Rhode Island Bar Journal

Rhode Island Bar Association Volume 70. Number 6. **May/June 2022**

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The Claiborne Pell Bridge, also referred to as the Newport Bridge, is a suspension bridge operated by the Rhode Island Turnpike and Bridge Authority that connects the city of Newport on Aquidneck Island and the Town of Jamestown on Conanicut Island, and is named for longtime Rhode Island U.S. senator Claiborne Pell who lived in Newport.

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Diversity, Equity, and Inclusion

Lynda L. Laing, Esq.
President
Rhode Island Bar Association

Our DEI Agenda identifies ways to advance inclusion and diverse perspectives in RIBA activities, services, and programs to affirm our Bar's commitment to DEI.

RIBA has adopted a Diversity, Equity, and Inclusion (DEI) agenda to help the legal profession that is still struggling with these issues. We were all reminded of this struggle when, on March 8, 2022, the Boston Globe wrote "a Black student at the Roger Williams University School of Law says a white sheriff's deputy mistook her for a defendant when she tried to enter a courtroom to represent a client as part of the school's criminal defense clinic." Our DEI Agenda identifies ways to advance inclusion and diverse perspectives in RIBA activities, services, and programs to affirm our Bar's commitment to DEI. It also attempts to advance RIBA leadership opportunities to attorneys of diverse backgrounds and promote interest in the practice of law to diverse populations.

RIBA created a Task Force to focus on four areas: (1) Leadership and Pipeline, (2) Messaging and Communication, (3) Education, and (4) Outreach. We had over 40 members that were on the Task Force chaired by Judge Rekas Sloan. They worked tirelessly for over a year to create a list of recommendations to the Executive Committee. Among the Task Force's efforts was a survey that all members had the opportunity to complete and submit. The survey was eye opening concerning the treatment of diverse groups. In August 2021, the Task Force submitted a Report of Recommendations to the Executive Committee. The Executive Committee reviewed the Recommendations and made modifications to the DEI Agenda which it later approved.

The DEI Agenda includes creating a DEI committee to regularly discuss DEI matters and make recommendations that will foster a sense of equity and inclusion among the members. The committee will also propose CLE and Annual Meeting programming, networking events with affinity legal organizations, and resources for the membership. We encourage all members to sign up for this committee.

A DEI Pledge was adopted so that all members and firms could participate in a pledge to show their commitment to increasing DEI in the legal profession. The Pledge is aspirational and completely optional and will offer helpful suggestions to members to achieve this goal. We hope the Pledge will increase diversity within the profession, ensure equity in internal employee policies and practices, promote the inclusion of all types of individuals at all levels in the profession, and ensure equity in availability and accessibility of legal services provided. This Pledge is posted on our new DEI web page, and it also includes all of the our DEI newsletters along with other DEI related information and links. You can visit the new DEI web page under For Attorneys, and Diversity, Equity, and Inclusion.

The EC also approved a DEI Action Plan Checklist. This Checklist is voluntary and hopes to help by including attorneys of diverse backgrounds and from underrepresented identity groups to become more active in RIBA. We also want to foster networking opportunities for law students and hope to increase their participation in RIBA. We hope these efforts will encourage attorneys, and new attorneys, to stay in Rhode Island and practice law.

RIBA has also created points of contact for DEI related inquires. We hope the community will use our Speakers Bureau for legal topics related to DEI such as Title VII, employment law, civil rights, and harassment in the workplace. RIBA is expanding the Lawyers in the Classroom program to include DEI topics such as Title VII and how it relates to students and schools, equal opportunity, and affirmative action topics. If any members are willing to volunteer to speak on these issues, please sign up for our Law Related Education programs. We also are encouraging CLE and Annual Meeting programing to include DEI topics. This year's annual meeting has two such programs. A panel consisting of Justice Long, Justice Rekas Sloan, and Justice Stuhlsatz along with RIBA members Hamza Chaudary and Josh Xavier will discuss the value of multi-culturalism and representation in all aspects of the legal system and will also address how organizations can attract and retain employees from a broad range of backgrounds. We end the Annual Meeting with Keith and Dana Cutler who will speak on Authentic Inclusiveness and discuss micro-aggressions, implicit bias, and good

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intentions gone bad.

RIBA hopes by adopting the DEI Agenda, we are showing our support of the advancement of attorneys from diverse backgrounds to positions of leadership and creating a supportive, equitable, and inclusive climate for attorneys to practice in our State. I am pleased and proud more than anything else during my term, that RIBA was able to move forward with the DEI Agenda. ◊

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Membership in the Rhode Island Bar Association's Lawyer Referral Service (LRS) is an excellent and inexpensive way to increase your client base and visibility within the community while expanding public access to legal representation. Optional special LRS projects include: **Senior Citizen Center Clinics** throughout the year and the state; **Reduced Fee Program** offered to qualifying clients; and the **Arts Panel** for local artists' legal needs all offer unique opportunities for increasing your business while you provide an important public service to your community.

Applications and more detailed program information and qualifications may be found on our website ribar.com in the Members Only section. You may also request information by contacting Public Services Director Susan Fontaine at 401-421-7799 or email sfontaine@ribar.com.

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 any article, editorial, column, or book review, except to the extent that, by publication, the subject matter merits attention. Neither the opinions expressed in any article, editorial, column, or book review nor their content represent the official view of the Rhode Island Bar Association or the views of its members.

Article Selection Criteria

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

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Grateful

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

"… maybe it will help remind us all not to be afraid to express gratitude to those we love and have helped us along the way…"

I have previously mentioned that my wife and I pick up our second and third grade grandsons from school in Johnston every Friday and bring them to their piano lessons in Providence. When we first started doing this, we would ask them after they got in the car, "How was school today?" The answer we almost always received was, "Fine." Not very illuminating.

My wife came up with the idea of asking them to each tell us one thing that they are grateful for. It warmed our hearts recently when our second grader said that he was grateful because he was getting to spend time with us. These things just melt your heart.

Gratitude is something I have been trying to focus more on as I get older. There are many things I am grateful for in my life, including the obvious ones such as my wife, our children, our grandchildren, and our dog. But, I'm also grateful for many others who have worked with me over the years including my legal assistant, who has worked with me for the last 24 years, my former law partner of over 20 years, Bob Schacht, my current law partner for the last 7 years, Leah Donaldson, and the wonderful staff at the Rhode Island Bar Association. And, of course, I'm extremely grateful to the volunteers who work with the Volunteer Lawyer Program on a pro bono basis, the many volunteers who serve the Rhode Island Bar Association in various capacities, the Fellows of the Bar Foundation who have all made a generous financial commitment to the Foundation, and the Board of Directors and the Officers of the Foundation who invest their time and talents to safeguard the monies entrusted to the Foundation and ensure they are properly used in order to maximize help to disadvantaged persons who need access to justice.

In my predominantly business oriented legal practice, I think most of my clients believe that they are fully expressing their gratitude through the timely payment of my fees. And, for the most part, I guess this is true (and I am grateful for timely payment!). So, it is unusual when a client reaches out to express gratitude in a special way.

About 25 years ago, I handled a hotly contested matter for a client (a lawyer) that resulted in a binding arbitration award in my client's favor of over $200,000. The award was eventually confirmed in both the Superior and the Supreme Courts. Unfortunately, however, my client never collected in whole or in part because after the Supreme Court decision, the defendant went into bankruptcy. Both my client and I were very disappointed. My client paid my legal fees, but in a most gracious and thoughtful act, my client also wrote the following to me in the form of a Shakespearean sonnet:

SONNET TO MY LAWYER

If it were but for love of cash (or worse)
That you embarked to carry on my fight
(and thus enhanced the greening of your purse)
Your work would no less warrant my delight!

A fool alone might ignorantly curse
The dearth of zealots taking on his plight:
The measure of the poet is the verse
And never what inspired him to write!

With every dollar that I might disburse–
Whether the outcome is the dreaded blight
Or joyous feast–with thanks may I immerse
My payment for a job that was done right.

For heartfelt thanks are warranted when one
Can say no less than, "t'was a job well done!"

A lawyer and a poet! I've kept this thoughtful and creative thank you sonnet in my desk drawer for over 25 years. I thought it might be nice to share it with those of you who take the time to read my President's Messages. And maybe it will help remind us all not to be afraid to express gratitude to those we love and who have helped us along the way with the many challenges we all face in our lives. ◊

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Rhode Island Bar Foundation

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

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

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May a State Court Adopt a Common Law Duty to Install Passenger Seatbelts on School Buses?
PART 2

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In short, there is a crucial distinction between an agency determination that there is no need to adopt a safety requirement, and an agency determination that states should not be permitted to adopt such a requirement.

Introduction

At the end of Part I of this article, I concluded that the federal regulation of seatbelts in school buses would not preempt a state tort action premised on the failure to install passenger seatbelts in a school bus. But I noted that: "The Rhode Island General Assembly also regulates school bus design, and like the federal standard, state law and regulation require a seatbelt for the driver's seat in conventional standard-size school buses, but are silent with respect to passenger seats. Whether the Rhode Island Supreme Court would be free to recognize a common law duty effectively requiring manufacturers to install passenger seatbelts in conventional size school buses operated in Rhode Island will be addressed in Part II of this article." This is that article.[1]

Part I was about the relationship of the federal law-making power with state law-making power. This Part II is about the relationship of Rhode Island's state legislative law-making power with the state judicial law-making power as a common law court. More specifically, the power to recognize new legal duties and, thus, new common law causes of action. And the place to start is what the General Assembly has said with respect to passenger seatbelts for the vehicles it has designated to transport students.

State Statutory on Seatbelts for Students

There is a recognizable scheme setting forth the seatbelt requirements for three distinct types of vehicles designated to transport school children: *school buses; pupil transportation vehicles*; and *school extra-curricular vehicles*. They are distinguished by the number of persons they are designed and constructed to transport.

A "school bus" is defined as any motor vehicle, whether privately or publicly owned, that is operated for the purpose of transporting children "to or from school."[2] If, however, the motor vehicle being used to transport children to or from school has been designed and constructed to seat only seven students in addition to the driver, it is designated as a "pupil transportation vehicle."[3] To transport children to school and back a city or town must use either a school bus or a pupil transportation vehicle–a school bus if there will be eight or more students, either a school bus or a pupil transportation vehicle if there will be seven or less.[4] The third category of student transportation vehicles designated by the General Assembly are called "school extra-curricular vehicles" and may be used, naturally, to carry students from school to extra-curricular activities and back.[5] A "school extra-curricular vehicle" is larger than a pupil transportation vehicle, but smaller than a school bus, and is designed to transport no more than 14 students.[6]

Another significant distinction between the three types of vehicles under state law is the number of seatbelts required for each. Both "school extra-curricular vehicles" and "pupil transportation vehicles"–smaller than "school buses" and designed to carry no more than fourteen and seven students, respectively–must have "safety belts" for each student passenger in addition to the driver.[7] In contrast, "school buses"–designed and constructed to seat more than fourteen students–are only required to "be equipped with a driver's seat safety belt."[8] The school bus seatbelt statute, R.I. Gen. Laws § 31-23-41, does not even mention passenger seatbelts. The first question is how courts should interpret that silence.

Silence, in Context, Has Meaning

The General Assembly expressly required that school buses have a seatbelt for the driver, just as it did for pupil transportation vehicles and school extra-curricular vehicles. But while the legislature expressly required passenger seatbelts on the two smaller vehicles, it did not require them on school buses–the statute is noticeably silent. To determine whether the Rhode Island Supreme Court might recognize a common law duty to install passenger seatbelts on school buses–where the statute addressing the seatbelt requirements for school buses is silent–the analysis starts with interpreting that silence. In theory there are three possibilities, but only two of them are reasonable ones.

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While it is possible that the General Assembly simply did not consider whether school bus passengers might benefit from seatbelts, notwithstanding that it did for the passengers on the smaller school transportation vehicles, that seems an unlikely and unreasonable conclusion. In fact, it is virtually inconceivable that legislators would consider the safety benefits of a seatbelt for the driver of the school bus, but not the students. Eliminating that possibility, the General Assembly's silence only reasonably means one of two things: that the General Assembly affirmatively decided that conventional school buses *should not have* passenger seatbelts, or, less stringently, that the added safety they provided *did not warrant* the additional cost requiring them would impose on cities and towns. Either conclusion is buttressed by a well-established principle of statutory construction.

Where two or more statutes address the same or a closely related subject matter, courts view them collectively as a legislative scheme that must be examined in its entirety to discern the legislature's intent, requiring that each individual statute be read, not in isolation, but in context.[9] The three relevant statutes, R.I. Gen. Laws § 31-22-11.6(b)(2), § 31-22.1-3(2), and § 31-23-41, each address a like subject matter–seatbelt requirements for legislatively designated student transportation vehicles. Reading them together, they show the General Assembly expressly included a passenger seatbelt requirement for pupil transportation vehicles and school extra-curricular vehicles, but not for school buses in two of the three vehicles, an omission that is most naturally seen as deliberate and purposeful,[10] conferring affirmative legislative meaning to [section] 31-23-41's silence. School buses are not required to have passenger seatbelts. By expressly including a passenger seatbelt requirement for all but school buses, the General Assembly evinced its determination that they were necessary in the former but not the latter. As described in Part I, for several decades the NHTSA has consistently concluded that "compartmentalization,"[11]–the specific seating configuration, seat construction, restraining barrier, and impact zone requirements for standard-size school buses (over 10,000 lbs. for federal purposes and seating more than fourteen students for state)– provides a level safety obviating a need for a passenger seatbelt requirement. Section 31-23-41, read in context with § 31-22-11.6(b)(2) and § 31-22.1-3(2), demonstrates that, as a matter of state policy, the General Assembly agrees.

That much is clear. The only genuine interpretive question is whether the General Assembly's silence indicates an intention that, as mentioned earlier, school buses *should not* have passenger seatbelts, or only that they *need not* have them. But the answer to that question is not essential to the remaining analysis, because either way the Rhode Island Supreme Court would almost certainly decline to exercise its common law authority to recognize a duty to install passenger seatbelts on school buses–and effectively impose a state passenger seatbelt requirement for school buses where the General Assembly has not. The reason lies within the Court's interpretation of the state constitution's Separation of Powers and Education Clauses.

Constitutional Restraints

Articles 5 and 12 of the state constitution, the Separation of Powers and Education Clauses, respectively, create constitutional boundaries between the legislative and judicial powers. Although the boundaries created by article 5 are somewhat opaque and malleable, the boundaries created by article 12 are well defined.

In fact, they might even be characterized as absolutist.

Article 5 separates state governmental power into "three separate and distinct departments: the legislative, executive and judicial."[12] The legislative and judicial boundary may be violated in one of two ways: where one branch "interfere[s] impermissibly" with the other branch's constitutionally assigned functions,[13] or where one branch "assumes the performance" of a function that has been entrusted to another.[14] Both Rhode Island's legislative and judicial departments possess the governmental power to create new causes of actions–the General Assembly by enacting statutory law, and the Rhode Island Supreme Court by its authority to develop the state's common law. The Supreme Court, however, has consistently cabined its common law authority to create new duties and causes of action by defining the power to create new cause of action as a legislative one.[15] The Court has consistently explained that principles of judicial restraint "prevent [courts] from creating a cause of action for damages in all but the most extreme circumstances."[16] Notwithstanding its original and ancient common law jurisdiction, the Court frequently states the judiciary's "duty [is] to determine the law, not to make the law[,]"[17] elegantly explaining that to do "otherwise, even if based on sound policy and the best of intentions, would be to substitute our will for that of a body democratically elected by the citizens of this state and to overplay our proper role in the theater of Rhode Island government."[18]

When the Court describes the power to create a new cause of action as a "legislative one,"–"except in all but the most extreme circumstances"–it is not clear what those extreme circumstances might be. One possibility is that the Court retains it common law authority to modernize, develop, and extend traditional common law tort concepts in areas where the General Assembly has not previously legislated–areas of policy that become smaller in number every year. Passenger seatbelt policy for school buses, however, is not one of those policy areas. The General Assembly has considered and enacted a seatbelt policy for school buses, and whether § 31-23-41 is interpreted to reflect a state policy that passenger seatbelts *may not be installed* on school buses, or simply that school bus manufacturers *do not have a statutory duty to install them*, the Court's precedents make it virtually certain that it would not effectively "substitute [its] will" for the General Assembly will by adopting directly a *common law duty to install them*. I think the Court would readily recognize that would be "to overplay [its] proper role" under the general separation of powers established by article 5.

Moreover, the Court's deferential approach to exercising its judicial law-making power would be further amplified by the Education Clause. A more specific separation of powers design, article 12, section 1, provides that "it shall be the duty of the general assembly to promote public schools…and to adopt all means which it may deem necessary and proper to secure to the people the advantages and opportunities of education."[19] The Court considers this clause to "expressly and affirmatively reserve to the legislature sole responsibility in the field of education"[20] that vests "the General Assembly with plenary power"[21] with "virtually unreviewable discretion"[22] on matters of education. In the Court's view, it is not even empowered to "review the General Assembly's performance of its constitutional duties" under the clause,[23] because it provides "no standard or authority" contemplating judicial review.[24]

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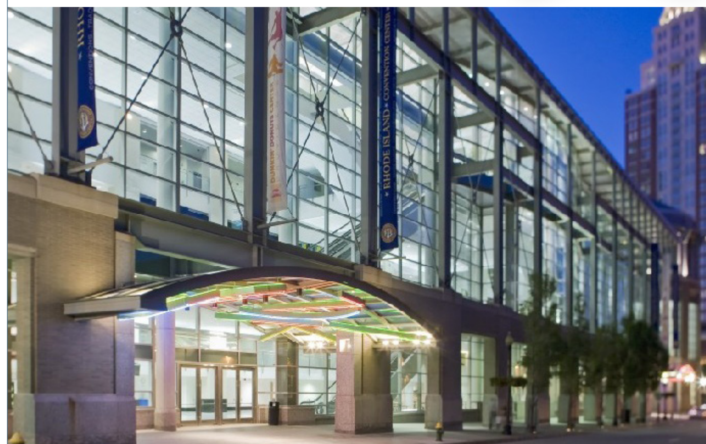
JUNE 23 - 24



Don't Miss Out on a Great Lineup of Annual Meeting Workshops!

The Rhode Island Bar Association Annual Meeting is on Thursday, June 23 and Friday, June 24, 2022 and will once again be held ***in-person*** *at the Rhode Island Convention Center. Here are a few highlights of our 33 fantastic workshops:*

Estate Planning Fundamentals: Wills, Trusts, and Powers of Attorney
Learn the fundamentals of estate planning documents, including wills, trusts, and powers of attorney, plus the advantages and disadvantages to using different types of trusts, as well as ethical considerations in working with clients who may have diminished capacity.

Knowledge is Power: Avoiding & Managing Burnout for New Lawyers
Learn how to cope with the stressors that can impact your daily life, how the practice of law can impact the well-being of newer attorneys, and what seasoned attorneys can do to support them.

Lawyers as Equitable Employers and Leaders
Learn how lawyers can create and support a diverse, equitable, and inclusive workplace, as well as equitable hiring, equitable HR policies and procedures, reasonable accommodations, accessibility, ADA compliance, handling of complaints of discrimination and harassment, and achieving an inclusive workplace.

Medicaid Crisis Planning
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Under the state constitution, the Judiciary is simply "not the branch of government that the framers charged with implementing a system of education,"[25] because "the arena of education policy presents many different dilemmas that are not easily resolved."[26] Recognizing that reasonable minds may reach many different conclusions on how the state's children are best educated, the Court has held that, as the unelected branch of government, it is "not suited to make these difficult policy decisions for the people of Rhode Island."[27] And thus, the Court has consistently refrained from "imposing [its] own judgment over the Legislature in order to determine whether a particular policy benefits public education."[28]

Integral to the state's educational system is deciding whether the safest and most effective way to transport children to school requires passenger seatbelts on school buses.[29] The General Assembly has at a minimum decided it does not. If the Court were asked to exercise its common law authority and recognize a duty that nevertheless required manufacturers to install seatbelts on school buses, it is beyond cavil that it would not. Given its respect for the state separation of powers, it would, in the Court's own words, "decline to interfere with the General Assembly's prerogative to fashion the policies that it, as a collective representative of the people, deems most appropriate for the establishment and maintenance of the state's public schools."[30] It might be said that the Rhode Island Supreme Court's common law power to recognize a legal duty to equip school buses with passenger seatbelts has been "preempted" by the enactment of § 31-23-41.

The Legislature Did Have a Choice–Right?

The analysis of the General Assembly's silence with respect to passenger seatbelts in § 31-23-4 that I have undertaken, presumed that the General Assembly had a choice to require passenger seatbelts in school buses or not, and chose not to. It was not until "late in the game" that I wondered whether that was true. Could a legislature in fact require school buses to have passenger seatbelts? Or would such a law be preempted by FMVSS 208? If it would be preempted, then § 31-23-4 did not represent a legislative choice–and all that precedes this section is not worth much. Thankfully, it turns out that under relevant United States Supreme Court precedent, FMVSS 208 does not preempt a state legislature from enacting a statutory requirement that school buses have passenger seatbelts.

As set forth in Part I, like § 31-23-4, FMVSS 208 requires a seatbelt for the school bus driver but not the passengers, remaining silent in that regard.[31] Litigants have argued in various courts that FMVSS 208's 'regulatory silence' is tantamount to an affirmative statement that passenger seatbelts *are not required* on school buses, and therefore state statutes that would make them required have been expressly preempted by Congress text in the National Traffic and Motor Vehicle Safety Act.[32] The concept that regulatory silence constitutes affirmative regulation for preemption purposes, however, has been rejected by the United States Supreme Court.

The Act's express provision provides that, for safety standards promulgated pursuant to the Act, "a State…may prescribe or continue in effect a standard applicable to the same aspect of performance of a motor vehicle or motor vehicle equipment *only if the standard is identical to the standard prescribed under this chapter*."[33] By its terms, therefore, the Act expressly pre-

empts state statutes and regulations that prescribe standards more demanding than the federal standard.[34] The argument might be made that the requirement of a seatbelt only for the driver is tantamount to "an explicit statement that passenger seatbelts are not required," reflecting a "conscious decision" by NHTSA "not to require seatbelts in passenger seats" based upon the determination that school buses are safe without passenger seatbelts.[35] Therefore, a state law that requires them is expressly preempted because it is "not identical to the standard prescribed" under the Act. The United States Supreme Court, in **Sprietsma v. Mercury Marine**,[36] held that regulatory silence by itself is not the equivalent of an affirmative regulation for purposes of preemption.

Sprietsma involved a Coast Guard regulation concerning propeller guards. Although the Coast Guard had considered adopting a rule requiring propeller guards, but it ultimately decided "to take no regulatory action"[37] based upon the high cost to retrofit existing boats, the lack of a universally acceptable guard for "all boats and motors," and data suggesting that "propeller guards might prevent penetrating injuries but increase the potential for blunt trauma caused by collision with the guard."[38] The Supreme Court rejected the manufacturer's attempt to equate the Coast Guard's decision not to adopt a propeller guard requirement with a policy *against* propeller guards, explaining that "[i]t is quite wrong to view th[e] decision [not to require propeller guards] as the functional equivalent of a regulation prohibiting all States ... from adopting such a regulation."[39]

The Court observed that the Coast Guard's stated reasons for not adopting a propeller guard requirement revealed only its judgment that the available data did not meet the..."stringent" criteria for federal regulation.[40] To give the regulation's silence preemptive effect, the Coast Guard would have been required to convey an "authoritative message" that it had taken the "further step" of deciding that, as a matter of policy, the States and their political subdivisions should not impose some version of propeller guard regulation because they were unsafe.[41] Silence alone is insufficient to find preemptive intent, because preemption analysis begins "with the assumption that the historic police powers of the States [are] not to be superseded by [federal law] unless that was the clear and manifest purpose of Congress."[42] Although the Coast Guard's decision not to require propeller guards was undoubtedly carefully considered and intentional, the regulatory history did not show any "further step" beyond silence, that conveyed an "authoritative" message of a federal policy against propeller guards. Therefore, the deliberate decision to not require propeller guards,[43] without more, did not signal an intent to preempt a state law that would.

In short, there is a crucial distinction between an agency determination that there is no need to adopt a safety requirement, and an agency determination that states should not be permitted to adopt such a requirement.[44] Stated another way, an agency decision that a proposed requirement *should* not be implemented may result in the preemption of state law, but a determination that a requirement *need* not be enacted will not.[45] And, in **Lake v. Memphis Landsman, LLC**,[46] the Supreme Court of Tennessee considered FMVSS 208's silence with respect to passenger seatbelts in buses over 10,000 lbs., and concluded that its regulatory history revealed only a decision that passenger seatbelts need not be required, not a regulatory policy that they should not

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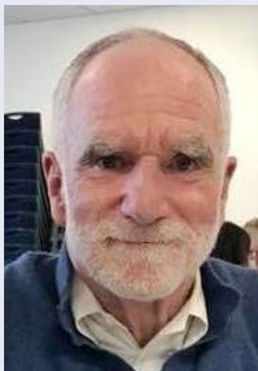

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be required by any states if it so chose.[47] Like the history of the Coast Guard regulation in **Sprietsma**, the regulatory history of FMVSS 208 demonstrates a determination by NHTSA that the relevant data–including costs and potential safety benefits–did not warrant a passenger seatbelt requirement for large buses.[48] NHTSA did not, however, take "the further step of deciding that, as a matter of policy," states should not be permitted to impose a passenger seatbelt requirement.[49]

Consequently, FMVSS 208 did not preempt the General Assembly from enacting a statutory requirement for passenger seatbelts in school buses if it had wanted to. It did have a choice, and therefore § 31-23-41's silence represented the General Assembly's determination that school buses should not be required to have passenger seatbelts as a matter of state education policy, and the Rhode Island Supreme Court would decline to an invitation to effectively substitute its judgment for that of the legislature.

Conclusion

Pulling the threads of Parts I and II together, while federal law does not require school buses to have passenger seatbelts in school buses, it would not preempt the Rhode Island Supreme Court from effectively doing so by recognizing a common law tort action premised manufacturer's failure to do so. Neither would it preempt the General Assembly from enacting a statutory requirement for passenger seatbelts on all school buses operated in this state. Put another way, FMVSS 208 does not preempt a either the Rhode Island Supreme Court from recognizing a common law duty to install passenger seatbelts in school buses, or the General Assembly from enacting legislation creating a statutory duty to do so.

But the Rhode Island General Assembly's decision to require seatbelts for school bus drivers, but not passengers, does "preempt"–in a manner of speaking–the Rhode Island Supreme Court from recognizing a common law duty, and corresponding common law action, that would effectively require what the General Assembly has not. "Preemption" in this case, not because of the federal constitution's Supremacy Clause, but rather, because of the separation of powers under articles 5 and 12 of the state constitution. If there is to be a cause of action in this state for injury to school bus passengers because of the lack of seatbelts, that is a policy determination within the sole and plenary constitutional authority of the General Assembly, and more importantly, the Rhode Island Supreme Court would agree.

ENDNOTES

1 *As in the first article, the term "standard-size school bus" will refer to a bus that has a gross vehicle weight rating of over 10,000 pounds, as well as a bus designed to seat more than fourteen students – which may be either a Type B bus, or the larger, and more conventional, Type C bus.*
2 *R.I. Gen. Laws § 31-1-3(aa);* ***see also*** *R.I. Gen. Laws § 31-22-11.6(a)(2)(i).*
3 *R.I. Gen. Laws § 31-22.1-1.*
4 *R.I. Gen. Laws § 31-22-11.6(a)(2)(i).*
5 *R.I. Gen. Laws § 31-22-11.6(a)(2)(ii).*
6 ***Id.***
7 *R.I. Gen. Laws § 31-22-11.6(b)(2); R.I. Gen. Laws § 31-22.1-3(2).*
8 *R.I. Gen. Laws § 31-23-41.*
9 ***See Twenty Eleven, LLC v. Botelho****, 127 A.3 897, 900 (R.I. 2015) ("[I] ndividual sections must be considered in the context of the entire statutory scheme, not as if they were independent of all other sections.") (Internal citation omitted);* ***see also Jerome v. Prob. Ct. of Barrington****, 922 A.2d 119, 123 (R.I. 2007).*
10 ***See*** *2B Norman J. Singer & Shambie Singer,* ***Sutherland Statutes and***

Statutory Construction, § 51:2.

11 **Dorsey v. Bluebird Corp.**, *74 F.Supp.3d 779, 782 (N.D. Miss. 2014) (quoting, National Association for Pupil Transportation and National School Transportation Association "Joint Response to National Highway Traffic Administration's Recommendations for Further Improving Safety of School Bus Occupants, Dec. 9, 2013, which in turn cited, NHTSA 2010 Final Rule, 49 C.F.R. Part 571, "School Bus Seating and Crash Protection").*

12 *R.I. Const. Art. 5.*

13 **Woonsocket School Committee v. Chafee**, *89 A.3d 778, 793 (R.I. 2014) (citing* **City of Pawtucket v. Sundlun**, *662 A.2d 40, 58 (R.I. 1995)).*

14 **Id.**

15 **State v. Lead Industries, Ass'n, Inc.**, *951 A.2d at 436 (quoting* **Accent Store Design, Inc. v. Marathon House, Inc.**, *674 A.2d 1223, 1226 (R.I.1996)).*

16 **Id.** *(quoting* **Bandoni v. State**, *715 A.2d 580, 595 (R.I.1998)).*

17 **Id.** *(quoting* **City of Pawtucket v. Sundlun**, *662 A.2d 40, 57 (R.I.1995)).*

18 **Id.** *(quoting* **DeSantis v. Prelle**, *891 A.2d 873, 881 (R.I.2006)).*

19 *R.I. Const. Art.12, § 1.*

20 **Royal v. Barry**, *91 R.I. 24, 31, 160 (A.2d 572, 575 (1960);* **see also City of Pawtucket**, *662 A.2d at 57;* **Brown v. Elston**, *445 A.2d 279, 285 (R.I. 1982) (reaffirming that Article 12 "vests the state legislature with sole responsibility in the field of education").*

21 **Woonsocket School Committee v. Chafee**, *89 A.3d at 789, 791.*

22 **City of Pawtucket v. Sundlun**, *662 A.2d at 57.*

23 **Id.** *at 56.*

24 **Id.** *at 56.*

25 **Woonsocket School Committee**, *89 A.3d at 794.*

26 **Id.** *at 793 n. 9.*

27 **Id.** *at 793 n. 9.*

28 **Woonsocket School Committee**, *89 A.3d at 793.*

29 **See Members of Jamestown School Committee**, *122 R.I. at 193, 195, 198, 405 A.2d at 21, 23.*

30 **Woonsocket School Committee**, *89 A.3d at 793.*

31 **See** *49 C.F.R. § 571.208, S4.4.4.2*

32 *49 U.S.C. § 30101, et seq.*

33 *Now codified at 49 U.S.C. § 30103(b)(1).*

34 **See Geir v. American Honda Motor Corp.**, *529 U.S. 861, 869 (2000).*

35 **See Lake v. Memphis Landsmen, LLC**, *405 S.W.3d 47, 58-59 (Tenn. 2013).*

36 *537 U.S. 51 (2002).*

37 **Id.** *at 65.*

38 **Id.** *at 61.*

39 **Id.** *at 65.*

40 **Id.** *at 66-67.*

41 **Id.**

42 **Wyeth v. Levine**, *555 U.S. 555, 565 (2009) (quoting* **Medtronic, Inc. v. Lohr**, *518 U.S. 470, 485 (1996)). The presumption against preemption, and the requirement that the intent to preempt be "clear and manifest," is the reason silence in the preemption context does not convey meaning, but that the General Assembly's silence in § 31-23-4 does. One analysis requires overcoming a presumption, the other does not.*

43 **Id.**

44 **Soto v. Tu Phuoc Nguyen**, *634 F.Supp.2d 1096, 1106–07 (E.D.Cal.2009).*

45 **Id.**

46 *405 S.W.3d 47 (Tenn. 2013).*

47 **Id.** *at 61.*

48 **Id.**

49 **Id.** *(quoting* **Sprietsma**, *537 U.S. at 67).* ◊

Stand and Deliver

Thursday, June 23rd, Plenary Session

The panel will discuss the value of multi-culturalism and representation in all aspects of the legal system, including the legal workforce and Rhode Island Judiciary, and will address how organizations can attract and retain employees from a broad range of backgrounds. Panelists will also describe the mission and work of the Supreme Court Committee on Racial and Ethnic Fairness in the Courts as well as the Rhode Island Bar Association's Task Force on Diversity and Inclusion.

Hon. Melissa A. Long was sworn in as an Associate Justice of the Rhode Island Supreme Court on January 11, 2021. Before her elevation to the Supreme Court, Justice Long served for over three years as an Associate Justice of the Rhode Island Superior Court, where she was assigned to be in charge of, or to assist on, various calendars in Providence County. Immediately prior to joining the bench, she was Deputy Secretary of State at the Rhode Island Department of State from 2015-2017. Justice Long currently chairs the Rhode Island Committee on Racial & Ethnic Fairness in the Courts and is an advisory board member of the National Consortium on Racial & Ethnic Fairness in the Courts.

Justice Long received her Bachelor of Arts degree from the University of Virginia and earned her law degree at the George Mason University School of Law. She served as a law clerk to the Honorable Marcus D. Williams of the Nineteenth Judicial Circuit Court of Virginia and thereafter devoted her legal career to public service and public interest law.

A Washington, D.C., native, Justice Long is the daughter of two U.S. Army veterans who married six months before the Supreme Court decided ***Loving v. Virginia***. Justice Long grew up on and near military bases in El Paso, Texas; Alexandria, Virginia; Schweinfurt, Germany; and Seoul, South Korea.

She and her family have resided in Providence since 1999.

Hon. Linda Rekas Sloan is an Associate Justice of the Rhode Island Superior Court. She was appointed by Governor Raimondo in December 2020.

Linda was born in Taipei, Taiwan and is the oldest of 4 girls born to Bao Yu and Russell Rekas. Her father was a career Navy man serving on nuclear submarines. Linda attended Coventry High School, Providence College, and Boston University School of Law.

Prior to her appointment to the bench, she practiced law in Rhode Island, Massachusetts, and before the United States Federal District Courts for the Districts of Rhode Island, Massachusetts, and Connecticut.

During the course of her career, Linda worked or practiced in the areas of insurance defense, bankruptcy, creditors rights, receivership, corporate and business law, real estate and title insurance at: Olenn & Penza; Salter, McGowan, Sylvia & Leonard; Orson & Brusini; Mortgage Guarantee and Title; Linda Rekas Sloan, LLC and Fidelity National Title Group.

Linda served as the Rhode Island Bar Association President from 2017 to 2018. She is also a Rhode Island Bar Foundation Fellow and the immediate past President of the New England Bar Association. She currently chairs the Rhode Island Bar Association Task Force on Diversity and Inclusion.

Hon. Lia N. Stuhlsatz attended Smith College and Howard University's Black College Exchange Program, graduating from Smith College in 1990, she then participated in the Teach for America program, teaching junior high social studies in the Washington Heights section of New York City.

Following her teaching experience, she attended CUNY School of Law, graduating in 1996. While in law school, she worked for Catholic Charities as a social worker for a program serving incarcerated mothers held at Rikers Island and Bedford Hills Correctional Facility.

Following law school, she was employed by the New Hampshire Public Defender as a trial attorney. She moved to Rhode Island in 1998 and joined Rhode Island Legal Services, Inc. where she represented clients in both the Domestic Violence Unit and the DCYF Unit.

continued on next page

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Thursday Plenary Session (cont.)

Judge Stuhlsatz was appointed to the Bench by Governor Gina Raimondo in 2016 and has been assigned to the Juvenile Calendar, the DCYF Calendar, and the newly created Safe and Secure Baby Court, which was established by Chief Judge Michael B. Forte in 2017.

Judge Stuhlsatz and her husband, Attorney Robert Caron, are the parents of two teenagers and live in East Providence.

Hamza Chaudary, Esq. is a Shareholder at Adler Pollock & Sheehan P.C. He serves as Chair of the firm's Diversity Equity and Inclusion Committee and is on the firm's Technology Committee. Hamza has significant civil litigation experience with a focus on cases involving real estate, land use, taxation, and zoning, including matters of first-impression. He serves on the Rhode Island Bar Association's Task Force on Diversity and Inclusion, the Board of Governors of Leadership Rhode Island, and the Board of Trustees/Executive Committee for the Providence Country Day School. He received his B.A. with Honors from Trinity College and his J.D. from Washington and Lee School of Law.

Joshua D. Xaiver, Esq. is currently an associate attorney with Partridge Snow & Hahn where he is a member of the firm's diversity committee. His practice consists largely of employment law. He earned his undergraduate degree from New York University and his law degree from Roger Williams University School of Law. During law school, Josh served as the President for the Multi-Cultural Law Students Association. Upon graduating from law school, he served as a judicial law clerk for the State of Rhode Island Superior and Family Courts. Josh is a member of the National Bar Association, the Cape Verdean American Lawyers Association, and the Rhode Island chapters of the Thurgood Marshall Society and Hispanic Bar Association. Josh is a proud son of immigrants. His mother was born in the Dominican Republic and his father was born in Cape Verde. Josh is also a proud Rhode Islander who is originally from Warwick.

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The Benefits of Mediating Real Property Disputes

Stephen J. MacGillivray, Esq.
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...there is an additional danger that the further parties progress into the litigation process, the more likely they are to become prisoners to the "sunk cost fallacy" – the tendency to follow through on an endeavor if we have already invested time, effort, or money into it, whether or not the current costs outweigh the benefits."

Happy neighbors are all alike; every unhappy neighbor is unhappy in their own way.[1] This is because disputes over real property are as unique as the property and parties involved. These matters present a multitude of legal and personal interests. They have the potential to cause enormous disruption to commercial interests as well as landowners' lives and their peaceful enjoyment of their property. They often result in protracted litigation, including follow-on lawsuits and appeals. Most notably, disputes over property and land use can engender emotion well in excess that warranted by the monetary value at stake.

These same qualities, (uniqueness, multiple interests, high emotion, etc.) make property disputes better suited to resolution through mediation than most other types of civil disputes. Below, the benefits of mediation that apply particularly to real property disputes, including land use disputes, are discussed. Following that, three hypotheticals are used in an attempt to illustrate these benefits.

Benefits of Mediation for Property and Land Use Disputes

The benefits of mediating that particularly apply to a real property dispute are the following:

1. **Multiple Opportunities For Success –** In general, settlement of litigated cases is driven by risk management. Rational litigants analyze a settlement offer by comparing it to the best and worst outcomes without a settlement. These are often referred to as BATNA and WATNA (Best Alternative to a Negotiated Agreement and Worst Alternative to a Negotiated Agreement). With land disputes, the diversity of possible outcomes makes predicting the results of litigation, and therefore risk, significantly more difficult. At the same time, the number of interests (legal and personal) and possible outcomes provide the mediator and the parties with a multitude of opportunities for developing a solution that maximizes each party's utility and satisfaction. For this reason, compared to cases where the parties are only fighting over one variable, such as how much money is owed, real property disputes have a greater chance of reaching a negotiated resolution.
2. **Speed/Cost –** An early, negotiated settlement obviously provides the parties with a speedier more cost-effective resolution compared with litigation. Moreover, there is an additional danger that the further parties progress into the litigation process, the more likely they are to become prisoners to the "sunk cost fallacy"– the tendency to follow through on an endeavor if we have already invested time, effort, or money into it, whether or not the current costs outweigh the benefits.
3. **Finality –** With land disputes, the present litigation may not be the end of the story. Land disputes are notorious for generating multiple appeals and follow-on litigation. With mediation, the parties control the outcome and can address multiple issues that have arisen, or may arise in the future. Accordingly, mediation presents a higher likelihood of finality and reduces the chances of continued conflict.
4. **Parties Have Their Say –** Property disputes make people crazy with emotion. A primary cause of this high emotion is the feeling of powerlessness associated with the perception that a party's interests and concerns are not being heard. Whether they are objectors to a new development, or neighbors in a boundary dispute, people contesting their real property rights want to have their interests recognized and understood. In a joint session or in private meetings with the mediator, mediation affords the parties an opportunity to explain their point of view, their frustrations, and their underlying interests, which in many cases are different from their pled claims for relief. A skilled mediator allows the parties to vent and, most importantly, to reveal where their underlying interests may overlap with their opponent's.
5. **Possible Reconciliation –** Related to the benefit of finality, mediation also provides a greater opportunity for reconciliation. Property litigation is often a zero sum game that leaves one or both of the litigants embittered. Lingering

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animosity reduces future enjoyment of property or, in the case of commercial interests, can cause continued and potentially unprofitable ill-will.

Three Hypotheticals

These benefits become more apparent when considered in the context of three specific hypothetical property disputes discussed below: i) a boundary dispute, ii) a family jointly-owned property; and, iii) a land-use/permitting matter.

I. The Boundary Dispute

A New Owner from out of state buys a vacation home in a well-established neighborhood with an excellent view over his Neighbor's property. Armed with a Class I survey, he visits his Neighbor to inform her "in a neighborly way" that a portion of her driveway and screening plantings are actually on his side of the property line. New Owner tells Neighbor that he wants to install a wood fence on the property line, but that he wants Neighbor's consent and input first. Neighbor is shocked and tells New Owner that the trees and driveway have been there the entire eight years that she has owned the property and perhaps longer. Neighbor is angry that New Owner wants to change things that "have worked well for everyone for so long." She does not consent. New Neighbor says he will regrettably have to move ahead without her consent. Both hire attorneys. They exchange legal letters. New Owner files a quiet title action and Neighbor counters with statutory and common law claims based on prescriptive rights.

On the ground, a passive-aggressive border war of minor incursions and nasty looks ensues. In the courts, lawyers take discovery, file motions, and advise their clients that dispositive motions are unlikely to succeed. New Owner cannot understand how a court can ignore a Class I survey. Neighbor refuses to let the new part-time resident push her around destroying her access and diminishing her privacy in the process. Hearts harden.

Litigation Outcome – Neighbor cannot meet the evidentiary burden to establish prescriptive rights. The Court directs her to remove her plantings and a portion of her driveway. She complies but ceases to maintain her side of the boundary. She plants trees in the middle of her property that eventually obstruct New Owner's view.

Mediation Outcome – In mediation, the parties meet in joint session. Although tensions run high, both indicate a common interest in having marketable title and creating an attractive boundary line that provides a degree of privacy for both sides. New Owner expresses his desire to maintain his view and Neighbor needs a driveway. In separate sessions, the mediator explores these interests with each party. Various means for accommodating these interests including easements, licenses, exchange of land for money and others are discussed. The mediator assists each side in recognizing the legal hurdles they face and asks them what are their best and worst case scenarios absent settlement. In the end, the New Owner grants Neighbor an easement to accommodate her plantings and driveway. They split the cost of fence, the style and height of which is agreed upon. Neighbor grants New Owner a sight easement preserving the view corridor. Based on terms agreed upon in writing prior to leaving the mediator's office, the parties' attorneys work

together, with a title attorney and a surveyor, to finalize the settlement and address any future needs of both parties.

II. Jointly-Owned Family Property

Dad and Mom pass away leaving the family summer home (the "Big House") on two and one-half acres in an R40 zone to their three adult children (the "Children").[2] At first, the Children share the property, each taking a portion of the year, and often staying at the Big House together. A few years pass and the interests of the children begin to diverge.

Child One has moved to the town where the Big House is located. He spends much of the year "housesitting" the property and using his limited handy man skills to "maintain" the Big House. He does not have the resources to help pay for real estate taxes but he wants to keep the house and be compensated for his maintenance efforts by the other children.

Child Two has had a family, lives an hour away, and wants to keep the Big House and have all three Children contribute equally to taxes and the cost of a professional property manager. Child Two loves the Big House and wants everything to stay the same as Mom and Dad planned. Child Two hopes to pass the Big House on to her children someday.

Child Three also loves the Big House but has moved to a foreign city and has few opportunities to use it. He might be able to live with the status quo except that the benefits to him simply do not justify the ever-increasing costs. Worse, he is agitated by what he sees as Child One's abuse of the situation. He thinks it would be healthier for all involved if they all just bought their own vacation homes and he asks his siblings to consider selling the Big House.

The maintenance, arrangements for shared use and costs of ownership increasingly become sources of friction between the siblings. Conflict over the Big House becomes the norm. Child Three refuses to talk to Child One. Child Three asks to be bought out but the other Children cannot afford to do so. Child Three files an action for partition of the Big House property.

Litigation Outcome – Because it is in an R40 district, the Big House property cannot be subdivided into three parcels. The court must therefore order sale. Child One insists that they use his favorite local broker, that they market the Big House for at least a year prior to accepting an offer and that the offer must be at least three times the town's assessed value. Child Three wants to make costly cosmetic improvements prior to sale but also wants the Big House sold within three months while the market remains favorable. Motion practice ensues and eventually, after a year, the Big House is put on the market under the direction of a court-appointed Special Master and, several months later, it is sold. The Children now communicate only through attorneys.

Mediation Outcome – After two days of meeting together and separately with the mediator, the terms of a negotiated settlement are agreed upon. A small mortgage will be taken out on the property and one new lot created by subdivision. The new lot will be encumbered with several easements benefiting the Big House property. The money generated from the mortgage and sale of the new lot allows Child Three to be bought out at 1/3 of the appraised value with enough money left over to cover delayed maintenance. A property manager is hired and the Big

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House is rented out frequently enough to cover the management fee and real estate taxes. The remaining time is split between Child One and Child Two. Child One is also allowed to live in the Big House during the winter months in return for paying for utilities. The terms are reduced to writing before the parties leave the mediator's office. By agreement of the parties, the mediator facilitates hiring an appraiser, an engineer, a title attorney and a property manager to implement the settlement.

III. Land Use Dispute

Development Corp. plans a mixed-use development on a 30-acre parcel for which it will need approval for a Major Subdivision from the municipality's Planning Board and several variances from the Zoning Board. The development is consistent with the town's comprehensive plan.

The property has ample frontage and borders a residential neighborhood on two-sides and a commercial area on one. The neighborhood kids have played on the property for years and their parents have enjoyed the natural buffer the property provides between their homes and the commercial zone. When the neighbors receive notice of an upcoming Planning Board meeting regarding the Major Subdivision, they are up in arms. Why haven't they heard about this before? How long has the town known about this?

A group of angry neighbors appears at the first Planning Board meeting. Many of them express concerns about flooding and dangerous traffic and increased noise. They testify that the property is often wet and, in their opinion, is almost certainly a wetland. They cannot understand why, despite their large numbers and impassioned pleas, the Planning Board seems to be moving ahead. Rumors spread. Development Corp. must be hiding information from them. Their anger increases, driving a number of conspiracy theories. Development Corp., with its experts and engineers, has the upper hand. In the end, the neighbors decide to pool their resources and hire a lawyer.

Litigation Outcome – The proposed development is held up for more than two years with appeals at every stage of permitting. In the end, after several visits to superior court and a petition for certiorari to the Supreme Court, the development is approved. With potential profits depleted by litigation costs, Development Corp. eliminates many of the plantings and other "beautification" aspects of the original plan. The neighbors input is ignored.

Mediation Outcome – At the first Planning Board meeting, the neighbors and the developer are asked to meet with a mediator. The mediator helps the representative from Development Corp. explain the details of development to the neighbors, the extensive engineering that has been completed and answer all questions. In private sessions, the mediator explains to the neighbors that the 30-acre property could be developed in a number of ways as a matter of right without permitting and, more importantly, without their input. Some of these would be far worse than the proposed development from the neighbors' perspective. The mediator explores Development Corp.'s BATWA with its representative, which is similar to the costly litigation result above.

In the end, the developer agrees to a 100' vegetated undeveloped buffer strip bordering the residential zone, to limit the number of units and to certain other restrictions on the property benefiting the neighborhood. The developer and the neighbors meet again with the Planning Board to describe their agreement. Permitting proceeds expeditiously.

Conclusion

Of course, hypotheticals are not real life and all mediations are not as wildly successful as the ones described above. Hopefully, these narratives demonstrate, however, that for attorneys whose clients have found themselves enmeshed in a judicial equivalent of a protracted ground war, mediation offers the significant chance to efficiently and cheaply obtain favorable outcomes.

ENDNOTES

1 *With apologies to Leo Tolstoy,* Anna Karinina.

2 ***See e.g.***, *George Howe Colt,* The Big House: A Century in the Life of an American Summer Home, *(Simon and Shuster 2003)*. ◊

Bar Association Mentor Programs

Our Bar Association is proud to offer mentorship opportunities to our members, promoting professional development and collegiality, and assistance and guidance in the practice of law. Experienced practitioners can share their wealth of knowledge and experience with mentees, and mentees receive a helping hand as they begin, or revitalize, their legal careers. Over the years, the Bar Association has matched numerous new members with seasoned attorneys, and we would like to refresh our directory.

For traditional mentoring, our program matches new lawyers, one-on-one with experienced mentors, in order to assist with law practice management, effective client representation, and career development. If you would like to volunteer and serve as a mentor, please visit **ribar.com**, select the **MEMBERS ONLY** area, and complete the **Mentor Application** form and return it to the listed contact.

As an alternative, the Bar Association also offers the Online Attorney Information Resource Center (OAR), available to Bar members through the **MEMBERS ONLY** section of the Bar's website, to help members receive timely and direct volunteer assistance with practice-related questions.

If you have any questions about either form of mentoring, or if you would like to be paired with a mentor through our traditional program, please contact Communications Director Erin Cute by email: ecute@ribar.com, or telephone: 401-421-5740.

Your Bar's 2022 *Annual Meeting Highlights*

Authentic Inclusiveness

Friday, June 24th, Plenary Session

All of us are seeking to have workspaces and organizations that are diverse and inclusive, but attitudes, misinformation, and cultural differences tend to get in the way. This program is designed to discuss some of the things that can get in the way of Authentic Inclusiveness, like micro-aggressions; implicit bias; and good intentions gone bad. Keith and Dana will keep it authentic and entertaining as they help us all navigate diversity and inclusiveness.

Award-winning trial attorneys Keith and Dana Cutler are partners in the law firm of James W. Tippin & Associates in Kansas City, Missouri, practicing in the areas of civil defense litigation, education law, and small business representation.

Dana has served in several positions of bar leadership during her career, including being the first woman of color elected as President of The Missouri Bar, in 2016. Her numerous bar-related awards include the 2020 Eighth Circuit Richard S. Arnold Award for Distinguished Service; three President's Awards from The Missouri Bar; a President's Award from the Kansas City Metropolitan Bar Association; the Ronda F. Williams Spirit of Diversity Award; and the Sly James Diversity and Inclusion Award, just to name a few. She has been recognized as a Missouri Super Lawyer since 2014 and was honored as the 2018 Woman of the Year by Missouri Lawyers Weekly at their Annual Women's Justice Awards Luncheon. Dana's practice is concentrated in Education Law with a focus on charter schools and general liability defense. She has tried more than twenty bench and jury trials. Dana received her Bachelor of Arts degree in English, with honors, from Spelman College in Atlanta, Georgia, and her J.D. degree from the University of Missouri at Kansas City.

In more than 30 years of practice, Keith has first-chaired over 80 civil trials in addition to arguments before the Courts of Appeals in Missouri and Kansas, the Missouri Supreme Court, and the Eighth Circuit Court of Appeals. He is also very active in the Bar—he has served as president or chair of several bar associations and bar committees, is an Adjunct Professor of Trial Advocacy at University of Missouri at Kansas City (UMKC) School of Law, and is a frequent seminar speaker on trial practice, ethics, and professionalism. His awards include the Lewis W. Clymer Award from the Jackson County Bar Association, the Decade Award from the UMKC School of Law, and the prestigious Lon O. Hocker Memorial Trial Award, given annually to three lawyers across the state of Missouri under the age of 36 who have demonstrated unusual proficiency in the art of trial advocacy. Keith received his Bachelor of Science degree in Physics from Morehouse College in Atlanta, Georgia, and his J.D. degree from UMKC.

Keith Cutler, Esq. (L) and Dana Cutler, Esq. (R)

When not practicing law, Dana and Keith are co-judges on the two-time Emmy-nominated, nationally syndicated daytime television courtroom show *"Couples Court with the Cutlers,"* which features couples who are having conflicts, complications, or disagreements in their relationships. The show airs daily on the Oprah Winfrey Network (OWN), the Bounce Network, and on television stations across the country.

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An Interview With Crystal D. Peralta, Esq.

by Nicole P. Dyszlewski, Esq., MLIS and Meghan L. Hopkins, Esq.

Focus on the Future is a spotlight series where members of the *Rhode Island Bar Journal* Editorial Board interview attorneys who are newer to the Rhode Island Bar.

> **What is your current title and position?**

I am a Litigation Associate at Adler Pollock Sheehan P.C.

> **What do you actually do all day?**

It depends! What I do on any given day depends on what type of project I am working on and who I am working with. I spend the majority of my time researching and drafting motions, memoranda, written discovery, and various other pleadings. I also regularly discuss litigation strategy and goals with clients, and correspond frequently with opposing counsel and other attorneys at my firm. Most recently, I drafted a complaint involving a dispute amongst members of an LLC and testified at the State House in my role as a registered lobbyist on behalf of one of the firm's clients.

> **What are some of your long-term goals?**

When I retire, I want to own a coffee shop/bakery with a focus on Latino pastries. In the meantime, my next career goal is to argue (and win) a motion.

> **Have you had any celebrity sightings in the course of your career as an attorney that you can share with us today?**

Not yet, but I did meet Justice Sotomayor once before I started law school.

> **Can you tell us one thing you have learned while being a new attorney?**

I've learned so many things! Being new to the practice of law, I feel like I am a 1L again. Because the practice of law is different from law school, much of a young attorney's time is spent learning and honing a whole new set of skills. So one thing I've definitely learned as a new attorney is to simply be comfortable with being uncomfortable.

I've also learned about the importance of mentorship. I'm grateful to have an amazing mentor at my firm (you're the best, Hamza!), and fortunate to be able to give back and mentor law students and new attorneys of color. I have been so inspired by the outpouring of support I receive from law students who consistently affirm how happy they are to see someone who looks like them employed as an attorney in a prestigious law firm. These moments further solidify my belief that law firms must have diverse attorneys among their ranks. It's important, to me personally and for the legal profession as a whole, that our future attorneys of color see themselves represented in all places and at all levels in the legal field.

The last thing I've learned as a new attorney is the importance and power of simply being kind—a sometimes forgotten trait in the often-times sharp-elbowed practice of law.

> **Based on your experiences, how can firms continue to diversify the hiring process?**

I think it is critical for law firms to diversify their hiring criteria and lessen the importance placed on GPA, class rank, and participation in law journals and moot court. Implementing a model that considers not only the candidate's ability, but also personality traits and other intangible things a candidate brings to the table, will help attract diverse candidates. It is also important for law firms to reflect a commitment to diversity within the firm itself. A firm should have formal programs to mentor diverse attorneys, ensure that diverse attorneys are well-represented at the partnership level, and make efforts to ensure they are retaining the diverse candidates they hire.

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> **We have done a few of these interviews now and several of the new attorneys we have talked to mention the value of having a good reputation, even early on in your legal career. Have you thought much about this issue yet?**

Yes. As a junior associate, I think about it a lot within the context of my own firm. Am I perceived as bright? Kind? A hard worker? A team player? How do my colleagues perceive the quality of my work and my commitment to both the firm and excellence in the practice of law? To rise within a firm you need to be smart and competent, but you also need advocates within the firm to champion your work. I am always mindful of how my reputation precedes

DYSZLEWSKI

HOPKINS

Continued on next page

me in a room and who may be willing to be an advocate for my professional development.

> **Who is your biggest inspiration inside or outside of law?**

My mom, Cristina Madera, has always been my biggest inspiration. She raised me as a single mother, in a country wholly foreign to her own (she immigrated to the U.S. from Dominican Republic) where she didn't always understand the language and where people weren't always kind. Somehow, like the superwoman she is, she managed to do it all. She worked multiple jobs, fed me the most delicious home-cooked meals every day, gave me all the love and support in the world, and ensured that I never wanted for anything—even though we lived in poverty for most of my young life. With each day that passes, I grow more grateful for my mother's sacrifices to give me the best childhood, the best education, and set me up to live my best life. I would not be where I am today without her. I love you mom!

> **What do you do to de-stress?**

I snuggle with my newly adopted kitten! Funny story, there is a debate in my household as to the kitten's true name. I call him Sammy. My boyfriend, who was dead-set against getting a cat until I broke him down (after a year of trying), became very involved in naming the cat and wanted to call him Salami. Really, my boyfriend wanted the cat to have a funny Spanish food-related name. Platano, Tostone, Queso Frito were all contenders (in his mind). We compromised on Sammy, but sometimes we call him Salami.

> **What is your favorite restaurant in Rhode Island??**

Spain Restaurant in Cranston. They have the BEST sangria, calamari, and paella in the state. My go-to dish is always the grilled salmon—simple but delicious.

> **According to your firm's website, you are a volunteer attorney for the RWU Pro Bono Collaborative Driver's License Restoration Project. Can you tell us a little bit about that project?**

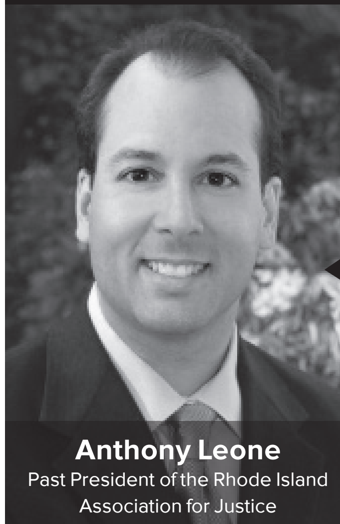
Sure! My firm has partnered with the RWU Pro Bono Collaborative to participate in their Driver's License Restoration Project. Through the project, myself and other attorneys at AP&S provide free license restoration legal assistance. Many of the cases we see arise from economically-vulnerable individuals being unable to pay traffic fines or other court debts, resulting in a loss of their license. I work with these clients to get their licenses reinstated as expeditiously as possible. Something as simple as not having a license can spell the difference between employment and unemployment, housing or homelessness. I feel grateful that I am able to put my legal skills to use to help those who really need it through this project.

Beyond the work with the RWU Law PBC, I am also on the board of the Women's Resource Center, an organization that focuses on domestic violence prevention and supporting and empowering survivors of domestic violence.

> **How have you chosen to decorate your office?**

I have pictures everywhere of my loved ones. I also have my commemorative gavel from when I won the RWU Law Esther Clark Moot Court Competition at the Rhode Island Supreme Court. My favorite piece of office décor, however: my Latina Judge Barbie! I have her as inspiration hanging on my wall.

Representing Residents Injured in Nursing Homes



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Reminder: Bar members may complete six credits through participation in video replay or on demand CLE seminars. 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.

Rhode Island Probate Court Listing and Judicial Communications Survey 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 Bar Association also posts a chart summarizing the preferences of Superior Court justices relating to direct communications from attorneys, and between attorneys and the justices' clerks which is updated yearly. The chart is available by clicking **MEMBERS ONLY** on the home page menu and then clicking **JUDICIAL COMMUNICATIONS**.

Sign Up For Your 2022-2023 Bar Committee Membership Today!

If you have not yet signed up as a member of a 2022-2023 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 2022-2023 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 Membership Services Coordinator Madeline Benner at (401) 421-5740 or mbenner@ribar.com.

Thanks to Our CLE Speakers

The success of the Rhode Island Bar Association's Continuing Legal Education (CLE) programming relies on dedicated Bar members who volunteer hundreds of hours to prepare and present seminars every year. Their generous efforts and willingness to share their experience and expertise helps to make CLE programming relevant and practical for our Bar members. We recognize the professionalism and dedication of all CLE speakers and thank them for their contributions.

Below is a list of the Rhode Island Bar members who have participated in CLE seminars during the months of March and April.

Hon. Richard A. Licht
Associate Justice
RI Superior Court

Hon. John J. McConnell, Jr.
Chief Justice
US District Court

Timothy J. Morgan, Esq.
Law Office of Timothy J. Morgan

Therese M. Picard, Esq.
Bittner & Picard, LLC

Alicia J. Samolis, Esq.
Partridge Snow & Hahn, LLP

Hon. Brian P. Stern
Associate Justice
RI Superior Court

Joshua D. Xavier, Esq.
Partridge Snow & Hahn, LLP

Proposed RIBA Bylaws Amendments Article IX, Sections 9.1, 9.2, 9.3

The Rhode Island Bar Association's House of Delegates, at their meeting on April 26, 2022, voted to approve the following Proposed Bylaws Amendments. Bar members will vote on the proposed amendments at the June 23, 2022 RIBA Annual Meeting. The proposed amendments allow RIBA members to continue conducting business, including meetings and voting, remotely, electronically, and in a hybrid manner outside of an emergency. Please email kbridge@ribar.com if you have any questions on these proposed amendments.

ARTICLE IX – ~~Sections (eliminated at Annual Meeting, June 19, 1981)~~ Meetings Participation and Communications

Section 9.1 The provisions of this Article IX shall govern all meetings and communications under these bylaws notwithstanding any other provision to the contrary.

Section 9.2 Any communication required or permitted under these bylaws to, from, or by the members of the Association, the Executive Committee, the House of Delegates, or the officers, may be made by electronic transmission.

Section 9.3 Any meetings required or permitted under these bylaws may be held in person, or by means of a conference telephone or similar communications equipment means, of which all persons participating in the meeting can hear each other at the same time, and participation by that means constitutes presence in person at a meeting.

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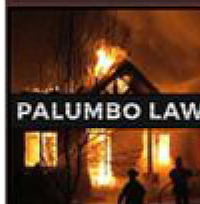

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When Buyers Erode The Protections Offered In Acquisition Agreements By Agreeing To Tax Off-Set Provisions

John P. Corrigan, Esq.[1]
John F. Corrigan Law P.C.
Providence

E. Hans Lundsten, Esq.[1]
Alder Pollock & Sheehan P.C.
Providence

Typically, in an acquisition agreement (the "Agreement") the rights and responsibilities of the buyer and seller are laid out in great detail, and in addition to describing the assets or business being sold and the liabilities, if any, that will be assumed by the buyer, includes representations and warranties ("Reps") from the seller concerning the business that is being sold. As an example, the seller usually is asked to represent that all liabilities or claims against the business are covered in its financial statements or have otherwise been disclosed to the buyer. The Agreement typically includes an obligation on the part of the seller to indemnify the buyer if the Reps are breached or are otherwise incorrect. The seller's indemnity obligation is also subject to caps (which limit the total amount the seller would be obligated to pay the buyer for a breach of the Reps) and baskets (which sets forth various minimum thresholds that have to be met before the seller is obligated to make any payment to the buyer for a breach of its Reps.). The Agreement may also contain a survival period restriction that acts like a statute of limitations on how long the buyer has to raise an indemnification claim for any breach of the seller's Reps. These provisions are customary and are found in most acquisition agreements, and from an administrative point of view, they simplify enforcement of the seller's indemnity obligations. Also, because these provisions are usually heavily negotiated, both sides are, or should be, on notice of what is or may be expected.

One twist on the seller's indemnity obligation, however, that is not so easily understood or the impact of which may not always be foreseen, is the inclusion of a so-called tax benefit off-set provision ("TBO") in the seller's indemnity obligation.

One twist on the seller's indemnity obligation, however, that is not so easily understood or the impact of which may not always be foreseen, is the inclusion of a so-called tax benefit off-set provision ("TBO") in the seller's indemnity obligation. Under such a provision the seller would be entitled to reduce its indemnity obligation to the buyer by off-setting that obligation to the extent the buyer secures a tax benefit from the event that triggers the indemnification claim. The rationale for this type of provision that is commonly expressed is the so-called equity or fairness argument. The seller argues that it is unfair to allow the buyer to obtain full indemnification and, in addition, to enjoy a tax benefit such as a tax-reducing deductible expense incurred in rectifying the damages caused by the breach.

The Emperor Has No Clothes

At first blush, the equity or fairness argument has some appeal. The devil, however, is in the details.

An example that the seller might suggest to show how this provision could come into play would involve an acquisition where the seller represented that all claims against the business were reflected in its financial statements. Following the closing, however, the buyer learns for the first time of a pre-existing product liability claim against the business in the amount of $1,500,000 which had not been reflected in the financial statements or otherwise disclosed to the buyer. To resolve this liability the buyer incurred total expenditures of $1,500,000. If a TBO provision had been included in the acquisition agreement, the seller would argue that its obligation to indemnify the buyer for the claim should be reduced by the tax benefit the buyer could secure by claiming a deduction for this expense. If the buyer's assumed federal and state income tax rate was 33⅓%, the seller would be in a position to claim that at most its indemnity obligation was $1,000,000 not $1,500,000.

The main problem with this type of provision is the questionable validity of the underlying assumption that preclosing liabilities and claims against the seller that impact the buyer, and which would be subject to an indemnity claim against the seller, could be deducted by the buyer. In the case of either an asset purchase or a stock purchase, unless the transaction qualifies as a tax free reorganization, there is little, if any, legal support for the view that the buyer would be entitled to such a deduction. The argument that the buyer could somehow be getting an unintended double benefit that justifies a TBO provision is at best highly debatable.[2]

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Seeking Law Related Education Program Attorney Volunteers: Update Your Preferences Today!

Your Bar Association supports law related education (LRE) for Rhode Island children and adults through three, longstanding programs: ***Lawyers in the Classroom*** and ***Rhode Island Law Day*** for upper and middle school teachers and students, and the ***Speakers Bureau*** for adult organizations. Responding to LRE requests, Bar volunteers are contacted – based on their geographic location and noted areas of legal interest – to determine their interest and availability.

If you are interested in serving as a LRE volunteer, please go to the Bar's website at **ribar.com**, click on **FOR ATTORNEYS**, click on **LAW RELATED EDUCATION**, click on **ATTORNEY ONLY LRE APPLICATION**. All Bar members interested in serving as LRE volunteers, now and in the future, must sign-up this year, as we are refreshing our database.

Following a recommendation from the Bar's Diversity and Inclusion Task Force, some new categories have been added to our Lawyers in the Classroom and Speakers Bureau programs. The new areas of interest include:

Lawyers in the Classroom

- Title VII as it relates to students/schools
- Equal opportunity and affirmative action

Speakers Bureau

- Title VII and Employment Law
- Civil Rights
- Harassment in the workplace

Please update your areas of legal focus. We cannot offer our new focus areas to classrooms and adult organizations without volunteers! Questions? Please contact Director of Communications Erin Cute at ecute@ribar.com or **401-421-5740**.

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Under applicable tax law, in a transaction taxed as an asset deal, the buyer can't deduct an expense to deal with a liability which has been incurred prior to the closing by the seller. Under such law, in a transaction taxed as a stock deal, a tax benefit is only possible if the acquired company is a "C corporation" and is a "free-standing" individually-taxed entity and not part of seller's consolidated group. Furthermore, even if the stock deal meets those two requirements, the built-in loss rules greatly diminish the possible benefit that could be achieved by the buyer.

The bottom line is that the so-called windfall tax benefit supposedly available to a buyer is closer to being a myth than a reality, as the arguments of the seller evaporate on closer examination; the emperor is indeed naked but for a fig leaf.[3]

Enhanced Buyer Risks

From a practical point of view if, notwithstanding the above, a TBO provision is included in the Agreement, the buyer really has no incentive or upside to even contemplate claiming a deduction that could be covered by that provision unless the provision places such an obligation on the buyer. If the deduction is claimed by the buyer, its indemnity claim against the seller would be immediately reduced but the buyer remains on the hook (subject to a possible retrieval claim against the seller) for any potential disallowance by the IRS or state taxing authorities. Frequently, the mechanics in many acquisition agreements of how the TBO provision is to be applied are conceptual and, at best, less than clear and frequently they merely provide that the buyer's indemnity claim will be reduced by this benefit. The problem is who makes that determination? Is the buyer's determination final and absolute or would the seller have the right to argue that such a deduction should have been claimed? Would the seller have the right to examine the buyer's tax returns and impose its judgment on that issue in place of the buyer's? Would any tax information disclosed to the seller be subject to a non-disclosure restriction? If the parties were unable to resolve whether the deduction should be claimed would this issue ultimately be left up to a court or an arbitrator? If the buyer is forced because of a decision by a court or arbitrator to claim the deduction, could the buyer be subject to tax penalties if that position is later successfully challenged by the IRS or a state tax authority? If the buyer is forced to litigate an IRS or state taxing authority's claim that the deduction was improper and it loses, will it have a clear claim against the seller for its costs and expenses or, would it be forced to sue the seller for its legal fees in challenging the denial and any tax, interest, or penalties it was required to pay? These points are seldom addressed in the typical TBO provision.

Why Would a Buyer Agree to Inclusion of a TBO Provision in an Agreement

Aside from the fatally flawed fairness argument, buyer's frequently agree to the inclusion a TBO provision because they, or their counsel, are told and they accept that this type of provision is customary in acquisition agreements. In point of fact, from publicly available information, while these provisions are included in a number of deals, they are not included in the majority of the reported deals, and have been declining in popularity in recent years. Studies done every two years of public deals by the American Bar Association Business Law Section M & A Market Trends Subcommittee of the Mergers & Acquisitions

Committee, show that the percentage of deals they reviewed that included a TBO provision dropped from a high of about 43% of the deals that closed in 2016-2017 to 32% of the deals that closed in 2018-2019 and 2020-2021 (the most recent information available). Similarly, a review of private deals studied by SRS Acquiom show that for deals that closed in 2018 28% contained a TBO provision and this dropped to 22% of the deals studied that closed in 2020. The claim that this is a typical provision in an acquisition agreement is far off the mark.

Conclusion

The inclusion of a TBO provision in an acquisition agreement bears risks to the buyer that it may not appreciate. The buyer should also understand that this type of provision, although not uncommon, does not appear in the majority of the deals. The premise that the TBO provision is needed to prevent the buyer from a tax windfall is at best questionable. If a TBO provision is to be included in an acquisition agreement the buyer and its counsel should, at a minimum, assure that it does not leave the buyer's tax positions exposed to second guessing by the seller, that there are limits on the buyer's tax information the seller will have access to, and restrictions on how it can be used and that the buyer is protected by escrows or otherwise if the IRS or a state taxing authority successfully challenges the claimed deduction.

ENDNOTES

1 *John F. Corrigan is a sole practitioner at John F. Corrigan Law P.C. in Providence, Rhode Island. E. Hans Lundsten is of counsel at Alder Pollock & Sheehan P.C. in Providence, Rhode Island. The views expressed are solely those of the authors and do not necessarily represent the views of their respective firms or clients.*

2 *188 BNA Daily Report For Executives J-1, 2003, Treatment of Contingent Liabilities in an Acquisition Evolving 2003.*

3 *For a more detailed analysis see, John F. Corrigan and E. Hans Lundsten,* Mistakes, Buyers Make – Reduced Indemnification Recoveries Due to Asserted Tax Savings *(May 6, 2021) https://businesslawtoday.org/2021/05, AMERICAN BAR ASSOCIATION, BUSINESS LAW SECTION.* ◊

Help Us Grow Our List Serve!

Free and available for all actively practicing Rhode Island attorney members, the Bar's List Serve gives you immediate, 24/7, open-door access to the knowledge and experience of over 700 Rhode Island lawyers. If you have a question about matters relating to your practice of law, you can post the question on the List Serve, and it will be emailed to all list serve members. Any attorney who wishes to provide advice or guidance can, and hopefully will, quickly respond. Help us grow our online community by joining TODAY! Visit **ribar.com** and the Members Only section, and click **List Serve** for instructions to join.

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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 **coastlineeap.com** (company name login is "RIBAR"). Please contact Coastline EAP by telephone: 401-732-9444 or toll-free: 1-800-445-1195.

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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 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 Kathleen Bridge at kbridge@ribar.com or 401.421.5740.

Virtually Seattle
American Bar Association Delegate Report
Midyear Meeting 2022

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

The 83rd Midyear Meeting of the ABA was held virtually on February 9-14, 2022. The House of Delegates met all day on February 14. As usual, the delegates were welcomed by the host city dignitaries from Seattle and ABA officers. We were afforded once again the opportunity to vote on pending Resolutions on a separate electronic device from what the meeting was streamed on. One of the proud highlights of the meeting for me was the livestream remarks of our own Chief Justice Paul Suttell, current President of the Conference of Chief Justices. He noted that responding to the pandemic's effect on the administration of justice, and the drive to combat racial prejudice in the justice system, were the main focus of his Conference. He noted a "Blueprint for Racial Justice" was a model for an initiative of the Conference. His remarks were received by the Delegates warmly.

Elections for future officers were held and another "first" for the ABA was the election of Mary L. Smith of Illinois, a member of the Cherokee Nation and the first Native American President of the ABA. The ABA has been, and continues to be, a leader in Diversity, Equality, and Inclusion. The Delegates were treated to a stimulating panel discussion on partisan gerrymandering and the threat it poses to our democracy. Among other important observations, I learned the derivation of the word "gerrymander," it being a combination of the word "salamander" whose irregular shape was like the voting district created by the legislature under a Governor "Gerry."

As far as substantive Resolutions are concerned, the House passed a variety of Resolutions: improving guardianship laws (no doubt given the national press coverage of the Britney Spears case), veterans' discharge upgrades recognizing the effects of mental health on some less than honorable discharges, transparency of nursing home ownership and operation, services for lactating mothers who are attorneys or litigants engaged in the legal system, the crisis in youth homelessness services, or lack thereof, and pretrial bail conditions. Given the national coverage of the last Presidential election and the vote of the Electoral College, a Resolution was passed to clarify and codify the process, and the efforts to restrict the voting process generally were the subject of some debate. A number of Resolutions were introduced to combat international problems in law such as genocide, ethnic cleansing, kleptocratic regimes, and war crimes. A series of Resolutions passed dealing with the immigration crisis at our southern border and streamlining immigration procedures while insuring due process rights of immigrants and asylum seekers. Residential eviction laws, in light of the pandemic, were revisited, as well as a number of criminal law Resolutions dealing with systemic bias in the courts. A number of Resolutions were also passed concerning the Commission on Uniform State Laws. This column cannot possibly cover all the important discussions and Resolutions that were held regarding these and other issues and I would invite the Bar to go to the ABA website for further in-depth coverage. Although the site is sometimes hard to navigate it has been improved substantially and is full of interesting information for those who are patient and tech savvy and even some, like me, who are not.

I attended a number of committee meetings in addition to and in advance of the House deliberations. The National Caucus of State Bar Associations, the Nominating Committee of the ABA, and the New England Bar Association are but a few of the ABA organizations I belong to, and those meetings were informative and valuable. In the past, I have served on a number of committees including Constitution and Bylaws, Gun Violence, Solo and Small Law Firm Section, among others, and I still follow closely their deliberations.

The Annual Meeting of the ABA is scheduled to be in person in Chicago August 5-9, 2022. ABA Day in Washington, D.C. will have taken place on April 4, 2022 by the time this article is ready for publication. The opportunity to meet virtually with our Rhode Island Congressional representatives is another valuable contribution to ABA and Congressional collaboration. As I write this column, the nomination to the United States Supreme Court of its' first African American female member with deep Rhode Island connections is being debated. The ABA Committee on the Federal Judiciary has endorsed her nomination heartily. In closing, I would like to invite comment about my role as ABA Delegate and, as always, I appreciate fully the privilege and honor it is to be able to represent the Rhode Island Bar Association at the ABA. I would encourage members of the Bar to advance their professional development opportunities by engaging in the variety of ABA programs. ◊

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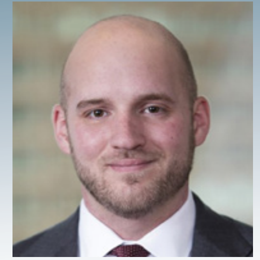
Lunch with Legends:

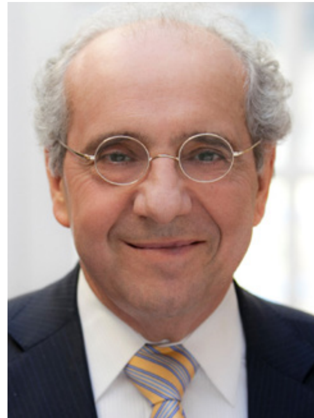
Trailblazers, Trendsetters, and Treasures of the Rhode Island Bar

William J. Delaney, Esq.
Cohn & Dussi LLC, Warwick



Paul L. Keenan, Esq.
Jones Kelleher LLP, Providence

Amato "Bud" DeLuca grew up in Cranston, Rhode Island with his large Italian American family. Bud earned his bachelor's degree from University of Bridgeport in Connecticut in 1968. Following graduation, he spent two years serving in the United States Army. After leaving the Army, Bud attended Suffolk Law School, graduating in 1973. A central theme of Bud's career has been serving those in need. From representing plaintiffs in personal injury and medical negligence cases, to handling cases as a volunteer ACLU lawyer, to starting and growing a public interest law center, Bud has seen and done almost all of it in his nearly fifty-year career.



Amato "Bud" DeLuca

On an unseasonably warm and sunny February day, we had the pleasure of meeting Bud for lunch at Café Choklad (more on that in a moment), which is just steps from Bud's office. Here are some excerpts from our conversation with Bud.

Why law school?
I grew up in a big family in Cranston with an Italian immigrant father, who did not speak any English. He worked as a baker and my mother as a footpress. Money was tight, so at our home, we had a large garden, a goat, and dozens of chickens, which helped supplement our income. At one point, the city of Cranston came and told my family that, for whatever reason, we could no longer keep the goat or the chickens. It was crushing. Nobody helped us. Nobody stood up for us. And I never forgot that. It's not right that people get taken advantage of because they don't know their rights, don't speak the same language, or are just different from the ones telling them what to do. That's what motivated me.

Tell us about your work for the ACLU.
The ACLU in Rhode Island uses volunteer attorneys. I started volunteering for them early on in my career, and I continue to do so. Being a lawyer is not about making money, it's about making a better world for everyone in it. It is an awesome responsibility. We have an enormous amount of power to make a difference in people's lives, should we choose to. And we should choose to do so. The systems and institutions tend to take advantage of people, especially poor people and people of color. As lawyers, we have the responsibility to help protect them from that. I learned early on that I could do that with the ACLU–and that's why I continue to do it. It is rewarding to help people who are oppressed, or need to speak up, or need their rights defended, and it makes the world a better place.

What drew you to Plaintiffs' work?
I knew early on that representing institutions is not what I would do. Institutions will always be able to afford the "best lawyers." And that was never going to be me. I've been blessed to represent plaintiffs in personal injury and medical negligence cases. I love what I do, so I keep doing it.

What was your most interesting case?
I've had many interesting cases, especially in my role as a volunteer ACLU lawyer. But there are two that stick out to me the most. The first is ***Lynch v. Donnelly***, which I argued in the United States Supreme Court. The case stemmed from a seasonal holiday display, including a crèche (manger scene) on government property, which was co-sponsored by the City of Pawtucket and some local businesses. I represented the ACLU in the federal court for the inclusion of the crèche in the display. The District Court ruled for the plaintiffs, and the First Circuit Court of Appeals affirmed. The City of Pawtucket ultimately appealed to the Supreme Court, which heard the case and overturned the lower courts' decisions, ultimately holding that the First Amendment did not prohibit Pawtucket from including a crèche in its annual Christmas display. The second interesting case was my representation of Tamerlan Tsarnaev's wife during the investigation after the Boston Marathon bombing. It was unlike any other representation in that we were dealing with the FBI and the terrorist task force, which had surveillance on her home and would follow us when we picked her from her home. It was surreal.

(continued on next page)

The Bar Journal assumes no responsibility for opinions, statements, and facts in any article, editorial, column, or book review, except to the extent that, by publication, the subject matter merits attention. Neither the opinions expressed in any article, editorial, column, or book review nor their content represent the official view of the Rhode Island Bar Association or the views of its members.

What is the Rhode Island Center for Justice?
Maybe seven or eight years ago, my then-partner (and now Chief of the Civil Division of the Rhode Island Attorney General), Miriam Weizenbaum and I were sitting here in this very same restaurant, Café Choklad, discussing opening an office in the West End of Providence to do pro bono work. Miriam said that we could, and should do something bigger. So, we started meeting with advocacy groups within various underserved and underrepresented communities and asked them what they needed, and decided to build an organization based on what they told us. Once we had that information and knew what our goals were, we teamed up with Roger Williams Law School for some office space and some law students to work as interns. In the last few years, the Center for Justice has grown, from an operation of one or two lawyers funded by us, to a self-supported non-profit public interest law center with internships and fellowships for the best and brightest students and lawyers from schools around the country, including Roger Williams. The Center for Justice provides legal assistance to individuals in a number of practice areas, including housing, immigration, workers' rights, criminal justice, education, and utility shutoffs. I'm still involved as the chair of the board of directors, but the growth and success of the Center for Justice is a testament to the hard work of a great team of passionate and dedicated professionals. It helps a lot of people and I'm very proud of what it's become. ◊

Fastcase Tip

Create a Case Law Alert

In Fastcase, you can receive an email as cases are published meeting search specifications laid out via search query and associated filters. Below is a quick step by step guide to creating a case law alert.

1. Run the search you wish to use for your case law alert.
2. On the results page, click the down arrow to the right of the search bar (and just left of Jurisdictions and Sources) at the top of the results page.
3. Click Add as Alert.
4. You can find case law alerts under the Bookmarks, History, Alerts menu (icon is found in the furthest top right of the results page and looks like a clock surrounded by a circular line).

Alert emails can be edited for frequency, sent to multiple parties, sent as a digest, or named. You cannot edit the filters or query associated with a case law alert; you would simply need to run a new search and save a new alert.

A case law alert email will—by default—be sent out once per business day per alert. When you receive a case law alert email it will contain the newly published cases with hyperlinked titles to a public facing version of the full text of the case as well as a case excerpt below each case title showing where your query is located within said case.

A free member service to all Rhode Island Bar Association attorneys, Fastcase's 24 hours a day, 7 days a week, 365 days a year, online legal research improves lawyers' ability to stay current with the law and provides cost effective client service.

To access Rhode Island Fastcase, connect to the Rhode Island Bar Association website at **ribar.com**. As always feel free to contact customer support with any questions you may have. Support is available Monday – Friday from 8 am to 9 pm EST and can be reached by email at support@fastcase.com or by phone at 866.773.2782.

fastcase

In Memoriam

Henry J. Almagno, Esq.
Henry J. Almagno, 79, of Cranston, died on Wednesday, February 16, 2022. Born in Providence, he was the son of the late Emilio and Nancy (Giarrusso) Almagno. He was the beloved husband of Elaine (Paliotta) Almagno for 44 years. Henry was a graduate of Suffolk University Law School and Providence College and had his own law practice in Rhode Island for 50 years. Besides his wife, he is survived by his children, Henry J. Almagno, Jr. and Laura M. Almagno, his brother Lawrence Almagno and his wife Deborah, and Barbara Irons and her husband Thomas. He also leaves behind several nieces and nephews.

Gary E. Blais, Esq.
Gary Ernest Blais, 66, formerly of Scituate, died on March 18, 2022 after a long illness. Gary was born on November 28, 1955, in Pawtucket, Rhode Island. He was the son of Ernest W. Blais, Jr. and M. Jeanne Blais. Gary received his bachelor's degree from Michigan State University in 1978, and his law degree at Thomas M. Cooley Law School in 1983. He began practicing law in Rhode Island in 1984, and served as District Attorney and Chief Legal Counsel for the Public Utilities Commission from 1988 to 1994. He opened his private practice in Providence in 1994, which he operated until 2019. Gary is survived by his wife of 22 years, Michelle Rouleau, his mother M. Jeanne Blais, his sister Susan M. Blais and brother-in-law Barry Fisher, his stepson John Greene, his daughter-in-law Ashley Casey, his granddaughter Avery Rose Greene, and his sons Glenn Archetto, Taylor Blais and Spencer Blais. He was predeceased by his father Ernest Blais and his granddaughter Aubrey J. Greene.

Joseph L. DeCaporale Jr., Esq.
Joseph Louis DeCaporale, Jr., 77, of Clearwater, FL, formerly of Rhode Island, died on August 5, 2021. Born in Providence, RI, he was the son of the late Joseph and Helen (Balasco) DeCaporale, Sr. Joseph graduated from La Salle Academy, Providence College, and Suffolk University where he earned his Juris Doctorate. He practiced law for nearly 40 years in the State of Rhode Island as a prosecutor, defense attorney, and in private practice. He is survived by his wife Elaine Audette DeCaporale, their son Paul and his wife Michelle, brother William "Billy" DeCaporale, and family, father-in-law Paul E. Audette, stepdaughter Anne-Marie, nine grandchildren, one great-grandchild, and several nieces and nephews. He is also survived by his former wife Jo-Ann and their children, Christine, Joseph, and Susan.

J. Ronald Fishbein, Esq.
J. Ronald Fishbein, 89, of Providence, died on Sunday, February 20, 2022. Born in Boston, he was the son of the late Nathan and Evelyn (Goldberg) Fishbein. After receiving a bachelor's degree in biology from Brandeis University, he earned a master's degree in biology from the University of Vermont and Doctorate of Law Degree from Boston College Law School. Mr. Fishbein was an attorney in Providence for many years before retiring and was a member of Temple Emanu-El. He is survived by two nephews, Adam and Joshua Fishbein, and very close friends Christopher J. Kane, his wife Angela V. Kane, and their son Giovanni J. Kane of Providence. He was predeceased by his brother Hal R. Fishbein and seven uncles.

Charles R. Mansolillo, Esq.
Charles R. Mansolillo, 72, of Cranston, died Monday, March 7, 2022. Charles was born in Providence on March 8, 1949, the eldest son of the late Nicholas W. and Adeline A. (Marcello) Mansolillo. He was a 1967 graduate of Classical High School and a 1971 cum laude graduate of Saint Michael's College, Colchester, Vermont. In 1985 he received his law degree from Suffolk University Law School and was admitted to the practice in RI. He pursued graduate studies in theology at the former Weston Jesuit School of Theology, Cambridge, Massachusetts. In 1973 Charles began his career in Rhode Island state and local government as the youngest member of the Providence delegation in the General Assembly. Beginning in 1975 he served as a Councilman and subsequently as Chief of Staff to Mayor Vincent A. Cianci, Jr.; and as a member of the Commission that authored the Providence Home Rule Charter. In 1986, Charles was the Republican nominee for Mayor of Providence. Charles returned to state government in 1987 as legal counsel in the Department of Children and Their Families. Subsequently, he was appointed Director of the Governor's Office of Housing, Energy and Inter-governmental Relations by Governor DiPrete, and later as the Governor's Policy Director. In 1991, Charles rejoined Providence city government as Deputy City Solicitor, and thereafter, in 1992, was appointed City Solicitor by Mayor Cianci. Upon Completion of his tenure in 2003 the Providence City Council, in recognition of his service, conferred on him the honorific title of City Solicitor Emeritus. Charles served as chairman of the board of directors of the Providence anti-poverty agency ProCAP, Inc., and as a trustee of the Providence Public Library. He also served as chairman of the board of the Providence Catholic Schools Collaborative. Charles leaves behind four brothers, Robert N. Mansolillo (Nancy) of Nashua, NH, John M. Mansolillo (Marlene) of North Providence, Nicholas W. Mansolillo of Orlando, FL, and James P. Mansolillo (Lauren) of Cranston; and several nieces and nephews.

Edward Marcaccio, Esq.
Edward Marcaccio, 89, died on Friday, March 4, 2022. He was the husband of the late Rose (DiTommaso) Marcaccio. Born in Providence, he was the son of the late Thomas and Delia (Pontarelli) Marcaccio. Ed was a graduate of Brown University in 1954. Upon graduation from Boston University School of Law, he practiced in Providence for decades with his father and brother. Ed is survived by his sons, Edward J. Marcaccio, MD and his wife Beth, and Paul T. Marcaccio, MD and his wife Donna; a brother, John Marcaccio, MD, several grandchildren and a great-grandson. He was predeceased by his brother Thomas Marcaccio.

Keven A. McKenna, Esq.
Keven A. McKenna, 77, of Providence, died on Friday, March 4, 2022. Born in Westerly, he was the oldest son of the late Eugene and Rita (Alexander) McKenna. A graduate of Westerly High School, Keven went on to Georgetown University and afterward obtained an MPA from Syracuse University. Keven then went on to graduate from Georgetown Law School and passed the Foreign Service Officer Exam. Keven had a prolific career as a lawyer and public servant, including serving as a Providence Municipal Court Judge, State Assemblyman, and many posts in Washington and within the State government. He was a parishioner of Blessed Sacrament Church in Providence, a member of the Knights of Columbus, and The Friendly Sons of St. Patrick. He was also a member of the American Judges Association. Keven is survived by his children, Sean K. McKenna of Middletown, Christopher B. McKenna (Maureen) of Pawtucket, Damian A. McKenna (Jessica) of Lafayette, CA, Mary-Kathryn Aranda (Victor) of Dedham, MA, and Joseph M. McKenna of Tempe, AZ, his siblings, Marylen McKenna, Ward McKenna (Mary Beth), Gregory McKenna (Maril), and Roberta Palmer (Bill), eleven grandchildren, and one great-grandchild.

Charles J. Reilly, Esq.
Charles J. "Chuck" Reilly, 70, of Providence and Palm Beach Gardens, FL, died on December 15, 2020. He was the husband of Barbara (Bouffard) Reilly. Born in Pawtucket, he was the son of Thomas J. Reilly, Sr., and Florence (McKenna) Reilly. As principal and founder of Reilly Law Associates in Providence, Chuck specialized in the practice of tax law. He graduated from St. Raphael's Academy in 1968 and Providence College in 1972 where he majored in accounting. He began his professional career as an agent with the Internal Revenue Service in Providence but was promoted to the level of Appellate Conferee and transferred to the Boston office. While there, he completed the requirements for becoming a Certified Public Accountant. He subsequently earned his law degree at Suffolk University. Chuck was admitted to practice law in Rhode Island. In addition, he was admitted to practice before the District Court of RI, the U.S. Tax Court, the U.S. Court of Appeals, the U.S. Claims Court, and the U.S. Supreme Court. In 2018, he received the Albert Nelson Marquis Lifetime Achievement Award. Charles is survived by his daughter, Kristen R. Alberione (and her husband, Lucas) of Rehoboth, MA, sister, Barbara Faulkner of Taunton, MA, sister, Sue Geraghty of Providence, brother, Thomas J. Reilly, Jr., of Providence, brother, Kevin Reilly of Alexandria, VA, and several grandchildren. He was preceded in death by his daughter, Elizabeth K. Reilly.

Ada Sawyer Centennial Celebration

Denise C. Aiken, Esq.
Providence

We had a terrific plan: a celebration of Ada Sawyer on the 100th anniversary of her passing the Rhode Island Bar Exam in September 1920 and becoming Rhode Island's first female lawyer. There would be a gala dinner with presentations by judges and people who knew Ms. Sawyer toward the end of her long career and members of her family to share the night.

However, as Robert Burns once said, "The best-laid schemes o'mice an' men gang aft a-gley."

Enter the COVID-19 pandemic, and our October 2020 date was postponed to March 2021 and then postponed again. We find ourselves farther removed from Ms. Sawyer's 100th Anniversary than we could ever have foreseen.

While we are much disappointed in missing our opportunity to celebrate Ms. Sawyer's accomplishments and her opening doors for other women, we will have time to honor her during the Bar Association Annual Meeting Luncheon on Friday, June 24th.

We are proud to announce that amid the usual Friday Luncheon activities, we will honor Ms. Sawyer as she is inducted into the RI Heritage Hall of Fame. I hope to see you there!

Ada Sawyer, Esq.

Establish Yourself As An Expert in An Area of Law

You have a lot to share, and your colleagues appreciate learning from you. We are always in need of scholarly discourses and articles, and we also encourage point-counterpoint pieces. Or, if you have recently given, or you are planning on developing a Continuing Legal Education seminar, please consider sharing your information through a related article in the *Rhode Island Bar Journal*. While you reached a classroom of attorneys with your CLE seminar, there is also a larger audience among the over 6,500 lawyers, judges, and other *Journal* subscribers, many of whom are equally interested in what you have to share. For more information on our article selection criteria, please visit the Bar's website, under News and *Bar Journal*, and click *Bar Journal* Homepage. The Editorial Statement and Selection Criteria is also on page 4 of every issue. Please contact Communications Director Erin Cute at 401-421-5740 or ecute@ribar.com if you have any questions.

Looking to Post or Search for a Job in the Legal Field?

The Rhode Island Bar Association's Career Center is operated by YourMembership.com. At no charge, Bar members may: search and quickly apply for relevant jobs; set up personalized Job Alerts for immediate notification any time a job is posted matching your skills and/or interests; create an anonymous job seeker profile or upload your anonymous resume allowing employers to find you; and access job-searching tools and tips. For a fee, employers may place job openings; search our resume database of qualified candidates; manage jobs and applicant activity right on our site; limit applicants to those who meet your requirements, and fill openings more quickly with talented legal professionals. For more information, visit the Bar's website at **ribar.com** and click Career Center under the list of Quick Links.

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.

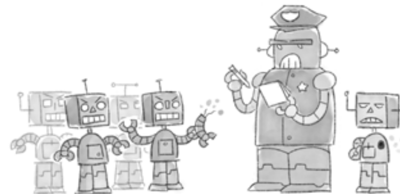
How It Works: Readers are asked to consider what's happening in the cartoon above and submit clever, original captions. Editorial Board staff will review entries, and will post their top choices in the following issue of the *Journal*, along with a new cartoon to be captioned.

How to Enter: Submit the caption you think best fits the scene depicted in the cartoon above by sending an email to ecute@ribar.com with "Caption Contest for May/June" in the subject line.

Deadline for entry: Contest entries must be submitted by June 1st, 2022.

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 caption for March/April



"I don't care how many lawyers you've replaced, it's still against the law."

LEE GREENWOOD, ESQ.

May Compare & Contrast Free, Non-Credit Program: Electronic Signatures

The next session in the, **FREE**, **non-credit**, technology program series, ***Compare & Contrast***, is scheduled for **Friday May 13th at 12:30 pm** via Zoom and will focus on digital marketing. In this session, Jared Correia of Red Cave Law Firm Consulting and Attorney Mike Goldberg, co-chair of the Bar's Technology in the Practice Committee, will review their top tips for digital marketing and generating new clients in the digital age, and take questions on the subject.

This quick (30 minute) and free presentation will get you the information you need to make an informed choice. Please **click here** to register for the program via Zoom.

This series will review different law-related products and services and each webinar will be focused on a particular topic. In just 30 minutes, Jared will discuss what makes the most sense for members depending on practice size and budget. All sessions will be recorded and available to view free of charge on the Bar's **Law Practice Management** page on **ribar.com**.

Lawyers on the Move

Jeffrey S. Brenner, Esq., partner at **Nixon Peabody LLP**, will lead the firm's newly established nationwide Construction & Real Estate Litigation practice.
401-454-1042
jbrenner@nixonpeabody.com
nixonpeabody.com

Gene M. Carlino, Esq., partner at **Pannone Lopes Devereaux & O'Gara LLC**, was recently elected as a Fellow of The American College of Trust and Estate Counsel.
401-824-5100
gmcarlino@pldolaw.com
pldolaw.com

Patrick A. Guida, Esq., partner at **Duffy & Sweeny, LTD**, was recently elected President of the American College of Commercial Finance Lawyers.
401-455-0700
pguida@duffysweeney.com
duffysweeney.com

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Start Your Summer Off Right!

6 Habits to Help Form a Healthier You

Stop Skipping Breakfast!

Often referred to as the most important meal of the day, eating breakfast can have a noticeable impact on your performance throughout your day. Because breakfast helps to restore and boost glucose, eating in the morning can contribute to better memory and concentration levels, as well as improve your mood and lower your stress levels.

Make a Good First Impression

First impressions can be nearly impossible to reverse or undo, and they often set the tone for the relationship that follows. After only 5 seconds, many people have already created an impression of you because of the way you dress and your body language. How can this disadvantage be overcome? Be aware that the "impression time window" is short. Use a sincere smile, give direct eye contact, be a patient listener, and watch the handshakes!

Don't Break the Chain

The concept called "don't break the chain" is a motivational construct that can help you reach a goal that can easily fall prey to procrastination. The idea is, you should spend time working on your goal at least once a day. Once the task is complete you mark an "X" through that day on the calendar. The more X's we see on the calendar, the more motivated we feel. Whether it's spending three minutes or a full day working on your goal, don't break the chain.

Working from Home: Get Dressed First

It's important to establish healthy work habits when working from home. Keep a routine that starts with getting dressed and doing most of what you would normally do if you were heading out the door to work. Getting dressed and presenting your best self, even if alone, can help you feel engaged and energized and increase your productivity.

Make Your Workspace Healthier with Plants

Working in the office can be tough, especially when it's beautiful outside and you'd rather be enjoying the outdoors. When you can't be outside, bring some of the outdoors in. Plants can help freshen up your work area, improve air quality, reduce stress, and can have positive psychological benefits as well.

Could You Be Depressed and Not Know It?

Depression can take hold gradually, without a person realizing that depressive thoughts and feelings are increasingly dominating their life. But no matter how hopeless you feel, you can get better. *If you think you need help, visit our website ribar.com to learn how RI Bar Association members can receive confidential assistance through the Lawyers Helping Lawyers Committee and Coastline EAP.*

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