges were appointed for a specific term. He roundly condemned the plan to fire them in the absence of any charges of criminal conduct or malfeasance in office. They could only be called "to answer for some crime by due process," but there was "not even a suggestion that they have intentionally departed from the line of their duty."[31]

No criminal charges had been brought. The legislators simply did not like the decision of the judges dismissing

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Five Things the Rhode Island Supreme Court Wants You to Know About Civil Trial and Appellate Practice

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Much can be gleaned from a close examination of the Court's decisions and, in particular, the footnotes that shed light on the Court's views. If one thing is clear, the Supreme Court wants practitioners to know the matters that trouble it and to heed its words of caution.

Introduction

As lawyers, we are trained to follow the rules. For civil practitioners, the Rhode Island Superior Court Rules of Civil Procedure and the Rhode Island Supreme Court Rules of Appellate Practice are familiar sources. Some of the most important rules, however, are not found in those carefully organized and numbered rules.

Buried within the footnotes of the Atlantic Reporter are some of the most important rules governing civil trial and appellate practice. The Rhode Island Supreme Court's decisions and, in particular, the footnotes to its decisions, are laden with important rules governing civil trial and appellate practice.

In recent years, the Rhode Island Supreme Court has developed a practice of sending admonitions and reminders to practitioners, largely through the footnotes of its decisions, on not only the Court's rules, but also its expectations for trial and appellate practice. The following are just a few of the reoccurring themes the Court has developed.

1. The Raise-or-Waive Rule

The raise-or-waive rule, arguably one of the most important rules for trial lawyers and appellate practitioners, is one of the Rhode Island Supreme Court's most frequently invoked legal doctrines. As of March 2017, the Rhode Island Supreme Court has already applied the rule in five civil decisions in its 2016-2017 term.[1] In three of the five decisions, the Supreme Court concluded that the raise-or-waive doctrine precluded review of at least one issue raised on appeal, underscoring the importance of properly raising issues and objections at trial.[2]

The Court applied the raise-or-waive rule in at least seven civil decisions in its 2015-2016 term[3] and in at least eight civil decisions in its 2014-2015 term.[4] Notwithstanding the Court's repeated reminders on the importance of adherence to the rule, preservation issues continue to arise.

As a general matter, the Rhode Island Supreme Court has "consistently adhered to the venerable 'raise or waive rule,' which provides that 'an issue that has not been raised and articulated previously at trial is not properly preserved for appellate review.'"[5] Thus, "'a litigant cannot raise an objection or advance a new theory on appeal if it was not raised before the trial court.'"[6] This is true regardless of whether the matter proceeds to trial or is disposed of at some earlier stage, such as summary judgment.[7]

The Supreme Court has applied the raise-or-waive rule when trial counsel has failed to properly preserve objections at various stages of the lower court proceedings. There are, however, notable trends. Most often the raise-or-waive doctrine is applied in the context of evidentiary rulings and jury instructions.

A. Evidentiary Rulings

With respect to evidentiary rulings, the Supreme Court consistently has held that "if 'the introduction of evidence is objected to for a specific reason, other grounds for objection are waived and may not be raised for the first time on appeal.'"[8] The Supreme Court's holdings highlight the need for counsel to inform the trial justice of all the bases for his or her objection to the introduction of evidence. For example, when an appellant argued recently that the trial justice had erred by admitting into evidence a medical report and testimony concerning the report because it was unduly prejudicial under Rule 403 of the Rhode Island Rules of Evidence, the Supreme Court held that the appellant had waived that argument by objecting to the evidence only on the grounds of relevancy.[9]

Related to the need to preserve objections to evidentiary rulings is the need to make a sufficient offer of proof. In a decision this term, the Supreme Court held that plaintiffs had preserved an argument related to the trial justice's preclusion of the plaintiffs' expert from testifying by making a sufficient offer of proof.[10] In so concluding, the Supreme Court explained "[i]t is well established that a litigant must make [an offer of proof] after a sustained objection to preserve the issue for appeal."[11] Thus, "'an examiner, after objection to a question propounded to a witness has been sustained, [must] advise the

Bar Public Services Department Honored with Legal Clinic Award

At the 2017 Rhode Island Coalition for the Homeless (RICH) Annual Luncheon, the Rhode Island Bar Association team of Public Services Director Susan Fontaine, Volunteer Lawyer Program Coordinator John Ellis, and Elderly Pro Bono Program Coordinator Elisa King were honored with the Homeless Legal Clinic Award. The Bar Association and the RICH have been in a longtime partnership to ensure the homeless have access to pro bono attorney representation and information in the court system through the Legal Clinic.

Honorees Elisa King, Susan Fontaine, and John Ellis

trial court what he expected the witness would have said if allowed to answer.'"[12]

B. Jury Instructions

The Rhode Island Supreme Court is most "exacting about applying the raise-or-waive rule in the face of inadequate objections to jury instructions."[13] In addition to the raise-or-waive rule, Rule 51(b) of the Superior Court Rules of Civil Procedure "'bars a party from challenging an erroneous instruction unless [the party] lodges an objection to the charge which is specific enough to alert the trial justice as to the nature of [the trial justice's] alleged error.'"[14] Accordingly, the Supreme Court is "especially rigorous in the application of the raise-or-waive rule when considering objections to jury instructions."[15]

In each of the past three court terms, the Supreme Court has refused to address arguments related to jury instructions on the grounds that the arguments had been waived.[16] For example, this term in **Bates-Bridgmon,** the Supreme Court concluded that plaintiffs in a premises liability case waived their request for a jury instruction on the mode of operation rule.[17] In that case, the plaintiffs maintained that the trial justice had told both parties that the court would instruct the jury on the mode of operation rule and the parties had extensively briefed the rule in the context of a motion in limine.[18] However, plaintiffs did not specifically request an instruction on the mode of operation rule and they did not object when the trial justice did not instruct the jury on it.[19] Accordingly, the Supreme Court concluded that the plaintiffs had waived their right to challenge the trial justice's decision not to instruct the jury on the rule.[20]

In other recent decisions, the Supreme Court reached the same conclusion and refused to address challenges to jury instructions where the party claiming error had not raised its objection at trial.[21] In doing so, the Supreme Court has explained that an objection on the record is required "even if a party has previously made a request for a particular instruction or if the trial justice has previously expressed an opinion on a particular instruction at an unrecorded charging conference or otherwise."[22] The rationale behind such a rigorous requirement is "'to allow the trial justice an opportunity to make any necessary corrections to his or her instructions before the jury begins its deliberations.'"[23]

2. The Failure to Order Transcripts for Appeal is "Risky Business"

The Supreme Court consistently has reminded practitioners and litigants about the risks inherent in failing to provide it with a transcript of the proceedings in the trial courts.[24] The Supreme Court has addressed this issue in three decisions thus far this term and in two of the three decisions has concluded that it could not review the claimed error because it had not been provided with the transcript.[25]

Most notably, in **Bailey v. Saunders,** the Supreme Court affirmed the Superior Court's decision on the sole basis that it was unable to consider the issues raised by the defendant on appeal because the defendant failed to include the transcript of the Superior Court proceedings within the record.[26] In doing so, the Supreme Court noted its oft-recited admonishment that "[t]he deliberate decision to prosecute an appeal without providing the Court with a transcript of the proceedings in the trial court is risky business."[27]

In limited circumstances, where the matters at issue are questions of law, and reference to the transcripts of the proceedings is unnecessary, the Supreme Court has addressed the question of law without the need for a transcript.[28] However, "'[u]nless the appeal is limited to a challenge to rulings of law that appear sufficiently on the record and the party accepts the finding of the trial justice as correct, the appeal must fail.'"[29]

Notwithstanding Supreme Court's words of caution, cases continue to reach the Court without transcripts.

3. Rule 54(b) Judgments Are Disfavored

In recent years, the Supreme Court has expressed its disfavor of Rule 54(b) judgments.[30] Last term, in **Cathay Cathay, Inc. v. Vindalu, LLC**, the Supreme Court noted its "strong preference for 'avoid[ing] piecemeal appellate review by delaying entry of judgment until all claims involving all parties are ripe for disposition and entering judgment as to all only when that time arrives.'"[31] The Supreme Court explained that "[t]he delay of the entry of judgment allows this Court to avoid the unnecessarily tedious and inefficient task of 'having to keep relearning the facts of a case on successive appeals.'"[32]

4. Speedy Resolution of Disputes

The Rhode Island Supreme Court has

expressed a preference for the speedy resolution of disputes and, on occasion, has seen fit to comment on the length of time particular matters have been pending. Implicit in the Supreme Court's decisions is a directive that practitioners move their cases along.

In two decisions this term, the Supreme Court commented on the length of time cases had been pending in Superior Court. In **Paolino v. Ferreira**, the Supreme Court paused to note that "[i]t does not escape our notice that the complaint in this case was filed in November, 2006, but that the matter was not reached for trial until June, 2012."[33] **In Rohena v. Providence**, the Supreme Court expressed concern about the length of time between the commencement of the action in 2006 and the defendant's motion for summary judgment in 2014, noting "[w]e have not been presented with any explanation for the delay between the filing of this suit and the motion for summary judgment."[34]

The Supreme Court's recent observations are consistent with the frustration the Court has expressed over the years with respect to seemingly endless cases. For example, on one occasion, the Supreme Court observed that it appeared that a case had "taken on a life of its own; we can perceive no sufficient reason why this particular litigation did not come to an end long ago. We see real similarities between this case and the fictional case of **Jarndyce v. Jarndyce**, which Charles Dickens so memorably and mordantly satirized in *Bleak House*."[35]

5. Failure to Develop Arguments in Brief

Similar to the cautionary messages that the Supreme Court often sends to trial lawyers about the importance of the raise-or-waive rule, the Supreme Court also often pauses to remind appellate practitioners of the importance of developing legal arguments in their briefing. Under the Court's jurisprudence, "[e]ven when a party has properly preserved its alleged error of law in the lower court, a failure to raise and develop it in its briefs constitutes a waiver of that issue on appeal and in proceedings on remand."[36]

Article I, Rule 16(a) of the Supreme Court Rules of Civil Procedure codifies this common law doctrine, providing "[e]rrors not claimed, questions not raised and points not made ordinarily will be treated as waived and not consid-

ered by the court." In recent decisions, the Supreme Court has reminded litigants that it "expect[s] if not 'demand[s] that the briefs before [it] will contain all the arguments that the parties wish [it] to consider.'"[37] Accordingly, in two decisions this term, the Supreme Court concluded that issues that had been raised by a party as issues for appellate review but not meaningfully discussed in the party's brief had been waived.[38]

Similarly, last term, the Supreme Court concluded in two cases that parties' cursory reference to an issue on appeal resulted in a waiver.[39] **In Nuzzo v. Nuzzo Campion Stone Enterprises Inc.**, for example, the plaintiff spent "a total of four short sentences" asserting an issue related to his counterclaim on appeal.[40] The Court noted that the plaintiff "completely fail[ed] to direct [the Court] to what he consider[ed] to be erroneous in the trial justice's findings[.]"[41] Because the plaintiff failed to direct the Court's "attention with specificity to any error[,]" the Court determined that the plaintiff "waived" any argument related to his counterclaim on appeal.[42]

Conclusion

The Rhode Island Supreme Court's commentary provides a window into the Court's preferences and expectations for trial and appellate practice. Much can be gleaned from a close examination of the Court's decisions and, in particular, the footnotes that shed light on the Court's views. If one thing is clear, the Supreme Court wants practitioners to know the matters that trouble it and to heed its words of caution. It is up to us, as practitioners, to seek out those messages and apply them in practice.

ENDNOTES

1 ***Rohena v. Providence***, *No. 2016-128-Appeal, 2017 R.I. LEXIS 29 (R.I. Mar. 2, 2017);* ***Paolino v. Ferreira***, *No. 2014-334-Appeal, No. 2014-335-Appeal, 2017 R.I. LEXIS 20, at *33-34 (R.I. Feb. 16, 2017);* ***In re Kyeshon J.***, *No. 2015-230-Appeal, No. 2016-161-Appeal, 2017 R.I. LEXIS 19 (R.I. Feb. 14, 2017);* ***Bates-Bridgmon v. Heong's Mkt., Inc.***, *152 A.3d 1137 (R.I. 2017);* ***Cote v. Aiello***, *148 A.3d 537, 549-50 (R.I. 2016).*

2 ***Rohena***, *2017 R.I. LEXIS 29;* ***In re Kyeshon J.***, *2017 R.I. LEXIS 19;* ***Bates-Bridgmon***, *152 A.3d 1137.*

3 ***Lemerise v. Commerce Ins. Co.***, *137 A.3d 696 (R.I. 2016);* ***Free and Clear Co. v. Narragansett Bay Comm'n***, *131 A.3d 1102 (R.I. 2016);* ***In re Estate Ross***, *131 A.3d 158 (R.I. 2016);* ***DePasquale v. Cwiek***, *129 A.3d 72 (R.I. 2016);* ***Behroozi v. Kirshenbaum***, *128 A.3d 869 (R.I. 2016);* ***Joachim***

v. Straight Line Prods., LLC, 138 A.3d 746 (R.I. 2016); **Ribeiro v. R.I. Eye Inst.**, 138 A.3d 761 (R.I. 2016).

4 **O'Connor v. Newport Hosp.**, 111 A.3d 317 (R.I. 2015); **Renewable Res., Inc. v. Town of Westerly**, 110 A.3d 1166 (R.I. 2015); **Ferris Ave. Realty, LLC v. Huhtamaki, Inc.**, 110 A.3d 267 (R.I. 2015); **Laplante v. R.I. Hosp.**, 110 A.3d 261 (R.I. 2015); **Thornley v. Cmty. College of R.I.**, 107 A.3d 296 (R.I. 2014); **Pawtucket Redevelopment Agency v. Brown**, 106 A.3d 893 (R.I. 2014); **Berman v. Sitrin**, 101 A.3d 1251 (R.I. 2014).

5 **In re Kyeshon J.**, 2017 R.I. LEXIS 19 at *9 (quoting **In re Shy C.**, 126 A.3d 433, 434, 435 (R.I. 2015)).

6 **Laplante**, 110 A.3d at 267 (quoting **State v. Bido**, 941 A.2d 822, 829 (R.I. 2008)).

7 **Rohena**, 2017 R.I. LEXIS 29 at *5-6 (concluding that an issue that was not raised in plaintiff's objection to defendant's motion for summary judgment was not preserved for appeal).

8 **O'Connor**, 111 A.3d at 327 (quoting **Robideau v. Cosentino**, 47 A.3d 338, 341 (R.I. 2012) (mem.)); accord **In re Kyeshon J.**, 2017 R.I. LEXIS 19 at *9.

9 **Thornley**, 107 A.3d at 302.

10 **Paolino**, 2017 R.I. LEXIS 20 at *33.

11 **Id.** (citing **Mead v. Papa Razzi**, 899 A.2d 437, 445 (R.I. 2006)).

12 **Id.** (quoting **Manning v. Redevelopment Agency of Newport**, 238 A.2d 378, 382 (R.I. 1968)).

13 **Ferris Ave. Realty, LLC**, 110 A.3d at 285.

14 **Id.** (quoting **Botelho v. Caster's, Inc.**, 970 A.2d 541, 548 (R.I. 2009)); accord **Bates-Bridgmon**, 152 A.3d at 1145.

15 **Bates-Bridgmon**, 152 A.3d at 1145.

16 **Id.**; **Free and Clear Co.**, 131 A.3d at 1110; **Ferris Ave. Realty, LLC**, 110 A.3d at 285-86; **Berman**, 101 A.3d at 1266-67.

17 **Bates-Bridgmon**, 152 A.3d at 1145.

18 **Id.**

19 **Id.**

20 **Id.**

21 **Free and Clear Co.**, 131 A.3d at 1110; **Ferris Ave. Realty, LLC**, 110 A.3d at 285-86; **Berman**, 101 A.3d at 1266-67.

22 **Berman**, 101 A.3d at 1266-67.

23 **Ferris Avenue Realty, LLC**, 110 A.3d at 285 (quoting **DiFranco v. Klein**, 657 A.2d 145, 147 (R.I. 1995)).

24 **Bellevue-Ochre Point Neighborhood Ass'n v. Preservation Soc'y of Newport Cnty.**, 151 A.3d 1223 (R.I. 2017); **OSJ of Providence, LLC v. Diene**, No. 2016-14-Appeal, 2017 R.I. LEXIS 22, at *5 n.5 (R.I. Feb. 24, 2017); **Loppi v. United Investors Life Ins. Co.**, 126 A.3d 458 (R.I. 2015); **Baker v. Mitchell**, 126 A.3d 482 (R.I. 2015) (mem.).

25 **Bellevue-Ochre Point Neighborhood Ass'n**, 151 A.3d 1223 (R.I. 2017); **OSJ of Providence, LLC**, 2017 R.I. LEXIS 22 at *5 n.5; **Bailey v. Saunders**, No. 2015-142-Appeal, 2017 R.I. LEXIS 4 (R.I. Jan. 6, 2017).

26 **Bailey**, 2017 R.I. LEXIS 4 at *1-3.

27 **Id.** at *2 (quoting 731 **Airport Associates, LP v. H & M Realty Associates, LLC**, 799 A.2d 279, 282 (R.I. 2002).

28 **Loppi**, 126 A.3d at 460.

29 **Id.** (quoting **Adams v. Christie's Inc.**, 880 A.2d 774, 778 (R.I. 2005)).

30 **Cathay Cathay, Inc. v. Vindalu, LLC**, 136 A.3d 1113, 1119 (R.I. 2016).

31 **Id.** at 1121 (quoting **Metro Properties, Inc. v. Nat'l Union Fire Ins. Co.**, 934 A.2d 204, 207 (R.I. 2007)).

32 **Cathay Cathay, Inc.**, 136 A.3d at 1121 (quoting **Astro-Med, Inc. v. R. Moroz, Ltd.**, 811 A.2d 1154, 1156 (R.I. 2002)).

33 **Paolino**, 2017 R.I. LEXIS 20 at *8 n.5.

34 **Rohena v. Providence**, 2017 R.I. LEXIS 29 at *2 n.2.

35 **Greensleeves, Inc. v. Smiley**, 942 A.2d 284, 294 n.19 (R.I. 2007); accord **Nardone v. Ritacco**, 936 A.2d 200, 202 (R.I. 2007) (noting that the case was "seemingly endless" and "reminiscent of the fictional chancery case of **Jarndyce and Jarndyce**, as described by Charles Dickens in the novel BLEAK HOUSE, because this case like that one, 'drones on'"); **Arena v. City of Providence**, 919 A.2d 379, 384 (R.I. 2007) (likening the case to the "chancery case of **Jarndyce and Jarndyce**, described by Charles Dickens in the novel BLEAK HOUSE, as it too 'drones on.'"

36 **McGarry v. Pielech**, 108 A.3d 998, 1005 (R.I. 2015).

37 **Id.** at 1004 (R.I. 2015) (quoting **Estate of Meller v. Adolf Meller Co.**, 554 A.2d 648, 654 (R.I. 1989)); **see also Renewable Res., Inc. v. Town of Westerly**, 110 A.3d 1166, 1173 (R.I. 2015).

38 **A. Salvati Masonry Inc. v. Andreozzi**, 151 A.3d 745 (R.I. 2017); **Bates-Bridgmon**, 152 A.3d at 1141 n.5.

39 **Nuzzo v. Nuzzo Campion Stone Enterprises, Inc.**, 137 A.3d 711 (R.I. 2016); **Gregoire v. Baird Properties, LLC**, 138 A.3d 182 (R.I. 2016).

40 **Nuzzo**, 137 A.3d at 717.

41 **Id.**

42 **Id.** ❖

You're fired! Voter recall of elected officials in Rhode Island

Samuel D. Zurier, Esq.
Providence

This past Election Day provided the setting for an unusual campaign. Citizens stationed outside precincts in a Providence neighborhood engaged voters in a discussion about their incumbent City Councilman, when neither his name nor the office he held was on the ballot. In the weeks leading up to Election Day, the councilman sued his constituents in Superior Court (and appealed to the Supreme Court) to enjoin their Election Day activities.[1] When his claim for judicial relief was denied, the councilman hit the campaign trail, discouraging his constituents from speaking to the volunteers or signing the petitions on which his name appeared.[2] The incumbent in question is in the middle of a four-year term, and his constituents canvassed signatures to authorize a special election to decide whether he should be recalled from office.

Because the recall process has not yet been successful in Rhode Island, we do not completely know whether it improves accountability, creates chaos, or achieves some combination of the two.

The Election Day campaign yielded more than 1,800 signatures.[3] In March, 2017, the Board of Canvassers certified petitions containing 2,383 signatures, and a recall election is currently scheduled for May 2, 2017.[4] To the best of the knowledge of the Rhode Island League of Cities and Towns,[5] this effort will make history if it succeeds, as previous recall campaigns in Rhode Island have been generally rare and uniformly unsuccessful.

While the political consequences (if any) will be local, the Constitutional and policy issues this campaign raises may help answer several questions about the form of representative democracy that prevails in the State of Rhode Island. When voters elect someone to a fixed term of office, by what measures (if any) should the official be held accountable prior to the next election? If voters are granted the authority to retract their approval mid-term, should this power be plenary, or should it be limited to specific types of official misconduct? When voters exercise this power, what boundaries (in terms of timing or thresholds of petition signatures) should be imposed? If the current Providence recall campaign succeeds, will it be a victory for the voters, or the opening of a Pandora's box of a "permanent campaign" that makes it impossible for elected officials to govern in a community's long-term interest?

To help understand these issues, this article first will review the recall election process in Rhode Island, describing notable prior (failed) efforts and governing municipal and State law. It will then offer a brief overview of experience and laws in other states. Finally, it will discuss how the different forms of recall law advance public policy goals, suggesting ways to improve our current structure.

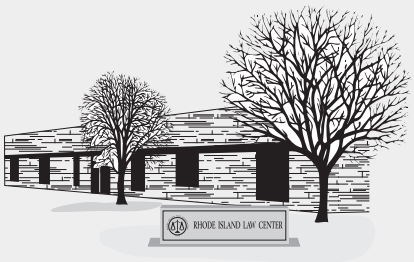
I. Recalls in Rhode Island

A. Attempted Recalls

The closest any Rhode Island community came to recalling an elected official probably happened in Exeter in December, 2013. At that time, the Rhode Island Firearms League aimed their sights at four Exeter Town Council members who had passed an ordinance regulating the issuance of concealed weapons permits by the Town Clerk.[6] To support their efforts, the Firearms League established a political action committee with the pretentious name of "We the People," which poured several thousand dollars of ammunition into their campaign. When the people of Exeter spoke, the recall effort failed by a roughly two-to-one margin.[7]

Other recall efforts in Rhode Island did not even reach the ballot. In 2014, a group of Woonsocket voters filed an initial affidavit seeking the recall of two City Council members because of their vote in favor of all-day kindergarten, but the proponents failed to collect sufficient signatures to require a recall vote.[8] In Tiverton in 2015, citizens targeted three Town Council members for a range of issues, including a vote concerning development of a mall.[9] The effort ended when the proponents failed to collect enough signatures necessary to put it on the ballot. Also in 2015, citizens began the process to recall the North Smithfield Town Administrator for his claimed "lack of leadership" and support of a controversial charter school, but their effort also failed due to a lack of signatures.[10] The League of Cities and Towns is unaware of any other efforts in recent history.[11]

Rhode Island voters amended Article IV,



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

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Section 1 of its Constitution to permit recall elections of the State's general officers with the introduction of four-year terms in the 1994 election. The Constitution does not provide for the recall of members of the General Assembly. There is no reported instance of a recall petition of a Rhode Island general officer reaching a significant stage of progress.

B. Rhode Island laws governing recall elections

As displayed in a chart at the end of this article, the charters of nineteen Rhode Island cities and towns permit recall of certain local legislators, administrators and other elected officials under widely varying procedures and requirements.[12] The Providence Home Rule Charter, whose provisions were tested in Superior Court in October and likely will be again this spring, contains the following typical combination:

The time window for recalling a Providence Mayor or City Council member opens after the official has been in office for at least six months, and closes a year before the conclusion of their four-year terms.[13] To start the process, a resident must present a declaration of intent with the signatures of 300 (City Council) or 1,000 (Mayor) signatures of qualified City electors for the position in question.[14] Once the signatures are verified, the proponents have 120 days in which to collect signatures of 15% of the City's qualified electors (Mayor) or 20% of the qualified electors of the council member's ward.[15] If these signatures are verified, a special election will take place within 60 days on the specific question of whether the incumbent be removed from office.[16] If the majority of votes cast favor removal, the incumbent will be deemed removed upon certification by the board of canvassers.[17] The resulting vacancy will then be filled with a special election.[18] The City Council has the authority to adopt legislation to implement the Charter provisions,[19] but has not exercised that authority to date.

Following the pattern of other Rhode Island municipalities, the Providence recall process does not limit the reasons voters may choose to recall their elected officials; instead, elected officials are effectively "employees at will" – subject to recall for any reason (or no reason at all) should the voters meet all the procedural requirements of timing, signatures

and votes. While the Providence Home Rule Charter does not explicitly address the issue of whether a recalled official can run in the special election to fill the seat he or she has vacated, the Supreme Court has decided this issue. In **Gelch v. State Board of Elections,**[20] then-Mayor Buddy Cianci filed papers to be a candidate in a special mayoral election to fill the vacancy created by his first criminal conviction while in office. The Supreme Court interpreted Section 206 of the Providence Home Rule Charter to render Cianci ineligible to serve as Mayor for the remainder of that four-year term.[21]

Other cities and towns offer variations on this general theme. Exeter (the target of the Rhode Island Firearms League) has one of the lowest signature requirements at 10% of eligible voters, while Richmond and West Warwick are distinctive by permitting recall petitions at any time.[22] On the other hand, Cranston and North Kingstown have a narrow time window, limiting petitions to a one-year interval after the first six months and before the last six months of an office holder's two-year term.[23] All of Rhode Island's cities and towns that authorize recall contain the same "employee at will" feature found in Providence. In this way, the recall process, which depends on the will of the voters, is less restrictive than impeachment or other ways to remove a sitting elected official from office.[24]

Unlike local recall provisions, Article IV, Section 1 of the Rhode Island Constitution limits recall petitions to instances where the elected official has engaged in actual or possible misconduct, as documented by a felony indictment, a misdemeanor conviction, or an Ethics Commission probable cause finding. The window of eligibility opens after the general officer has been in office for six months, and closes twelve months before the expiration of his or her term. The Constitution does not have a recall provision for General Assembly members.[25]

II. Recalls in other states

A. National experience with recalls

Recall laws date back to the Massachusetts Bay Colony and the Articles of Confederation.[26] More recently, numerous state and local governments began enacting voter recall laws in the Progressive Era, beginning with the city of Los Angeles, and the states of Michigan, and Oregon.[27] Today, there are major

internet compilations of recall election data, namely the Recall Elections Blog[28] and Ballotpedia.[29] These sources reported a total of around 200 recall efforts involving 340 officials in 31 states in 2016, led by California (58 officials targeted), Colorado (32) and Michigan (31). Forty-five officials (including sixteen mayors) were recalled from office nationally in 2016, and ten more officials resigned before the recall vote took place.[30]

The great majority of recall efforts nationally are directed at local officials. Only two governors have been recalled: Lynn Frazier of North Dakota in 1921 and Gray Davis in California in 2003. Governor Evan Meacham of Arizona was impeached in 1988 while a recall petition was underway, and Governor Scott Walker of Wisconsin survived a recall effort in 2012.[31] During 2011-13, seventeen state legislators faced recall votes, of which eight were removed from office.[32]

B. Recall laws in other states

Recall laws vary widely across the country in many of the same ways they vary among Rhode Island cities and towns. In contrast to Rhode Island's local rules, several states have enacted measures to discourage purely political recalls, such as requiring the petitioners to list the general grounds on which they base their petition,[33] limiting recalls to specific permitted grounds (usually involving malfeasance),[34] or requiring a court to review whether the stated charges are legally sufficient or, in some states, supported by clear and convincing evidence.[35]

III. Policy considerations and recommendations

The wide range of recall procedures and requirements reflects diverging views of the goals and purpose of this voter prerogative. At one end of the spectrum, voters can recall elected officials throughout most of their term for any reason. This vision was advanced during the Progressive Era, along with voter initiatives and referenda. The latter two Progressive reforms have generated controversy in such states as California, where critics contend the process can be hijacked by big money interests, and can place valuable civil rights at risk.[36]

Locally, the Exeter recall effort, which targeted Town Council members for their vote on a single gun-related measure, fits this mold. Critics of this type of

"extreme accountability" worry that it can prevent elected officials from making difficult or long-term decisions, as officials find themselves engaged in a "permanent campaign" rather than having an opportunity to act as statesmen and stateswomen. Rhode Island's voters accepted this line of thinking by extending the governor's term of office from one year to two years in 1912, and to four years in 1994. There also are dynamic considerations, as the volume of recall efforts in other states appears to expand over time. For example, according to Ballotpedia,[37] California had a total of eleven recall efforts between 1913 and 1996, twelve during 1997-2008, but 243 in the last eight years.

At the other end, states such as Minnesota require that recall petitions be supported by proof of malfeasance as found by a judge in an evidentiary hearing, eliminating recalls based on political differences. This approach embodies the philosophy of Edmund Burke, a distinguished member of the British Parliament in the eighteenth century, who once famously declared "your representative owes you, not his industry only, but his judgment; and he betrays instead of serving you if he sacrifices it to your opinion."[38] Mike Burk, the aptly named Chair of the Tiverton Democratic Town Committee, echoed Edmund's view of representative democracy when he wrote a letter to the editor making this argument against the recall of sitting Republican town council members:

> While our Town Charter allows a recall for no reason, recalls should not be about disagreements over decisions made (or not), how quickly (or slowly) a decision is made, or because a councilor is bombastic and brash. As a representative democracy, we elect councilors every two years and trust them to make decisions based on the public good. If we don't like their behaviors or decisions, we can vote against them the next time around.[39]

Extreme Burkeanism has its own problems. The Minnesota model, which requires judicial determinations of malfeasance before permitting a recall petition to go to the voters, create hurdles that might be impossible for ordinary citizens to surmount. In this regard, the Rhode Island Constitution's list of permitted

continued on page 38

Your Bar's 2017 Annual Meeting Highlights

Thursday, June 15, Keynote Session

The Supreme Court in a Time of Transition

The role of Solicitor General is ultimately to gather information, and decide what position the government should take before the Supreme Court, but there is more to it than meets the eye. Providing his perspectives from some of his noteworthy cases argued before the Court during his time as Solicitor General, Attorney Donald B. Verrilli, Jr. discusses what litigating before the Supreme Court in a time of transition means for our nation, given the current political climate.

Our speaker, **Donald B. Verrilli, Jr.**, is one of the nation's leading Supreme Court and appellate advocates. He served as Solicitor General of the United States from June 2011 to June 2016 under the Obama Administration. During that time he argued dozens of cases before the U.S. Supreme Court, was responsible for representing the United States government in all appellate matters before the High Court and in the courts of appeals, and was a legal advisor to President Barack Obama and the Attorney General. Mr. Verrilli's landmark victories include his successful advocacy in defense of the Affordable Care Act in *National Federation of Independent Businesses v. Sebelius* and *King v. Burwell*; his successful advocacy for marriage equality in *Obergefell v. Hodges* and *United States v. Windsor*; and his vindication of federal immigration authority in *Arizona v. United States*. Currently, Mr. Verrilli is a partner with Munger, Tolles & Olson, and the founder of its Washington, D.C. office, where he focuses on representing and counseling clients on multi-dimensional problems, where litigation, regulation and public policy intersect to shape markets and industries in our evolving economy.

Please see your **2017 Rhode Island Bar Association Annual Meeting Brochure** for more information about the Meeting's 38 great CLE-credited seminars, social events and other interesting and informative activities and to access your registration form, or go to the Bar's website at **ribar.com** to download a Brochure pdf and an interactive registration form. **Please note, to save $25, you must register before June 9, 2017**.

Some Like It Hot*

American Bar Association Delegate Report – Midyear Meeting 2017

Robert D. Oster, Esq.
ABA Delegate and Past
Rhode Island Bar Association
President

The ABA Midyear Meeting in Miami in February was hot! Not the weather, but rather the mood was overshadowed by the events of the day– namely the travel ban on immigrants from predominately Muslim countries and the attack on the courts by the Administration. In Rhode Island, we have witnessed bullying and threats on our Jewish and Muslim communities. More on this later in my report.

The meeting itself was ably led by President Linda Klein of Georgia, and a number of resolutions were adopted: juvenile justice reform, immigration action on "Dreamers," criminal law and procedure reforms, civil Gideon, and sex based violence and discrimination. We were addressed by Chief Justice John Minton, Chief of the National Conference of Chief Justices, who was welcomed warmly with his remarks that had to do with fully funding the courts and defending against baseless attacks. He emphasized approaching treatment options instead of incarceration for nonviolent offenders. As to the adequate funding of the courts he stated, "The courts cannot be treated by politicians as ATM machines."

President Klein addressed the need to provide more for our veterans and their families. She stated that this is a "defining moment in which to hold power accountable. Constitutional protections are not up for negotiation and there are no so-called judges in America," an apparent reference to the President's derisive comments about the federal judges who stayed the travel ban. Fear can never overrule the Rule of Law. It was pointed out that the theme for Law Day this year is the 14th Amendment to the United States Constitution. The protections afforded to citizens and non-citizens alike by the Due Process clause of that Amendment could not be timelier.

Last year President Klein appointed me to a prestigious blue ribbon commission on gun violence made up of law professors, lawyers and advocates of all types. Several draft resolutions have been proposed and I would invite comment from members of the Bar who have an interest in this area. I have found the assignment to be complex as it is worthy of study. On another area, the ABA House of Delegates is tasked with general oversight of law school accreditation and education. We sit as a kind of super delegate to ensure standards in legal education receive the highest attention in light of declining law school enrollments and astronomical student loan debt for many students. In addition, I sit on the Solo and Small Practice Division of the ABA, and the National Caucus of State Bar Associations, which, while grass roots, has powerful influence on ABA policy.

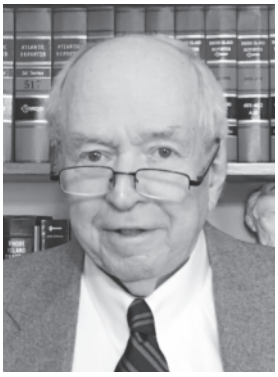
The late filed resolution which reacted to the immigration travel ban was introduced by Monte Frank, current President of the Connecticut Bar. Himself the grandchild of Holocaust survivors, he added his own personal story to the immigration debate. He also told the story of the *St. Louis*, a passenger liner that left Germany with hundreds of mostly Jewish refugees from the Nazis. It was denied entry to Cuba and the United States partly over fears of immigrants and, although the passengers were able to see the lights of Miami at night, they were returned to Germany for almost certain death in the extermination camps. The comparison to the present refugee crisis is startling. Needless to say, the Resolution supporting policies allowing entry to fully vetted refugees and immigrants, whatever their religious or national background, passed unanimously.

I am honored to be your Delegate to the ABA, and I invite comment about any ABA matter. I would encourage every lawyer to look up the ABA and its hundreds of practice areas and committees which I have found to be of the highest caliber and contribute to my practice.

* *Some Like It Hot* is the name of a comedic film, which is a must-see for film buffs, with starring performances by Marilyn Monroe, Jack Lemon and Tony Curtis, among others.

Through a request sent to our Honorary Members of the Rhode Island Bar Association, we are able to present to our readers the remembrances of our most august Bar members. These colleagues, enjoying 50 years or more as a Bar member, share some of their noteworthy accomplishments that enhanced the practice of law and improved the system of justice in Rhode Island.

50 YEAR CLUB



John J. Finan, Jr.

During the mid-1980s and even into the 1990s, there was a plethora of asbestos-related cases, with the majority of them being heard in the Federal District Court under the direction of then Mr. Justice Pettine.

I represented a defendant that was not a manufacturer of asbestos, as such, but was merely a distributor. Unfortunately for my client, he happened to be on the "laundry list" of all the defendants that would be listed with each and every new case. His insurance coverage had been depleted, and the company was unable to fund any further settlements, and it was willing to pay legal expenses, rather than to make any voluntary settlement overtures with the goal that it would soon get off of the "laundry list" of defendants.

That sounded like a noble stance to take, but one has to understand how the defense of these cases was handled. There were approximately eighteen defense attorneys involved, and the work would be broken down into various committees, which was fine. It was so cumbersome that the only place where meetings could take place and depositions held would be at the Providence Public Library in a large committee room that was located therein. We all worked hard on our own committee, but yet, there was not to be a great deal of cooperation between the committees, and certainly no individual attorney had knowledge of all the nuances of the other committees.

I was one of the attorneys that could not engage in any type of suggested settlement overtures, as I had no authority to do so. I can remember the anger of most of the attorneys, and in particular, one of the lead attorneys who, in his great anger, threatened to throw me out of the window and refused to let me engage in any meeting where settlement was discussed, nor did I receive particular trial tactics that the defense committee had engaged in at any trial.

The last case that I was involved in was one where all of the defendants, except my client, settled out of the case, and my case was to go to trial. At this point, any trial attorney, certainly including myself, would suffer many an anxious night, particularly going to trial without the benefit of all of the remaining defense committees. It came down to a situation whereby a pretrial conference was held by Mr. Justice Pettine, and he started off cautioning the plaintiffs' counsel that he had better be into a position to prove his case, otherwise there would be serious sanctions. Just when I was taking some comfort in that statement, he looked at me and said I, too, had better be able to successfully defend the case, or there would likewise be sanctions imposed against me and my client. Fortunately, plaintiffs' counsel succumbed before my client and I did, and that was the last time my client was on the so-called "laundry list" of defendants for all the remaining cases that continued to be filed.

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

Stephen Adams, Esq. **Jenna Pingitore, Esq.**
Barton Gilman LLP, Providence

Paul J. Dimaio was born in Providence in 1942 and raised in the Edgewood section of Cranston. Paul graduated from Boston University in 1965. By 1968, Paul had graduated from Suffolk Law School and had his first child on the way. After a quick stint doing title searches, Paul joined forces with retired Workers' Compensation Judge Jack Rotondi to start their own firm. Paul and Judge Rotondi started at the old Industrial National Bank Building, renting the furniture and using whoever came in that day as a typist. The two eventually joined Anthony Grilli, Sr. and his son, Anthony, Jr., which is when Paul started trying cases – and he has never stopped. Since the mid-1990s, Paul has run his own firm in a historic building on Broadway, which was previously his father's dental practice. He shares the office with wife Priscilla, daughter Stephanie, and a number of other colleagues. In addition to working on his antique car collection, Paul has sat on the bench in Johnston Probate Court for over forty years, and was recently featured in Marc Smerling's podcast "Crimetown" in connection with his representation of Gerry Tillinghast during the Bonded Vault trial. We had the opportunity to sit with this legendary trial lawyer. Excerpts from our conversation follow.

Paul J. Dimaio, Esq.

Do you remember what your first car was when you got out of law school?
As my regular car, it was either a '47 Packard, two-door coupe that was old then, or a '50 Chevrolet I paid twenty-five bucks for. That was it. I didn't believe in new-new cars. In fact, I still don't. I collect antique cars. When you do what we do for a living, you need to go and find something that you can see as an accomplishment. Because doing work, what we're doing, is like shoveling sand against the tide. You never see the end. So I go home, I'll fix a starter, and I can rest easier. I see what I did; something we accomplished.

You've tried hundreds of cases. Do you remember your first trial?
It was about a year out of law school – a Hells Angel murder case. At that time, you couldn't try capital cases without five years' experience, but the judge gave me special permission. Judge Bulman was the judge. My clients had secured the billy club from this police officer the night of the event. I will never forget. The police officer denied using the billy club but we had this paper bag on my desk during the course of the trial. Eventually we pulled it out, all the billy clubs were numbered. So we subpoenaed the Providence police – it was his billy club. So the jury is out trying to make a decision. Judge McKenzie who was on the criminal calendar at that time, a wonderful old judge, walks from the fifth floor, Courtroom 9, down to the third floor. Calls me over. "Son?" "Yes, Judge?" "If that jury comes back with guilty, I suggest you make an oral motion for a new trial." "Okay, Judge." Jury comes back not guilty. That was my first trial.

What is your most memorable case or your most memorable experience?
I represented a guy named George Sams, Angela Davis's assassin. She wrote the book on the Black Panthers, and there is a whole chapter dedicated to George Sams. Fearsome-looking guy with a big smile. He gets charged with attempted murder here in Rhode Island where he is in the witness protection program. State police charge him. There are only two people, the victim and him. The prosecutor was a good guy. He kept saying, "Are you going to put your client on the stand?" "No, I'm not going to do that. Why would I do that? He's got two murder convictions. I'm not going to do that." His client testified and then I put George on the stand. "Mr. Sams, you're a murderer, aren't you?" "Yes, I am. I'm trained at murder. Munitions. Dynamite. Samurai sword. You name it. But I didn't do this. There's no such thing as attempted murder with me. Impossible." They found him not guilty.

What advice would you give to new lawyers?
Return your phone calls, keep your appointments and prepare your cases. Because if you worked on today's work, that's tomorrow's business. Do the best with what you've got in front of you, that's tomorrow's business. Very simple.

Attorney Addresses Students on Bankruptcy Issues

Bar member Christopher M. Lefebvre, Esq. delivered an engaging presentation to Pilgrim High School students on the consequences of bankruptcy in early April. According to teacher Bryan Cooper, Attorney Lefebvre was "enthusiastic, energetic, and easy to relate to. You know he was successful because kids were talking about it in the hall. Apparently word spread so fast that faculty members came down during their non-teaching period to hear him in his last session."

RHODE ISLAND BAR ASSOCIATION'S

Online Attorney Resources (OAR)

Exclusively designed to help Bar members receive and offer timely and direct assistance with practice-related questions.

OAR provides new and more seasoned Bar members with the names, contact information and Bar admission date of volunteer attorneys who answer questions concerning particular practice areas based on their professional knowledge and experience. Questions handled by **OAR** volunteers may range from specific court procedures and expectations to current and future opportunities within the following **OAR** practice areas:

Administrative Law
Business Law
Civil Law
Creditors and Debtors
Criminal Law
Domestic/Family Law
Federal Court
Probate and Estates
Real Estate
Workers' Compensation

TO CHOOSE YOUR OAR OPTION:

- **Bar members with questions about a particular area of the law.**
- **Bar members willing to volunteer as information resources.**

Go to the Bar's website at **ribar.com**, login to the **MEMBERS ONLY**, and click on the **OAR** link.

HONOR ROLL

Volunteers Serving Rhode Islanders' Legal Needs

The Rhode Island Bar Association applauds the following attorneys for their outstanding pro bono service through the Bar's Volunteer Lawyer Program, Elderly Pro Bono Program, US Armed Forces Legal Services Project, and Foreclosure Prevention Project during February and March 2017.

FEBRUARY 2017

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Continued on next page

Technology Lawyers Helping Technology Companies Grow Their Portfolios

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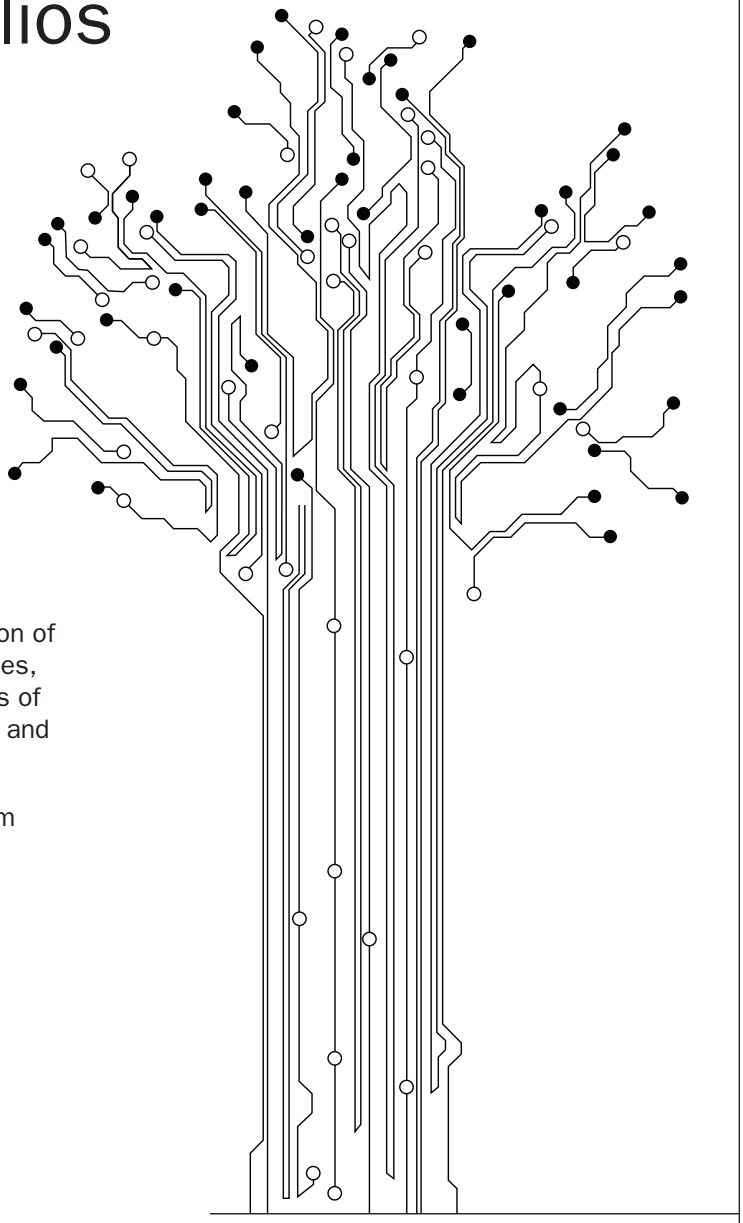

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The Rhode Island Supreme Court licenses all lawyers in the general practice of Law. The Court does not license or certify any lawyers as an expert or specialist in any field of practice.

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The Bar also thanks the following volunteers for taking cases for the Foreclosure Prevention Project and Legal Clinic events during February and March.

Foreclosure Prevention Project

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For information and to join a Bar pro bono program, please contact the Bar's **Public Services Director Susan Fontaine** at: **sfontaine@ribar.com** or **401-421-7758.** For your convenience, Public Services program applications may be accessed on the Bar's website at **ribar.com** and completed online.

Your Bar's 2017 Annual Meeting Highlights

Friday, June 16th, Plenary Session

What Miles Davis Teaches About Attorney Ethics

Join the CLE Performer, Stuart Teicher, for this out-of-the-box look at the ethics rules. Learn how the music, attitude, and lifestyle of legendary trumpeter Miles Davis allow us to learn about certain fundamental concepts in ethics. Whether it's the importance of meaningful communication without clients (Rule 1.4), or how complying with the rules over the long term depends on developing a heightened state of awareness (1.0 Definitions, 1.1 Competence, 1.3 Diligence), this program will be valuable to all lawyers – you don't need to know a thing about jazz.

Stuart I. Teicher, Esq. is a professional legal educator who focuses on ethics law and writing instruction. A practicing attorney for over two decades, Stuart's career is now dedicated to helping fellow attorneys survive the practice of law and thrive in the profession. Mr. Teicher helps attorneys get better at what they do (and enjoy the process) through his entertaining and educational CLE Performances. His focus is on the ethical issues in social networking and other technology. Mr. Teicher is a Supreme Court appointee to the New Jersey District Ethics Committee where he investigates and prosecutes grievances filed against attorneys. Mr. Teicher is also an adjunct professor of law at Georgetown Law where he teaches Professional Responsibility, and an adjunct professor at Rutgers University in New Brunswick where he teaches undergraduate writing courses.

Please see your **2017 Rhode Island Bar Association Annual Meeting Brochure** for more information about the Meeting's 38 great CLE-credited seminars, social events and other interesting and informative activities and to access your registration form, or go to the Bar's website at **ribar.com** to download a Brochure pdf and an interactive registration form. **Please note, to save $25, you must register before June 9, 2017**.

Seminar Helps Lawyers Market Their Practice

The March 2nd seminar, *How to Ethically Market Your Practice in the Digital Age*, reviewed ethical considerations for all attorneys to keep in mind as new technology continues to impact the practice of law. Presenter Carl P. DeLuca, Esq. discussed the history of attorney marketing including ethical restrictions and landmark cases, plus the seedy side of marketing, such as ambulance chasers and pay-per-lead programs. The CLE seminar examined various advertising mediums and the Rhode Island requirements for ethical marketing, and tips on how to avoid the pitfalls using current guidelines and discussion from the ABA. The seminar is available on demand through the Bar's website under **Online CLE Seminars**.

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RI Bar Association Continuing Legal Education Seminars

Register online at the Bar's website www.ribar.com and click on CONTINUING LEGAL EDUCATION on the left side menu or telephone 401-421-5740. All dates and times are subject to change.

May 2
Tuesday
The Litigator's Toolbox – The Economic Expert
RI Law Center, Cranston
3:00 p.m. – 5:15 p.m., 2.5 credits

May 3
Wednesday
Bankruptcy Best Practices: Chapter 7 & 13
RI Law Center, Cranston
1:00 p.m. – 4:00 p.m., 2.5 credits + 0.5 ethics

May 4
Thursday
Food for Thought
Marijuana Laws
RI Law Center, Cranston
12:45 p.m. – 1:45 p.m., 1.0 credit
Also available as a LIVE WEBCAST

May 11
Thursday
Effectively Representing Your Client in Mediation
RI Law Center, Cranston
3:00 p.m. – 5:00 p.m., 2.0 credits

May 12
Friday
Let's Talc – The Next Wave of Toxic Tort Litigation in Rhode Island?
RI Law Center, Cranston
12:30 p.m. – 2:30 p.m., 2.0 credits
Also available as a LIVE WEBCAST

May 16
Tuesday
Food for Thought
Trial Tactics
RI Law Center, Cranston
4:00 p.m. – 6:00 p.m., 2.0 credits

May 18
Thursday
Food for Thought
Top 10 Ethics Complaints
RI Law Center, Cranston
12:45 p.m. – 1:45 p.m., 1.0 ethics
Also available as a LIVE WEBCAST

June 1
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Food for Thought
Business Calendar
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12:45 p.m. – 1:45 p.m., 1.0 credit
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Times and dates subject to change.
For updated information go to ribar.com

NOTE: You must register online for live webcasts.

RHODE ISLAND LAW CENTER LOCATION
The Rhode Island Law Center is now located at
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Continuing Legal Education Telephone: 401-421-5740.

Rhode Island Bar Association Annual Meeting

Thursday, **June 15th** and *Friday*, **June 16th**
Rhode Island Convention Center
Providence, Rhode Island

Your choice of 38
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must be reported by June 30, 2017
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Registering before June 9th saves $25!

Please see your **2017 Rhode Island Bar Association Annual Meeting Brochure** to access details and your registration form, or go to the Bar's website: ribar.com to download a brochure PDF and an interactive registration form.

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

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

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

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

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

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

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

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Lawyers Helping Lawyers Committee Members Protect Your Privacy

SOLACE

Helping Bar Members in Times of Need

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

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

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

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

Trevett v. Weeden

continued from page 9

the complaint against John Weeden. The judges "stand upon the firm ground of rectitude and independence," Varnum exclaimed.[32] Moreover, even if charges had been brought, because both houses of the General Committee had met as a Grand Committee to appoint judges "they [the legislature] resemble the king" and "therefore [they] cannot try the judges upon a criminal charge."[33] The Attorney General, William Canning, agreed with Varnum's argument. He stated that there would be "a fatal interruption, if not annihilation to government if they [the judges] could be suspended or removed from office for a mere matter of opinion."[34]

The legislature, after realizing that they could not dismiss the judges without charging them with a criminal offense, which they could not do, adopted a motion to that effect. The judges were finally discharged from further attendance upon "this Assembly."[35] The judges won this round, but, not surprisingly, they were not reappointed the following year when their terms expired.

In early 1787, Varnum published an account of the trial of **Weeden** and of the appearance of the judges before the legislature. In the absence of a record of trial, this pamphlet, along with contemporaneous newspaper reports are our best sources of information about these events, which occurred months before the 1787 Constitutional Convention convened in Philadelphia. Probably, Varnum wanted to attend the Constitutional Convention, but Rhode Island refused to send a delegation. Not to be dismayed, Varnum had his pamphlet widely disseminated and even offered it for sale in Philadelphia as the delegates arrived.[36]

The ideas that Varnum espoused in his defense of John Weeden were not radical ideas. They were well within the mainstream of progressive 18th century political and legal thought. Written constitutions were seen (and still are) as an expression of the will of the people. The legislature could not enact laws inconsistent with the will of the people as expressed in a constitution. In Rhode Island, where there was no written constitution, the legislature was still bound by the laws of the land which confirmed to the citizens all the "liberties and immunities of free and natural subjects ...

Lawyers on the Move

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Rhode Island Probate Court Listing on Bar's Website

The Rhode Island Bar Association regularly updates the Rhode Island Probate Court Listing to ensure posted information is correct. The Probate Court Listing is available on the Bar's website at **ribar.com** by clicking on **FOR ATTORNEYS** on the Home page menu and then clicking on **PROBATE COURT INFORMATION** on the dropdown menu. The Listing is provided in a downloadable pdf format. Bar members may also increase the type size of the words on the Listing by using the percentage feature at the top of the page.

The Rhode Island Bar Association's **free**, web-based, **online Attorney Directory** provides an excellent means for your colleagues and clients to quickly connect with you.

Searchable by last name, first name or both, your Bar's online Attorney Directory serves as an easy means for you to communicate with your colleagues, and for clients and potential clients to connect with you. Attorney Directory contact information may include the Bar member's name, photograph, law office name, postal address, email address, telephone number, and facsimile number. And, email addresses are live, so simply clicking on a Directory email address creates a pre-addressed communication.

Access is easy through the **Attorney Directory** button at the top of the Rhode Island Bar Association's web site Home page at **ribar.com**. Bar members may update their information directly, online, via the **Members Only** feature on upper right corner of the Bar's website Home page. After logging in using your user name and password, you may click on the **Member Maintenance** button and update your information. This automatically updates both the Bar's secure and private database for home contact information and populates the publically-accessible, business-information-only online Attorney Directory. As an alternative, Bar members may provide address or other contact changes by connecting with the Rhode Island Bar Association's Office Manager Susan Cavalloro by email: scavalloro@ribar.com or telephone: 401-421-5740. Attorney Directory photographs must be emailed to Ms. Cavalloro, provided in a jpg format of no smaller than 300 dpi.

as if they were born within the realm of England."[37] It is the duty of judges to determine whether an act of the legislature is consistent with the constitution or, in the absence of a written constitution, with the fundamental laws of the land. If an act of the legislature is contrary to applicable law, then it is void. This is judicial review in a nutshell. It requires judicial independence.

In Rhode Island, the concept of judicial review of the acts of the legislature, which Varnum espoused so eloquently in **Trevett v. Weeden**, lay fallow for many years. Rhode Island continued to be governed by the Royal Charter of 1663 until a written constitution was finally adopted and became effective in May 1843. That constitution provided for separate, distinct but coordinate departments of government – one legislative and the other judicial. Nevertheless, the legislature continued to exercise judicial power by granting new trials and reversing judicial decisions in insolvency cases.[38]

Finally, in 1854, the General Assembly requested an advisory opinion from the Rhode Island Supreme Court as to whether the General Assembly had constitutional authority to reverse and annul "the judgment of the Supreme Court for treason rendered against Thomas W. Dorr" on June 25, 1844. The Supreme Court responded with a vigorous and unequivocal NO! The court reasoned that the state constitution vested the legislature and judiciary with exclusive power in each appropriate sphere, saying, "The power exclusively conferred upon the one department is, by necessary implication, denied to the other."[39] Only the judiciary could deal with legal questions. Therefore, the legislature lacked the power to change judicial rulings.

In exercising its powers of judicial review of an act of the legislature, the Rhode Island Supreme Court embraced Varnum's argument made 68 years before in **Trevett v. Weeden** that the judiciary has both the power and the duty to rule on whether the legislature has exceeded its lawful powers. In **Trevett v. Weeden**, the legislature exceeded its authority by attempting to deny a trial by jury to persons charged with violating the paper money statute, which was a crime. In 1854, when the legislature attempted to exercise judicial powers, the Supreme Court bluntly stated, "The union of all the powers of government in the same

hands is but the definition of a despotism."[40]

By 1854, the concept of judicial review, which Varnum first urged in **Trevett v. Weeden**, had finally and clearly been made part of Rhode Island law. Judicial review, to be effective, requires a separation of legislative, judicial and executive powers. In 2004 the Rhode Island Constitution was amended to make certain that the powers of the state government would be distributed into three distinct departments: legislative, judicial and executive.[41] This amendment guaranteed judicial independence. Two other amendments set the stage for future judicial review of legislative acts: First, "The Constitution shall be the supreme law of the state, and any law inconsistent therewith shall be void."[42] Second, "The Supreme Court shall have final revisory and appellate jurisdiction upon all questions of law and equity."[43]

Finally, 218 years later, Varnum's constitutional argument in **Trevett v. Weeden** became enshrined in the Rhode Island Constitution.

ENDNOTES

1 *Irwin H. Pollock, RHODE ISLAND AND THE UNION, (Evanston: Northwestern University Press, 1969), pp. 104, 127-129. Pollock covers Rhode Island history from 1775 to 1795. It is a well researched, well written and reliable source.*

2 *Bernard Schwartz, ed., THE BILL OF RIGHTS: A DOCUMENTARY HISTORY, (New York: Chelsea House Publishers, 1971), p. 418, 419. In the spring of 1787 Varnum published a pamphlet which is the only known record of the trial of John Weeden, including the trial of the judges and their appearances in October and November of 1786 before the General Assembly. This pamphlet is rare, but it is available electronically at Hein-on-Line and, therefore, is somewhat awkward to use. Schwartz included Varnum's defense of* ***Weeden*** *in his multi-volume work, which is much easier to use than the electronic version of Varnum's pamphlet. The Roger Williams University School of Law Library has a copy of the original pamphlet which may be used under controlled conditions. The discussion of the trial of the judges and their two appearances is largely based on the original 1786 pamphlet.*

3 ***Ibid.***

4 ***Ibid.***

5 ***Ibid.*** *pp. 419-420.*

6 ***Ibid.*** *p. 420.*

7 ***Ibid.***

8 ***Ibid.***

9 ***Ibid.*** *p. 421.*

10 ***Ibid.*** *Rhode Island's first written constitution became effective in 1843. Article I, section 15 provided, "The right to a trial by jury shall remain inviolate." This provision is in the Rhode Island Constitution in effect in 2016.*

11 *William E. Nelson, MARBURY V. MADISON, (Lawrence: University Press of Kansas, 2000),*

p. 18.
12 *Schwartz, p. 421.*
13 ***Ibid.***
14 ***Ibid.** pp. 421-422.*
15 ***Ibid.** p. 422.*
16 ***Ibid.***
17 ***Ibid.***
18 *Philip Hamburger, LAW AND JUDICIAL DUTY, (Cambridge: Harvard University Press, 2008), p. 2, 17-18. Hamburger makes the point that such questions are legal questions, which a judge has a duty to answer. The five judges in this case discharged their judicial duty.*
19 *Schwartz, p. 422.*
20 *Polishook, p. 22-27, especially p. 26.*
21 *Schwartz, p. 427.*
22 *Nelson, p. 7.*
23 *Schwartz, p. 428.*
24 *Hamburger, p. 433 n. 133.*
25 *Polishook, pp. 138-142.*
26 ***Ibid.** p. 139, especially note 21.*
27 ***Ibid.** p. 140, especially note 25.*
28 *James M. Varnum, THE CASE OF TREVITT V. WEEDEN, 1786, p. 39.*
29 ***Ibid.** pp. 44-46.*
30 ***Ibid.** p. 48.*
31 ***Ibid.** pp. 48-49.*
32 ***Ibid.** p. 49.*
33 ***Ibid.***
34 ***Ibid.** p. 51.*
35 ***Ibid.** p. 53.*
36 *Patrick T. Conley, "The Constitutional Significance of Trevett v. Weeden (1786), Bicentennial Day Address, May 3, 1976," p. 10. Conley is confident the delegates to the 1787 Constitutional Convention were aware of Varnum's argument, which was "a significant contribution to the development of American Constitutional thought." Conley, DEMOCRACY IN DECLINE, p.100.*
37 *Schwartz, p. 420.*
38 *Another excellent account of the events surrounding the **Trevett v. Weeden** trial is Patrick T. Conley, DEMOCRACY IN DECLINE: RHODE ISLAND'S CONSTITUTIONAL DEVELOPMENT, (Providence: Rhode Island Historical Society, 1977) pp. 98-99. Conley has written a well researched, thorough account of the events from Independence to Rhode Island's first written constitution. See pp. 80-100 for an account of the paper money issues which led to **Trevett v. Weeden**.*
39 ***Taylor v. Place**, 3. R.I. 299, 301 (1854).*
40 ***Ibid.***
41 *Rhode Island Constitution, Article 5.*
42 ***Ibid.** Article 6, section 1.*
43 ***Ibid.** Article 10, section.* ❖

You're fired!

continued from page 21

bases for recall of general officers (felony indictment, a misdemeanor conviction, or an Ethics Commission probable cause finding) has the advantage of self-authentication, providing voters with threshold conditions that can be objectively verified without protracted court proceedings.

While nobody is asking for this writer's advice, he would recommend adjusting the current procedures to achieve a better balance of these goals. When an elected official engages in misconduct, there should not be any time limits (either after the start or before the end of a term of office) to recall the official. Providence residents remember the agony of Plunderdome, in which a sitting mayor remained in office through years of a high-profile racketeering investigation, trial and conviction, leaving behind a stain the City is still removing fourteen years after he left City Hall for federal prison.

In contrast, the pot shots misfired by the Firearms (minor) Leaguers in 2013 exposed the havoc that outside groups with ideological agendas can wreak upon local government. For purely political or ideological recalls, time boundaries make sense; indeed, one can question whether any such recalls are necessary or appropriate when a public official must win re-election every two years.

The current recall effort in Providence might not provide a perfect "test case" to consider these issues. While the councilman's argument to the court and to the voters has been that his election entitles him to four years in office barring a Cianci-style conviction and imprisonment, the recall proponents are not litigating a single vote (as in Exeter) or a general grievance of voter dissatisfaction (as in Tiverton). Instead, the Providence petitioners have based their campaign on specific instances of actual or potential malfeasance, namely the councilman's arrest and indictment on multiple counts of embezzling more than $127,000 from a non-profit youth sports organization and misappropriation of campaign funds.[40] The specificity and gravity of the case for this recall help to explain the dramatic collection of 1,800 signatures in a single day (and 2,383 altogether) in a district in which the incumbent won his most recent election with 1,955 votes.[41] As this article

goes to press, the City Council set an election date of May 2, 2017.[42] With that said, there may be more legal challenges along the way in this unproven area, and perhaps a spirited campaign from the incumbent to hold onto his seat if and when the matter comes to a popular vote.

IV. Conclusion

Rhode Island pays a price every time an elected official squanders the public trust, and that price increases when the official in question refuses to step down unless or until imprisonment or some other legally required removal is complete or at least imminent. This lack of self-restraint may result from the official's personality or calculations of self-interest, but usually is publicly justified as the continued acceptance of an obligation to complete a term of office established by law following a free and fair election. The recall process offers a solution to this problem by using democratic elections to hold elected officials more accountable. Because the recall process has not yet been successful in Rhode Island, we do not completely know whether it improves accountability, creates chaos, or achieves some combination of the two. The current recall laws and ordinances at the state and local level strike a balance between Progressive and Burkean models of representative democracy, but those procedures could be improved by developing one set of (Progressive or broader) rules for cases of misconduct (especially if it is objectively documented) and a second set of (Burkean or stricter) rules for recalls arising from political or policy-based considerations.

For these reasons, the actions of a few thousand voters in a Providence neighborhood may foster a lively discussion of how democracy works (or should work) in the Ocean State. Stay tuned.

ENDNOTES

1 ***See Jackson v. Haugen**, PC-2016-4909, PC-2016-4910; **Jackson v. Haugen**, SU-16-0318, SU-16-0319.*

2 *Author's discussions with participants.*

3 ***See** NPR report, http://ripr.org/post/collecting-signatures-election-day-organizers-say-jackson-recall-effort-well-under-way.*

4 ***See** Providence Journal, March 4, 2017, p. A1 and Providence Journal, March 14, 2017, p. A2.*

5 *I appreciate the assistance of Peder Schaefer, Associate Director of the Rhode Island League of Cities and Towns and Dan Beardsley, soon to be Director Emeritus, who generously shared their vast knowledge and research.*

6 *At the time of the recall vote, the officials in question were midway through a 2-year term. All*

four sought re-election the following year. Two of them were successful, while two of them were not.

7 ***See*** *Westerly Sun, December 18, 2013, viewable at http://www.thewesterlysun.com/news/state/3166412-129/exeter-defeats-recall-attempt-for-gun-changes.html.;* ***Jon Marcus, R.I. Town Recall Over Gun Rights Rejected****, Time Magazine, December 15, 2013, viewable at http://nation.time.com/2013/12/15/r-i-town-recall-over-gun-rights-rejected/.*

8 ***See*** *"Petition Filed To Recall Two Woonsocket City Council Members, available on ABC6-TV website at http://www.abc6.com/story/24960812/petition-filed-to-recall-two-woonsocket-city-council-members.*

9 *The council member's opponent in the previous election wrote a letter to the editor discouraging the recall effort.* ***See*** *http://www.heraldnews.com/article/20150908/OPINION/150906990.*

10 ***See*** *http://www.valleybreeze.com/2015-07-01/woonsocket-north-smithfield/recall-petition-will-likely-fall-short#.WEsVL1xG6VC.*

11 *In 2008 some Lincoln citizens contemplated a recall of their Town Administrator, however it is uncertain whether the Town charter permitted a recall.*

12 *The following table provides summary information about Rhode Island cities and towns that allow recalls of elected officials. Except for Providence and Central Falls (which have appointed school boards), these communities also allow recall of elected school committee members:*

13 *Prov. Home Rule Charter § 208.*

14 ***Id.****, § 208(a).*

15 ***Id.****, § 208(b).*

16 ***Id.****, § 208(c, d).*

17 ***Id.****, § 208(e).*

18 ***Id.****, § 208.*

19 ***Id.****, § 208(f).*

20 ***In Gelch v. State Board of Elections****, 482 A.2d 1204 (R.I. 1984).*

21 ***Id.****, 482 A.2d at 1210-11.*

22 ***See*** *n. 12.*

23 ***Id.***

24 *Under Section 206 of the Providence Home Rule Charter, a sitting elected official becomes ineligible to remain in office for such reasons as resignation, moving out of the district or city, conviction of a felony (with all appeals exhausted) or is otherwise permanently incapable of performing his or her duties of office. As a result, former Mayor Cianci remained eligible to serve after his Plunderdome conviction because he still had a pending appeal; instead, it was his leaving the City to go to prison that triggered his removal from office.*

25 *Article XI of the Rhode Island Constitution provides for impeachment, but this power is assigned to the General Assembly and is limited to the possible removal of executive and judicial officers.*

26 *Joshua Spivack, "What is the history of recall elections?," viewable on the History Network's web page at http://historynewsnetwork.org/article/1660http://historynewsnetwork.org/article/1660.*

27 *Los Angeles enacted the nation's first recall ordinance in 1903, and Michigan and Oregon enacted the first state laws in 1908. "Recall of State Officials," (last updated March 8, 2016), viewable at http://www.ncsl.org/research/elections-and-campaigns/recall-of-state-officials.aspx.*

28 ***See*** *http://recallelections.blogspot.com/.*

29 ***See*** *http://www.ballotpedia.org/Recallwww.ballotpedia.org/Recall.*

30 ***Id.***

31 ***See*** *n. 17,* ***supra****.*

32 ***Id.***

33 ***See, e.g.****, Ariz, Const. Art 8, § 2; Col. Const. Art. XXI, § 1*

34 *In Georgia, for example, OCGA § 21-4-3(7) defines six types of malfeasance that can support a recall. The list does not include dereliction of duty or policy disagreements. Before the recall petition goes to the voters, a court must review (and approve) its legal sufficiency. OCGA, § 21-4-6.*

35 ***See*** *n. 20,* ***supra*** *(Georgia law – legal sufficiency).* ***See also*** *Minn. Stat. Ann., § 351.14-23 (clear and convincing evidence for recall of county officials).*

36 ***See, e.g.****, John E. McDonough, "Taking the law into their own hands," Commonwealth Magazine, Fall, 2002, viewable at http://commonwealthmagazine.org/politics/taking-the-laws-into-their-own-hands/.*

37 ***See*** *n. 18,* ***supra****.*

38 *Edmund Burke, Speech to the Electors of Bristol, November 3, 1774.*

39 *Letter from Mike Burk, Fall River Herald News, September 8, 2015, viewable at http://www.heraldnews.com/article/20150908/opinion/150906990. The Tiverton Democratic Chair's last name does not have an "e" at the end, so any family relationship to the British statesman is well-hidden.*

40 *Providence Journal, November 4, 2016, viewable at http://www.providencejournal.com/news/20161104/recall-effort-against-providence-city-councilman-kevin-jackson-to-move-forward.*

41 ***See*** *n. 4,* ***supra*** *and Rhode Island Board of Elections website for 2014 local election results, viewable at http://www.elections.ri.gov/elections/preresults/.*

42 *See n. 4, supra.* ❖

City/Town	Mayor/Town Manager Term	Recall?	Council Term	Recall?	Time After Start or Before End of Term	% of Electors	Charter Section
Burrillville	2-5	N	4	Y	6A/12B	15	2.07
Central Falls	2	Y	2	N	6A/6B	500/20	4-105
Charlestown	Indef.	N	2	Y	4A/6B	20	C-187
Coventry	Indef.	N	2	Y	6A	20/30	C-2.03
Cranston	2	N	2	Y	6A	20	2.08
Exeter	2	Y	2	Y	6A/6B	10	203
Glocester	NA	N	2	Y	6A	10	C14-16
Middletown	Indef	N	2	Y	6B	20	404
N. Kingstown	Indef.	N	2	Y	6A/6B	50V/20%	1206
N. Smithfield	2	Y	2	Y	6A	30%	II,2(b)
Pawtucket	2	Y	2	Y	3A/6B	10%	6-300
Providence	4	Y	4	Y	6A/12B	1000/15 300/20	208
Richmond	Indef.	N	2	Y	–	25	I,7
Smithfield	Indef.	N	2	Y	6B	15	9.01-9.06
Tiverton	Indef	N	2	Y	–	25	1209
Warren	Indef.	N	2	Y	6B	500	2.04
W. Greenwich	Indef.	N	2	Y	6A	30	202
W. Warwick	Indef	N	2	Y	6A/6B	25	2101-06
Woonsocket	2	Y	2	Y	6B	10	XVI,2,8
State	GO-4	Y	GA-2	N	6A/12B	3/15	IV,1

As noted in the bottom row, the Rhode Island Constitution permits recall of general officers, but not General Assembly members.

In Memoriam

Joseph F. Baffoni, Esq.
Joseph F. Baffoni, Esq., 90, of Narragansett passed away on March 1, 2017 surrounded by his loving family. He was the son of the late Frank and Anita (Fanella) Baffoni and beloved husband of Clare E. (Beecher) Baffoni and the late Mary (Lucca) Baffoni. Joe was a Navy Veteran of WWII serving in the Pacific Theater. He graduated from Providence College and then went on to Boston College to earn his Doctor of Jurisprudence degree. He was a practicing attorney until 1991, when he was appointed by the Governor to be an Adjudicatory Hearing Officer for the Department of Environmental Management. He was a member of the Rhode Island Bar Association and American Bar Association. He belonged to the Knights of Columbus and The American Legion. Joe was an avid golfer and a long-time member of Exeter Country Club. He also loved playing High Low Jack and watching the Providence College Friars and the New England Patriots. Joe was extraordinarily kind, loving, incredibly quick witted and the "ultimate gentleman." He is survived by his children, Joseph Jr. of CO, Marie (James) Maguire of ME, Robert (Christine) of NC, and David (Sharon) Baffoni of NC. He is also survived by his stepchildren, Laurie (Ken) Leonard of Narragansett, David (Naoko) Chiaverini of NY, and Leanne (Steve) Lasher of East Greenwich. He was the loving Papa of 9 grandchildren and 2 great grandchildren. He is also survived by his sister Jennie Gleason of NC. He was predeceased by his sisters Mary Chiulli and Nancy Fazio.

William R. Harvey, Esq.
William R. Harvey, 70, of Middletown, died Thursday, January 5, 2017, at Miriam Hospital in Providence. He was the husband of Betty Lou Oakley Harvey. Born on January 28, 1946 in Newport, he was the son of the late William Ward and Lynette (Beattie) Harvey. In addition to his beloved wife of 47 years, William is survived by his children, William W. Harvey II and his wife, Karen Harvey, of Portsmouth, Bethany H. Stewart of Saunderstown, and Ryan D. Harvey and his wife, Alexis Harvey, of Boston, MA. Bill had eight grandchildren, William, Shane, Maxwell, Brianna, Stephan and David Harvey, and Beau and Ruby Stewart. He is also survived by his sisters, Lynn H. Summers and her husband, Daniel Summers, of Iowa City, IA, and Anne H. Lawton and her husband, Edward Lawton, of Holliston, MA. He also leaves behind his Oakley brothers and sisters-in-law, many nieces and nephews, cousins, and his Aunt, Joan (Beattie) Klaserner. After two years at Rogers High School, he transferred to, and graduated from, The Governor's Academy in South Byfield, MA. Bill later graduated from Denison University, and Suffolk Law School. In between his university and law school years, Bill served in the Army National Guard. Bill practiced law in Newport for over 45 years. For many years he practiced alongside his father, W. Ward Harvey, at Sheffield & Harvey. Years later the firm transitioned into Harvey, Carr & Hadfield, and he practiced alongside his son, William W. Harvey II. He took great pride and pleasure in having been blessed with sharing his professional life with both his father and his eldest son. Bill was passionate about being active in the community he loved. In the past he served for eight years on the Middletown Town Council. He was the president of the Potter League for Animals, and was instrumental in its relocation to its present site. He served on the Boards of Newport Hospital, The Newport County YMCA, The Preservation Society of Newport County, The Rhode Island Foundation, and Newport Federal Savings Bank. He was actively involved in capital campaigns for The Maher Center and Newport Hospital. He was presently on the Board of Savings Institute Bank & Trust, was serving as legal counsel to The Newport County Chamber of Commerce, and was a member of the YMCA finance committee.

V. Duncan Johnson, Esq.
V. Duncan Johnson, 78, passed away on March 14, 2017 in Montclair, NJ. Following his graduation from Harvard College (1960) and Harvard Law School (1963), he became a prominent corporate and banking attorney, spending his entire career at the Providence law firm of Edwards Angell Palmer & Dodge (now Locke Lord). He is survived by his wife of 53 years Diana L. Johnson; his children Alexandra Sharma (her husband Amit) and Mark Adam Johnson; his sister Elizabeth Prevost, and his grandchildren Arjun, Anika, Hadley and Arden. He was a mentor to many and devoted to philanthropy. He served on numerous boards, among them the Rhode Island School of Design, the Providence Foundation, the Cummings School of Veterinary Medicine at Tufts University, the Rhode Island Hospital, Crossroads Rhode Island and the Paul J. Aicher Foundation in Hartford.

John D. Lynch, Esq.
John D. Lynch passed peacefully surrounded by his family on March 14, 2017 after a long and difficult battle with Alzheimer's. John is survived by his wife of 55 years, Patricia M. (Washburn) Lynch and his ten children: Susan Lynch McKnight and her husband Jamie, of Narragansett; the Honorable Karen Lynch Bernard, Associate Justice of the RI Family Court, of Warwick; Bethany A. Furtado, Chairwoman of the Warwick School Committee, and her husband Gil, of Warwick; Kristen E. Lynch of Warwick; Deborah L. D'Orsi and her husband Scott, of Sudbury, MA; Tricia A. McCool and her husband Steve, of West Roxbury, MA; John D. Lynch, Jr., Esquire and his wife Demonica, of Warwick; Jennifer L. Buckley, Esquire and her husband Jerry of Warwick; the Honorable Erin Lynch Prata, State Senator District 31, and her husband Joe, of Warwick; and Joseph R. Lynch and his wife Danielle, of Belmont, CA. He also leaves his 27 beloved grandchildren: Jimmy and Paige McKnight; Robert, Owen and Georgia Bernard; Matthew, Nicolas and Zachary Furtado; Raymond Pendergast; Hope, Will, Tess, Drew and Luke D'Orsi; Jack, Corinne, Devlin, Jimmy and Catherine McCool; Julia Lynch; Carly, Ryan, Ben and Danny Buckley; and Caleb, Charlie and Nolan Lynch. John was the son of the late James F. Lynch, a former Warwick Police Chief, and Rita M. (Craig) Lynch. He also leaves: his sisters Dorothy Horan and Rita M. Lynch Barbone; his brother James C. Lynch and his wife Joyce; his sister-in-laws Nancy Bessette, formerly of Cranston and Judy Mullarkey and her husband Ed of Rocky Hill, CT. He was the brother of the late Richard Lynch. John leaves many nieces, nephews and good friends. He was a lifelong Warwick resident and was very proud of his Apponaug roots. He was a graduate of LaSalle Academy '57, where he was captain of the football team, Boston College Class of '61, and Suffolk University School of Law Class of '64. John practiced law for over 50 years at his law office on Tollgate Road in Warwick, proudly practicing over the last few decades with his

children Karen, John Jr., Jennifer and Erin. He was a member of the RI and Federal Bar Associations; Kent County Bar Association; RI Family Law Inns of Court; RI Trials Lawyers Association; and the National Association of Criminal Defense Attorneys. He was recognized as the Boston College Man of the Year by the Boston College Club of RI and was appointed by Governor Noel as a member on the original Judicial Tenure and Discipline Committee. He was a past associate member of the Warwick FOP, Knights of Columbus, Warwick Elks, Potowomut Golf Club and the RI State Police Auxiliary. He was very proud to have been appointed as an Honorary Lt. Colonel of the RI State Police by Col. Walter E. Stone.

Michael J. McAtee, Esq.
Michael J. McAtee, 37, of Cumberland, RI passed away on Tuesday, February 14, 2017, surrounded by his loving family. He is the son of retired Superior Court Magistrate William J. and Joyce A. McAtee of Cumberland. Michael graduated from St. Raphael Academy, Providence College and Roger Williams School of Law. After graduation from law school, Michael worked for the firm of Robinson & Clapham in Providence before leaving to establish his own firm. Michael found his true calling as a staff attorney for AFSCME Council 94. Michael had fond memories of working for the Pawtucket Red Sox during the Ben Mondor and Mike Tamburro years. He was a member of the Cumberland Democratic Town Committee, RI Bar Association, MA Bar Association and the Pawtucket Bar Association. Besides his parents, he leaves his sister, Katie A. McAtee (Steven Lynch) of East Providence, his beloved Golden Retriever, Charlie, and his loving aunts, uncles, cousins and many friends.

Benjamin A. Mesiti, Esq.
Benjamin A. Mesiti, 41, of Johnston, passed away on Monday, February 27, 2017. He was the beloved husband of Ashley (D'Amico) Mesiti. Born in Providence, he was a son of the late Benito I. and Shirley M. (Fracasso) Mesiti. Benjamin graduated from RI College then went on to study at the New England School of Law in Boston and became an accomplished attorney for over 15 years. He was the proud owner and operator of Mesiti Law Offices in Johnston for 6 years and also owner of State Properties, Inc. Brokerage in Johnston. Benjamin was a man of many talents as he was a singer, musician, songwriter, music producer, and DJ. He performed locally at many venues throughout RI. His favorite pass time was to sit down at his grand piano, and write and sing music. Besides his wife, he is survived by his cherished daughter Arabella Shirley Mesiti. Ben was the dear son-in-law of Paul D'Amico of Woonsocket and Annmarie Rainone and her husband Joseph of North Providence. He also leaves behind many aunts, uncles, cousins, and close friends.

Lloyd A.G. Rustigian, Esq.
Lloyd A.G. Rustigian, 86, of North Providence and Pompano Beach, FL, passed away on Sunday, March 5, 2017. He was the beloved son of the late Jasper and Agnes (Yegiaian) Rustigian; dear brother of the late Ralph B. Rustigian, Alice C. Anjoorian, Norma A. Shooshan, and Norman J. Rustigian; and loving uncle to six nephews and nieces, Harry Anjoorian Jr. of VA, Jeffrey A. Anjoorian of VA, Karen I. Anjoorian of VA, Sonya E. Shooshan of MD, Michael B. Shooshan of MA and the late Diane A. Shooshan; and is also survived by his beloved Barbara DeDonato of North Providence and her sons Joseph (Paula) of North Providence and John (Kristyn) of Cumberland.

Woodrow W. Tucker, Esq.
Woodrow W. Tucker, 91, of Wakefield passed away Thursday, January 26, 2017. He was the husband of Marjorie (Jones) Tucker for 67 years. Born in South Kingstown, he was the son of the late Percy H. and Annie R. (Tefft) Tucker. Mr. Tucker was co-owner and president of South County Real Estate Title Insurance Co. for many years before retiring in 1992. He received his education at South Kingstown High School and Northeastern University School of Law, and was admitted to the bar in 1950. He served South Kingstown in many capacities – the first Probate Judge, Town Moderator and Union Fire District Solicitor. An attorney for 50 years, he was President of Washington County Bar Association, Pettaquamscutt Credit Union, Patrons Fire Insurance Company and Phi Gamma Pi Fraternity. A board member for Rhode Island State Grange Credit Union and Farmers and Traders Life Insurance, he also served on the executive committee of the Rhode Island Bar Association. He was a Paul Harris Fellow of Wakefield Rotary Club and held many leadership positions in the Grange across local, county, state and national settings, including as National Ritualistic Officer. He loved South County – its natural beauty, agriculture, sea shore – and traveled internationally in retirement. Besides his wife, he is survived by his son, Keith B. Tucker of Exeter; four daughters, Pamela L. Sawin and her husband, Craig, of Foxborough, MA; Kimberly J. Smith and her husband, John, of Chepachet; Christine D. Tucker and her husband, Brian McDonnell, of Coventry; and Suzanne E. Tucker of Hope Valley; and six grandchildren, Jennifer Witham, Christopher Sawin, Christina and Meghan Smith, Hannah and Sarah McDonnell.

James Vincent Solis, Esq.
James Vincent Solis, Esq., of Westerly, passed on January 25, 2017, at the age of 56. He was the beloved husband of Laura (Klanian) Solis and the devoted son of the late Julio and Rita Solis. James was born in Bronx, NY. He graduated from Westerly High School and received a double Bachelor's degree Summa Cum Laude in Philosophy and Logic from the University of Rhode Island. In 1988, he received his Juris Doctorate degree from Rutgers University School of Law, Camden, NJ. He was admitted to practice in all state and federal courts in Rhode Island, was a member of the Rhode Island Bar Association, Washington, D.C. Bar Association and the Washington County Bar. He was honored to participate in the prestigious group N.A.E.L.A., the National Academy of Elder Law Attorneys. James served the local community through his solo law practice (wills, trusts, estates, taxation) for over 25 years. He was passionate about his electric guitars and was very well read in music, physics, philosophy and religion. In addition to his devoted wife, he leaves three brothers: Dr. Jon Solis (Patti) of Westerly, Joseph Solis (David) of Attleboro, MA and Jason Solis of Pawcatuck, CT. He is survived by several loving nieces and nephews and a large extended family.

Caption This! Contest

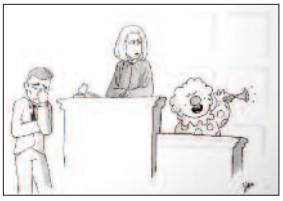
We will post a cartoon in each issue of the *Rhode Island Bar Journal*, and you, the reader, can create the punchline.

How It Works: Readers are asked to consider what's happening in the cartoon and submit clever, original captions. Editorial Board staff will review entries, and will post their top three in the following issue of the Journal, along with a new cartoon to be captioned.

How to Enter: Submit the caption you think best fits the scene depicted in the cartoon by sending an email to kbridge@ribar.com with "Caption Contest for (issue months here)" in the subject line.

Deadline for entry: Contest entries must be submitted by the 1st of the month prior to the next issue. For example, for the May/June issue cartoon, captions must be received by June 1st, to be published in the July/August issue.

By submitting a caption for consideration in the contest, the author grants the Rhode Island Bar Association the non-exclusive and perpetual right to license the caption to others and to publish the caption in its Journal, whether print or digital.



Winning captions for March/April issue cartoon

Permission to treat the witness as hilarious?

— MATTHEW BLAIR, ESQ.

The other 19 were driving getaway, I was just the horn guy.

— LAURIE CHRISTENSEN, ESQ.

Sign Up For Your 2017-2018 Bar Committee Membership Today!

If you have not yet signed up as a member of a 2017-2018 Rhode Island Bar Association Committee, please do so today. Bar Committee membership runs from July 1st to June 30th.

Even Bar members who served on Bar Committees this year must reaffirm their interest for the coming year, as Committee membership does not automatically carry over from one Bar year to the next. Bar members may complete a Committee registration form online or download and return a form to the Bar. Please join no more than three committees.

To sign up for a 2017-2018 Bar Committee, go to the Bar's website at ribar.com and go to the MEMBERS LOGIN. After LOGIN, click on the BAR COMMITTEE SIGN-UP link.

As an alternative, you may download the Bar Committee Application form appearing above the button and mail or fax it to the Bar Association. Please only use one method to register to avoid duplication. If you have any questions concerning membership or the sign-up process, please contact the Bar's Member Services Coordinator Erin Bracken at 401-421-5740.

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