

# Rhode Island Bar Journal

Rhode Island Bar Association Volume 69, Number 5, March/April 2021



**Fear and Loathing in Kennedy Plaza**  
**Ethical Considerations When Responding**  
**to Online Client Criticisms**  
**Book Review – *How to Be An Anti-Racist***  
**by Ibram X. Kendi**

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**Black Point Ruins, Scarborough Beach, Narragansett, RI** The Black Point Ruins, also known as the Scarborough Ruins, is a historical landmark located between Scarborough Beach and Black Point in Narragansett. Built in 1865 for the Davis family, the property was originally called Windswept. In the mid-1900s, the property was sold and turned into a restaurant, Cobb's By the Sea.



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

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## For the Public Good



**Richard P. D'Addario, Esq.**  
President  
Rhode Island Bar Association

**Doing pro bono work gives us the opportunity to work with other clients that we may not otherwise represent in our practice, and it allows us, in many cases, to gain expertise outside our usual practice areas.**

One of the reasons I have always been proud of the legal profession and my status as a lawyer is that we contribute in so many ways to the public good. In addition to solving the legal problems of our paying clients, lawyers devote a good deal of their time to pro bono work.

The term “pro bono publico” means that, unlike traditional volunteering, we use our special skills and knowledge to provide services to individuals who cannot afford those necessary services and to organizations that are dedicated to acting for the public good.

As you are aware, Rhode Island has adopted the recommendation of the American Bar Association: Our Rules of Professional Conduct recognizes that along with the privilege to practice law comes a responsibility to use our skills to assist those in need and to improve the legal profession. Although Rule 6.1 does not require pro bono work, the rule “encourages” us to devote a minimum of 50 hours per year to pro bono work. This can be done by direct representation without a fee or by providing services for a reduced fee, as well as participation in activities for improving the law, the legal system, or the legal profession. We should all aspire to achieve that recommendation.

I was fortunate in my first years of practice to be employed by Rhode Island Legal Services, and I became acutely aware of the fact that life is not so easy for some of us. In those five years, I learned that the legal problems associated with the less fortunate in our society are real, sometimes complex, and helping resolve them was at times life-changing for some of them. The ability to help solve some of these issues for my clients was rewarding. As my private practice developed, I found that many times I achieved the greatest satisfaction from helping someone in need, and I was fortunate enough to have the means to do so. I am sure many of us still remember these clients and their cases as we look back on our careers.

A study of the American Bar Association in 2018 entitled “Supporting Justice” surveyed members of the Bar in over 20 states. The survey indicated that approximately 20% of the attorneys surveyed provided at least 50 hours of pro bono service each, but it also discovered that one out of

five attorneys has never done so. What is encouraging, however, is that over the past 30 years, pro bono work has grown in scope and visibility. Most attorneys understand the need for doing pro bono work and generally have an interest in doing so. Most firms have active programs that include pro bono work for their associates, and law schools across the country have requirements that their students devote a minimum number of hours to pro bono work in order to obtain a degree. In fact, Roger Williams University Law School requires its students to participate in 50 hours of approved pro bono activity in order to receive a degree.

I am proud to say that our Rhode Island Bar Association and its members provide substantial representation in pro bono cases. If you are not a member, please consider signing up for the Bar’s Volunteer Lawyer Program, ably administered for over 34 years by Public Services Director Susan Fontaine. The VLP program was responsible for the placement of over 470 cases in 2019 and almost 350 in 2020. The Bar Association has approximately 1,200 volunteer attorneys, and there were more than 2,600 hours of direct pro bono work reported by that program in 2020. In addition, in most years the VLP conducts extensive outreach programs through community organizations.

Of course, it is always the hope and goal of the Bar Association to enlist more lawyers in providing the types of pro bono representation that most directly benefit less fortunate clients. The Bar offers free CLE programs for those who volunteer, and there is also a mentoring component of the program that will assist attorneys who are less experienced in certain areas involving pro bono work.

At the same time, there are many other opportunities for us to offer pro bono work such as participation in Law Day activities, involvement as a judge in the school Mock Trial program, and at the Law School as a Moot Court jurist. All of these activities allow us to fulfill our fifty-hour aspiration.

Besides the fiat of Rule 6.1, there are many reasons why we should participate in pro bono work as a part of our profession. In the first place, it makes us all feel like we are doing good, which is always a positive. In addition, it enhances the profession’s public image, something we should all

work to achieve every day.

Doing pro bono work gives us the opportunity to work with other clients that we may not otherwise represent in our practice, and it allows us, in many cases, to gain expertise outside our usual practice areas. Finally, doing pro bono enhances our own personal reputation and helps build up the goodwill necessary for a successful law practice.

I also want to take this opportunity to point out and recognize the extensive contributions we make as attorneys by our participation in community and government activities. So many Rhode Island lawyers take part in their local government, serving on town councils, zoning boards, planning boards, school and budget committees, and other related functions, to say nothing of the numerous nonprofit organizations and boards that enlist our involvement. These contributions are valuable to our local communities and should not go unrecognized. We should always acknowledge and applaud all of this participation for the public good, participation that has become, and will always be, an important and integral part of our profession. ◇

## Mindfulness for the Busy Lawyer CLE Program

Attorney Patricia A. McLaughlin showed Bar members how to start the new year off right by teaching them how to stay resilient to stress and improve their overall well-being with her **Mindfulness for the Busy Lawyer series**. Learning these techniques will build awareness and improve focus and productivity in daily legal practice. Her January and February sessions are available on the Bar's website in the On Demand section, but Attorney McLaughlin will also be offering live webinars every month through the spring. Visit our **CLE Calendar** to register!

## Expand your Client Base with the Bar's Lawyer Referral Service!



Attorney **Kristy J. Garside**, a member of the Lawyer Referral Service, enthusiastically supports the program. *"The Bar Association's Lawyer Referral Service is a win-win for both attorneys and clients. Attorneys are able to expand their client base while clients are able to connect with competent attorneys in the area of law they need."*

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: **Ask A Lawyer** providing live, television studio lawyer panels in partnership with Channel 10; **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](http://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](mailto: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 signed articles, except to the extent that, by publication, the subject matter merits attention. The opinions expressed in editorials are not the official view of the Rhode Island Bar Association. Letters to the Editors are welcome.

#### Article Selection Criteria

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

Direct inquiries and send articles and author's photographs for publication consideration to: **Rhode Island Bar Journal Editor Kathleen Bridge** email: [kbridge@ribar.com](mailto:kbridge@ribar.com) telephone: 401-421-5740

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# Rhode Island Bar Association Volunteer Lawyer Program 34 Years of Pro Bono Service 1986-2020 2020 Highlights and Accomplishments

## Program Summary

In keeping with its mission, The Rhode Island Bar Association's Volunteer Lawyer Program (VLP) continued to provide legal assistance to those who cannot obtain legal representation either on their own or through other legal resources. Administered by the Bar Association for thirty-four years, the Volunteer Lawyer Program continues to offer many interesting and relevant opportunities for the private bar to handle pro bono cases. VLP membership provides a satisfying variety of experiences that cannot be duplicated elsewhere while opening the door to justice for low-income citizens. Volunteer Lawyer Program attorneys impact the quality of their clients' lives positively by providing critically needed representation and protections. The contributions of volunteer attorneys are essential to the system of justice. The ethical commitment of the Bar Association to the delivery of pro bono assistance is reflected by the ongoing dedication of the members to public service.



## Propelling through the Pandemic

For several months beginning in March 2020, the staff facilitated client intake and case placement working from home following the state health restrictions and protocols. Many legal issues that developed for the public were directly related to

COVID-19, especially in the areas of housing, domestic violence, and probate. Intake and placement for all case types progressed with little interruption and continues due to the dedication of our volunteer attorneys. Sadly, for the majority of 2020, we were unable to coordinate and schedule any legal clinic programs, such as the popular collections clinic. This clinic has been offered on-site several times a year at the RI Law Center for many years.

In appreciation, a Constant Contact email was sent in October from President Richard D'Addario to the more than 100 volunteer attorneys who accepted pro bono cases during this difficult time. Many of the attorneys accepted more than one case. These incredible volunteers were offered a complimentary CLE program of their choice out of seven listed until the end of the year.

## Education – Increasing Case Placement

Focusing on recruiting VLP members is essential to respond to the legal needs of the most vulnerable in our state. The most effective method of member recruitment and retention of current members is through sponsoring and providing the benefit of free continuing legal education. This is accomplished in cooperation with the Bar's Continuing Legal Education (CLE) department and the ongoing support of the Public Service Involvement Committee members and outstanding volunteer speakers.

In October, a family law seminar series, "Unique Aspects of Military Divorce: and Ancillary Issues," gave volunteer attorneys,

who accepted family law cases, a guide to the unique issues and challenges presented when handling a military divorce. This free, two-part, five-credit program was offered via Zoom. The thirty members who attended had the benefit of hearing from Francis J. Flanagan Esq. of Flanagan Law Offices LLC, former Deputy Disciplinary Counsel Barbara L. Margolis, Esq., Paul P. Pederzani III, Esq. of Pederzani Law Offices, P.C., Kristy J. Garside, Esq. of The Law Offices of Howe & Garside, and Kerry Reilley Travers, Esq. Included in Part one were discussions on jurisdiction; service (SCRA); grounds, timing of filing and other strategies; family care planning; temporary custody and support; relocation; visitation; and the International Hague Convention. Part two reviewed pensions, new and old; the 10-year rule; 20/20/20; the Howell decision; and disability. Twenty-plus family law cases were immediately placed by offering this presentation.



Kristy J. Garside, Esq.



Barbara L. Margolis, Esq.



Paul P. Pederzani III, Esq.

Not pictured: Francis J. Flanagan, Esq. and Kerry Reilley Travers, Esq.

In addition to the free seminars sponsored by the VLP, members who contribute and report thirty plus hours of pro bono service annually are eligible to receive CLE coupons to be used in the following calendar year. They are given the choice of attending one, free, three-credit seminar or three, one-credit Food for Thought seminars of their choice. Instituted in 2009, this policy reflects the Bar's longstanding support and encouragement of pro bono legal assistance and public service.

## Volunteer Recognition

Although the Pro Bono Awards presentation could not be held in person due to the pandemic, attorneys Doris A. Lavallee and Gregory P. Sorbello were honored by President David Bazar with the 2020 Pro Bono Publico Award for their exceptional contributions to the poor through the Volunteer Lawyer Program and Pro Bono Program for the Elderly. The amazing pro bono contributions of these two award recipients exceeded a remarkable 450-plus hours!

Phillip C. Koutsogiane was honored with the 2020 Continuing Service Award. Selection for this award is based on pre-

## Letter to the Editor

A number of Bar members know Al Killilea. Al is a retired Professor of Political Science at URI. He taught at URI for his entire career. I was the first in my family to attend college, and Al took me under his wing as a much-needed mentor when I attended URI. He also mentored many other URI students who have gone on to become lawyers and judges in Rhode Island. Those of us who were lucky enough to be taught by Al owe much of our critical thinking and persuasive writing skills to Al and the one-page papers we had to prepare for his classes.

Al and I have remained close for 50 years. I helped the Killilea family when Al and his wife Mary Ann lost their daughter Mari in a terrible car accident when Mari was only 16 years old. The Killileas have established a scholarship fund in Mari's memory at the Rhode Island Foundation.

Unfortunately, Al has battled polycystic kidney disease throughout his life. His kidneys have now completely failed and he must undergo dialysis in order to stay alive. The dialysis is not only exhausting, but it is grueling for Al because for some reason his blood is not sufficiently cleansed by the dialysis machine.

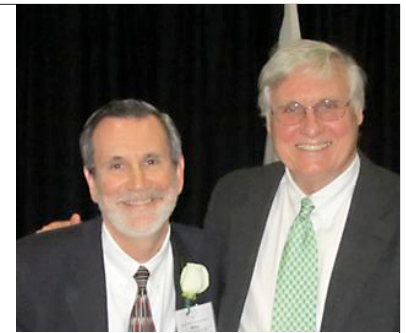
It's not often that people are given the chance to save a life, but that is exactly what being a living kidney donor offers. More than 6,000 people were living kidney donors in the United States in 2018, according to the United Network for Organ Sharing. Sadly, however, the number of people in need of a lifesaving kidney transplant far exceeds the number of donors. In fact, almost 100,000 people are desperately waiting for a kidney transplant.

For patients in dire need of a transplant, finding a living kidney donor is their best option. According to Mikel Prieto, M.D., a Mayo Clinic transplant surgeon, "Living kidney donation gives patients with end-stage kidney disease the best opportunity to return to a full and productive life."

Al and Mary Ann have, to date, been unsuccessful in their search for a kidney donor. I offered to help get the word out, and at my request, Al wrote the following to me:

"I feel a kinship to the members of the Rhode Island Bar Association because of the large number of my former students in my Political Theory classes at URI who are now lawyers and judges in Rhode Island. Those former students have already given me the gift of their insights and enthusiasm over the years. So I feel greedy in asking them and their peers to consider making another huge gift to me. I have end-stage kidney disease and need someone to donate a kidney to me. It is an impossible request to make of a close friend or a complete stranger, and yet I must make it. If you or someone you know would consider making this priceless donation, you can get more information without

any obligation from the website of the United Network for Organ Sharing (UNOS) or from Sarah J. Gibb, Transplant Donor Coordinator at Rhode Island Hospital at (401) 444-3091. You can also speak with my wife, Mary Ann Killilea, about kidney donation at (401) 396-6858. My deep thanks for considering this request."



Michael R. McElroy and Al Killilea

Many may wonder if living with only one kidney presents a problem. According to the National Kidney Foundation, for those with one kidney, life span is normal and most people with one kidney live healthy, normal lives. I can personally attest to this. My lovely wife, Christine, was stricken with kidney cancer about 30 years ago. She had to have one of her kidneys removed, and she has had no ill effects.

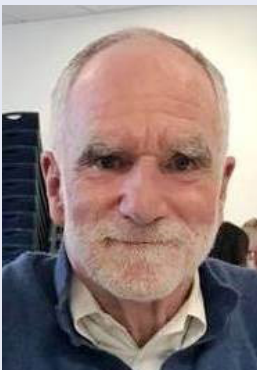
Some Bar members may also be aware that my friend, attorney John Longo, donated one of his kidneys to fellow attorney Ken Haupt a number of years ago. John's selfless sacrifice highlights the tremendous generosity of spirit that exists in our small, tight-knit legal community here in Rhode Island.

Hopefully, Al and Mary Ann will be blessed with a kidney donation soon. If anyone would be interested in exploring a kidney donation to save Al's life, it would be the ultimate and most precious gift one could give to another—the gift of life itself.

The following call to action was written by the poet Samuel F. Pugh and has always inspired me:

When I have food,  
help me to remember the hungry;  
When I have work,  
help me to remember the jobless;  
When I have a home,  
help me to remember those who have no home at all;  
When I am without pain, help me to remember those who suffer,  
And remembering,  
help me to destroy my complacency;  
Bestir my compassion,  
and be concerned enough to help;  
By work and deed,  
those who cry out for what we take for granted.

Michael R. McElroy, Esq.



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■  
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## IMMIGRATION LAW

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viously receiving the Pro Bono Publico Award and having extensively contributed to the pro bono effort for at least five years. Ever since joining the Volunteer Lawyer Program in 2004, he has contributed his expertise. For his outstanding service to the poor, he received the Pro Bono Publico Award in 2014. Since 2015, he has increasingly accepted pro bono matters, providing hundreds of hours of representation for those in desperate need. His patience, constant concern for the community, and willingness to work with those facing hardship is always evident throughout his representation.

Please note all three of these remarkable 2020 award recipients have accepted cases throughout the months of the pandemic without hesitation.

### Placement Strategies

Due to the pandemic there were no in-person events with members of the Bar for staff to attend. Instead, staff prepared and distributed pro bono case summaries via email to emphasize the critical need for legal assistance and encourage participation. This was one of several effective methods of case placement, in addition to the traditional direct calls to panel members and blast emailing.

Most potential clients contact the VLP by telephone to request pro bono service. The public is referred by the human service network, including the Courts, Rhode Island Legal Services and other legal assistance agencies, community action programs, senior citizen organizations, the Rhode Island Bar Association website, law offices, and the internet.

In 2020, the public was assisted by volunteer attorneys with bankruptcy, collections, consumer, education, employment, guardianships, landlord/tenant, license registry, non-profit, probate, tort defense, and family law issues. Although there is no longer specific funding available for foreclosure-related matters, we received requests from clients desperate to save their homes during the pandemic and will continue to provide assistance, within the parameters allowed.

During December 2020, volunteer attorneys enthusiastically responded to the “12 Days of Pro Bono” holiday email request that listed two or three available pro bono cases daily. The generosity of our members resulted in the placement of 41 pro bono cases! To date, this is the largest number of cases taken during such a short time period.

### Collaboration

We continue to receive many requests for assistance with domestic violence, bankruptcy, divorces, collections, guardianships, probate matters, etc., and anticipate an even greater number of landlord/tenant and eviction matters once the moratorium is lifted. We continue to work together and collaborate with Rhode Island Legal Services in many of these matters. We also hope to jointly sponsor a landlord/



Doris A. Lavalley, Esq.



Gregory P. Sorbello, Esq.



Phillip C. Koutsogiane, Esq.

tenant CLE seminar during 2021, to increase volunteer attorney participation in this crucial area.

### Joining the VLP

VLP clients are prescreened by the staff for financial eligibility. They are families and individuals including veterans and the elderly in our communities statewide that truly need your help. Joining is a simple process and mentors are available. For more information about the Volunteer Lawyer Program, please contact Susan Fontaine at [sfontaine@ribar.com](mailto:sfontaine@ribar.com) or 401-421-7758. For your convenience, VLP membership applications may be accessed on the Bar’s website at [ribar.com](http://ribar.com) and completed online. Once we receive your application, we will contact you.

*The Rhode Island Bar Association’s Volunteer Lawyer Program is funded by Rhode Island Legal Services, Inc. and the Rhode Island Bar Foundation.*



## 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 January and February.

**Alyssa Aquino, Esq.**

Hinshaw & Culbertson LLP

**Michael A. DiLauro, Esq.**

Office of the Public Defender

**Natalia N. Friedlander, Esq.**

Rhode Island Center for Justice

**David A. Grossbaum, Esq.**

Hinshaw & Culbertson LLP

**Patricia A. McLaughlin, Esq.**

Attorney at Law

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## Fear and Loathing in Kennedy Plaza



Peter J. Comerford, Esq.  
Coia & Lepore, Ltd.  
Providence

**Our own Supreme Court has often included literary quotes and allusions in its opinions. Like their federal brethren, Rhode Island's justices most often cite Shakespeare, frequently in the form of brief quotes cited as a form of authority, rather than illustrative of the narrative underlying the decision.**

On October 2, 2020, Judge Mary S. McElroy of the federal district court for the District of Rhode Island issued a decision in *Carroll v. Craddock*,<sup>1</sup> granting a preliminary injunction for Sean Carroll, enjoining the Rhode Island DMV from withdrawing his license plate “FKGAS.” This was a groundbreaking opinion, not just because of its erudite exposition of the relevant principles of First Amendment law, but because it appears to be the first judicial opinion to cite to the writings of gonzo journalist Hunter S. Thompson. Judge McElroy used this literary reference to express wonderment at the role of the car in American life:

Hunter S. Thompson described the feeling behind his trip in the Red Shark in this way: “Every now and then when your life gets complicated and the weasels start closing in, the only cure is to load up on heinous chemicals and then drive like a bastard from Hollywood to Las Vegas ... with the music at top volume and at least a pint of ether.” *Fear and Loathing in Las Vegas: A Savage Journey to the Heart of the American Dream* (1971).

The Red Shark was the large, red, rented Chevrolet convertible that Thompson drove during the remarkable adventures narrated in the book. The court used the quote as illustrative of the car functioning as “an instrument of grand adventure.”<sup>2</sup> How this quotation functions within the opinion we will explore later, but at this point, it is enough to note that Judge McElroy has joined a distinguished company of jurists who have used literary references to enliven their opinions. The legal journal *The Green Bag* published a study<sup>3</sup> in which they quantified the literary references made by then-sitting justices of the United States Supreme Court and the authors they cited. Shakespeare and Lewis Carroll were tied for being cited most frequently, with sixteen references each. The opinions authored by the late Justice Antonin Scalia offered the most literary allusions of the justices surveyed. Hunter S. Thompson was not cited in any of the opinions studied.

Our own Supreme Court has often included literary quotes and allusions in its opinions. Like their federal brethren, Rhode Island's justices most often cite Shakespeare, frequently in the form of brief quotes cited as a form of authority,

rather than illustrative of the narrative underlying the decision. A search of Rhode Island cases on Casemaker for “Shakespeare” yields forty-three results, though several of those result from the court's citation of the New York case *Shakespeare v. Markham*.<sup>4</sup> For instance, in *May v. Penn TV & Furniture Co., Inc.*, Justice Flanders quoted *The Merchant of Venice* in support of the proposition that appearances can be deceiving.<sup>5</sup> The observation in *Romeo and Juliet* that “a rose by any other name would smell as sweet” is cited in three different opinions<sup>6</sup> by three different justices to remind us to look at substance rather than labels in our legal analysis. In the first paragraph of *Long v. Atlantic PBS, Inc.*, we are told that Neil Sedaka crooned that “breaking up is hard to do,” and that the parties find themselves, as in Shakespeare's phrase in *King Lear*, “more sinned against than sinning.”<sup>7</sup>

Other authors, with literary merit if not popularity at the level of the Bard, make do with only one or two mentions by the court. For instance, even Homer barely rates a couple of mentions. Justice Kelleher (more about whom later) said, “given the unique circumstances surrounding this case, we shall recite those facts again even though we are not unmindful of Homer's lament, ‘It is tedious to tell again tales already plainly told.’”<sup>8</sup> Sometimes the literary reference is a way of tracing and acknowledging the origin of an adage or saying. For example, after using the phrase “let sleeping dogs lie,” Judge Savage traced the saying to “Geoffrey Chaucer, *Troilus and Criseyde*, l54 (1381-1386); (Barry Windeatt trans., Penguin Books 2003) (“It is nought good a slepying hound to wake.”); see also *Wade v. Rich*, 618 N.E. 2d 1314, 1322 (Ill. App. Ct. 1993) (citing Chaucer).<sup>9</sup> Similarly, Justice Robinson, in explaining why he would uphold the validity of a poorly-drafted criminal statute, quoted the proverb that “the best is the enemy of the good.” He explained, in a footnote, “According to an authoritative source, the quoted language was originally an Italian proverb that was quoted in Italian by Voltaire in a letter that he wrote to the Duc de Richelieu on June 18, 1744. The Yale Book of Quotations 791 (Fred R. Shapiro ed., 2006).”<sup>10</sup>

The use of literary materials as a form of



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authority was the subject of extended judicial commentary in an advisory opinion to Governor Almond concerning separation of powers.<sup>11</sup> The pertinent issue for our purpose is that one of the justices objected to the majority's use of the opinion of Professor Hazard as an authority on the point in question. Owing to its pertinence, it is worth quoting at (considerable) length:

Our colleague in his individual advisory opinion chides us for alluding to the opinion of Professor Hazard regarding the scope of permissible regulation by the ethics commission. We recognize that this Court is not bound by the opinions of outstanding academics, and *we note that our colleague cites in profusion numerous secondary sources including law review articles, treatises, and even various quotations from the Bard of Avon whose unparalleled literary talents were not matched by his exposition of political or jurisprudential theory.* Indeed, in his famous tragedy *Richard II*, he expresses through John of Gaunt his lyrical and unalloyed admiration for England with the following panegyric:

“This royal throne of kings, this scepter'd isle,

This earth of majesty, this seat of Mars,

This other Eden, demi-paradise,

This fortress built by Nature for herself,

Against infection and the hand of war,

This happy breed of men, this little world,

This precious stone set in the silver sea,

Which serves it in the office of a wall,

Or as a moat defensive to a house

Against the envy of less happier lands;

This blessed plot, this earth, this realm, this England\*\*\*”

William Shakespeare, *Richard II*, act 2, sc. 1.

It is even more remarkable that this lyrical praise was sung by the Bard at a time (1595) when England was an autocracy. This was long before her parliamentary system of government was admired by political philosophers in the age of the enlightenment.

Without in any way diminishing our admiration for the noble Shakespeare, Professor Hazard is perhaps the most outstanding expert in the field of ethics. ...[I]t is rare that one has the benefit of a specific opinion of such a persuasive secondary source that is directly applicable to the question at hand. By contrast, the numerous references of our colleague to various articles apply only by analogy and are not specifically addressed to the question that we must answer. We would suggest that Professor Hazard's qualifications are at least equal to those of any of the authors cited by our colleague. We concede that he does not write in blank verse, but his commentary is eloquent and persuasive.<sup>12</sup> (emphasis added)

One justice merits detailed analysis of his literary citations: Justice Thomas Kelleher was a skilled legal stylist, who quoted widely and well. He is, of course, among those who quoted Shakespeare.<sup>13</sup> He pertinently paraphrased Mark Twain on the exaggeration of the report of a litigant's death.<sup>14</sup> He cited to the fables of Aesop regarding the fact that appearances can be deceptive.<sup>15</sup> He said of a fleeing criminal accused that “taking the words of Horace Greeley to heart, he headed west.”<sup>16</sup> He quoted Robert Frost on the merits of the road not taken.<sup>17</sup> In describing the loss of sleep suffered because a noisy freight yard was put in a residential neighborhood, he had this to say:

We need only to refer to the fabled Don Quixote, where Cervantes wrote:

‘Blessing on him who invented sleep, the mantle that cov-

ers all human thoughts, the food that appeases hunger, the drink that quenches thirst, the fire that warms cold, and the cold that moderates heat, and, lastly, the general coin that purchases all things, the balance and weight that equals the shepherd with the king, and the simple with the wise.’ (Jarvis’s translation)<sup>18</sup>

The marriage of form and content reached a stylistic apex in his opinion in *State v. Marrapese*.<sup>19</sup> That case decided an appeal filed by Frank “Bobo” Marrapese from a criminal conviction that Bobo thought was tainted by the failure of the trial court to declare a mis-trial owing to certain testimony by Bobo’s sometime paramour, Vivian (the opinion does not disclose her last name). Justice Kelleher found himself reminded “of Congreve’s famous utterance that ‘Heaven has no rage like love to hatred turned Nor hell a fury like a woman scorned.’”<sup>20</sup> The stylistic achievement is that this quote was not a mere rhetorical garnish, like a sprig of parsley on a fish filet, but a well-chosen introduction to the narrative that Kelleher guides us through in deciding the issues before the court.

Kelleher tells the tale of Bobo and Vivian in a whimsical way worthy of British humorist P.G. Wodehouse, if Wodehouse had written about mobsters. The contrast between the felonies detailed in the case and the tongue-in-cheek prose style is what “works” stylistically. For instance, we learn that “Bobo suggested a camper safari to Florida and Vivian thought such an undertaking was a grand idea.”<sup>21</sup> In furtherance of that grand idea, Bobo stole a camper. Kelleher wrote: “After she and her boyfriend inspected the camper, they both agreed that the new acquisition would afford them a pleasant change and an exhilarating sojourn in Florida’s sunny climes.”<sup>22</sup> Bobo then broke up with Vivian, prompting her to report Bobo to the state police for the theft, for which he was charged and brought to trial.

Vivian testified at the trial, and the refusal to declare a mistrial in the face of her utterances was one of the issues on appeal. On cross examination, she testified: “Vivian defensively responded that she kept track of everything Bobo did and added the comment: ‘Every time he stole, I kept track of it, just in case.’”<sup>23</sup> Later, the following transpired: “The defendant’s attorney continued the query by asking, ‘(d)idn’t you live with him for a couple of years?’ Vivian replied that she would not describe their two-year association as ‘living’ because most of the time ‘he was out stealing.’”<sup>24</sup> And finally: “When the trial justice explained to the witness that defendant’s attorney was exercising his ‘prerogative,’ Vivian said to the trial justice: ‘Why don’t you ask him (defendant’s attorney) about when he called me and tried to have me take money to go away to Florida.’”<sup>25</sup> Bringing the opening quote full circle, the opinion concludes by saying:

The jury therefore had sufficient competent evidence to find that Vivian’s story was pure fiction, the product of a *scorned woman* with a mixed-up mind. However, in their efforts to discredit Vivian, the defense presented evidence which did indeed support the tale she told. Based on the record before us we do not hesitate to find that the jury complied with the trial court’s mandate to ignore Vivian’s outburst and decide the case solely on the evidence properly before it. Putting Vivian’s spontaneous utterances to one side, there is ample evidence to support the findings of guilt. Consequently, we find no fault with the trial justice’s denial of the mistrial motion.<sup>26</sup> (emphasis added)

All of which brings us back to Mr. Carroll and his license

## Mark Your Calendars! Rhode Island Bar Association Virtual Annual Meeting

JUNE  
23 - 24



The Rhode Island Bar Association Virtual Annual Meeting is scheduled for Wednesday, June 23 and Thursday, June 24, 2021. Our plenary speakers, the Honorable O. Rogeriee Thompson of the United States Court of Appeals for the First Circuit, and the Honorable John J. McConnell, Jr., Chief Judge of the United States District Court for the District of Rhode Island, will draw upon their career experiences to lead a discussion and provoke a meaningful conversation about diversity in the profession. Our **18** fantastic workshops, skillfully organized by our excellent presenters, include such topics as:

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plate. Unlike some of the literary quotations we have seen, the court's allusion to Hunter S. Thompson is not used as authority for a legal point, nor is it mere garnish (though as a nod to a classic of counter-culture literature, it does add a nice hint of spice). Rather, it is part of a series of observations, supported in eight footnotes, explaining the court's view of the importance of the automobile in American culture. By means of those observations, the court established that the DMV's regulation of the alphanumeric identifier known as the license plate amounts to a constitutional issue under the First Amendment, since that piece of metal is, in reality, an example of poetic license.<sup>27</sup> Moreover, the opinion is to be credited, albeit obliquely, for not shying from the use of the word the suggestion of which led the DMV to find the plate offensive, rather than indulge a series of euphemisms. But finally, the significance of this issue can perhaps best be summed up in the words of Hunter S. Thompson himself, "Freedom is something that dies unless it's used."<sup>28</sup> Or, if you prefer P.G. Wodehouse, "It was one of those cases where you approve the broad, general principle of an idea but can't help being in a bit of a twitter at the prospect of putting it into practical effect. I explained this to Jeeves, and he said much the same thing had bothered Hamlet."<sup>29</sup>

#### ENDNOTES

1 1:20-cv-00126-MSM-LDA, *United States District Court, D. Rhode Island*, October 2, 2020.

2 *Supra*, at p. 2.

3 Dodson, Scott, and Ami Dodson. "Literary Justice." *THE GREEN BAG: AN ENTERTAINING JOURNAL OF LAW* 18, no. 4 (2015): 429-434.

4 72 NY 400.

5 686 A.2d 95 (R.I. 1996) *In addition to the six separate references to various plays of Shakespeare, there is a reference to the Wallace Stevens poem "The Emperor of Ice Cream."*

6 *Travelers Property and Cas. Corp. v. Old Republic Ins. Co.*, 847 A.2d 303 (R.I. 2004); *Votolato v. Merandi*, 747 A.2d 455 (R.I. 2000); *O'Connell v. Bruce*, 710 A.2d 674 (R.I. 1998), *though one wonders if this has now been over-ruled by the court's opinion in City of East Providence v. United Steelworkers of America*, 925 A.2d 246, n. 1 (R.I. 2007, Suttell, C.J.), *which stated that "a rose is a rose is a rose," citing to Gertrude Stein.*

7 681 A.2d 249 (R.I. 1996).

8 *Cranston Teachers' Ass'n v. Cranston School Committee*, 423 A.2d 69 (R.I. 1980); *then thirty-four years later, Justice Robinson quoted Kelleher quoting Homer. Carrozza v. Voccola*, 90 A.3d 142 (R.I. 2014).

9 *Bartlett v. Fitts*, C.A. No. PC 00-2002 *Superior Court of Rhode Island May 17, 2007, note 9.*

10 *State v. Maxie*, 187 A.3d 330 (R.I. 2018) (Robinson, J. dissenting), *but see Rhode Island Public Employees Retiree Coalition v. Raimondo*, C.A. PC 2015-1468 *Superior Court of Rhode Island June 9, 2015, wherein a justice of the Superior Court attributed the adage directly to Voltaire.*

11 *In re Advisory Opinion to the Governor*, 732 A.2d 55 (R.I. 1999).

12 *Id.* at 67 – 68.

13 *Petition of Rhode Island Bar Association*, 374 A.2d 802 (R.I. 1977), *wherein he quotes both HENRY VI, Pt. II and HAMLET regarding lawyers.*

14 *Bogosian v. Vaccaro*, 422 A.2d 1253 (R.I. 1980).

15 *State v. Hannagan*, 473 A.2d 291 (R.I. 1984).

16 *State v. Newman*, 367 A.2d 200 (R.I. 1976).

17 *Taylor v. Marshall*, 376 A.2d 712, 717 (R.I. 1977 Kelleher, J. dissenting).

18 *DeNucci v. Pezza*, 329 A.2d 807, 809 (R.I. 1974).

19 351 A.2d 95 (R.I. 1976).

20 *Ibid.*

21 *Ibid.*

22 *Ibid.*

23 *Id.* at 97.

24 *Id.* at 98.

25 *Ibid.*

26 *Id.* at 100.

27 *Even if Mr. Carroll's plate reminds us of the words of scripture: "Vanity of vanities, says the Preacher, vanity of vanities! All is vanity." Ecclesiastes 1:2*

28 [https://www.goodreads.com/author/quotes/5237.Hunter\\_S\\_Thompson](https://www.goodreads.com/author/quotes/5237.Hunter_S_Thompson).

29 P.G. Wodehouse, *JEEVES IN THE MORNING*. ◇

## Invitation to Exhibit

### Rhode Island Bar Association Virtual Annual Meeting June 23 & 24, 2021

In light of continued concerns about the safety of gathering in large numbers during the pandemic, the leadership of the Rhode Island Bar Association has decided to produce a virtual event for our **2021 Annual Meeting**. This year's meeting will be presented over the course of two days on Wednesday, **June 23rd** and Thursday, **June 24th**.

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## BOOK REVIEW

# *How to Be An Anti-Racist*

by Ibram X. Kendi



Samuel D. Zurier, Esq.  
Providence

**With the retreats and setbacks the cause of civil rights has suffered, both in the Supreme Court and elsewhere, since Dr. King's passing in 1968, there is ample reason to question whether our country has given up on both "the fierce urgency of now" and "the arc of the moral universe" that he embraced.**

Over the past few years, video recordings of the deaths of Black Americans at the hands of the police, the burgeoning Black Lives Matter movement, and the 1619 Project combined to support a growing national consensus to address racial injustice. The May 26, 2020 murder of George Floyd produced a tidal wave of protests across the racial divide, leading so far to such changes as the removal of Confederate monuments in the South and the removal of "Providence Plantations" from our State's official name last November after voters had overwhelmingly rejected a similar proposal in 2010.

These events spurred many of us to learn more about the issue of racial injustice by reading such books as Professor Ibram X. Kendi's *HOW TO BE AN ANTI-RACIST* (2019). The volume really is two books in one, combining a personal memoir with a doctrinal statement of policy principles. Most readers will focus on the first book, in which Professor Kendi's candid and compelling stories encourage readers (including this one) to reflect on their own experiences and gain insight concerning their unconscious biases. At the same time, the policy principles presented in the second book, which are the subject of this review, raise difficult questions for attorneys, highlighting the gaps in our country's realization of the ideal of equal justice under law (as reflected in the Supreme Court's jurisprudence) and offering a controversial way to fill these gaps.

More specifically, Professor Kendi's policy principles push back on a view of the nation's history many of us learned in law school and celebrate each Martin Luther King Day, namely that the civil rights era validated a national value of justice and equality, starting a long march towards those goals that continues to this day, albeit at a frustratingly slow pace. Professor Kendi's argument essentially rejects that gauzy vision, proposing a starker alternative.

To understand Professor Kendi's argument, this article will begin with a brief overview of three lines of Supreme Court equal protection cases (in the areas of public education, affirmative action in public university admissions, and voting rights)

in which the early promise of the civil rights era was weakened over time by court decisions that limited remedies to cases of intentional discrimination, and which restricted the use of racial criteria in fashioning remedies, causing racial inequities to remain or worsen.<sup>1</sup> It will then describe how Professor Kendi's doctrinal framework essentially flips the status quo around, placing the burden of proof on those who seek to justify any policy or action that does not have a favorable impact on reducing racial disparities. This article will conclude with some suggestions for lessons our legal community can take from Professor Kendi's argument.

### I. The Civil Rights Era And Its Aftermath

#### A. Public School Integration

For many historians, the civil rights era began with the **Brown v. Board** of Education decision in 1954, in which the Supreme Court declared that "in the field of public education the doctrine of 'separate but equal' has no place."<sup>2</sup> The **Brown** court presented a new standard of equal protection in public schools, stating:

In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education. Such an opportunity, where the state has undertaken to provide it, is a right which must be made available to all on equal terms.<sup>3</sup>

At first, the Court allowed local communities to develop their own compliance plans to implement the new rights "with all deliberate speed."<sup>4</sup> When local communities failed to act on their own, the Supreme Court upheld comprehensive court orders, stating that a school board must take "whatever steps might be necessary to convert to a unitary system in which discrimination is eliminated root and branch," and that it must "come forward with a plan that promises realistically to work, and promises realistically to work *now*."<sup>5</sup>

The Supreme Court's initial position of strong support shifted during the 1970s as the Warren Court gave way to the Burger, Rehnquist and Roberts Courts. In the **Swann** decision of 1971,<sup>6</sup> the Court placed limits on court-ordered busing, stating:

Absent a constitutional violation there would



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be no basis for judicially ordering assignment of students on a racial basis... All things being equal, with no history of discrimination, it might well be desirable to assign pupils to schools nearest their homes.<sup>7</sup>

Two years later, in **Keyes v. School District No. 1, Denver, Colorado**,<sup>8</sup> the Supreme Court held that Denver’s student assignment plan, which was proven discriminatory in some neighborhoods, should be presumed discriminatory as a whole absent proof to the contrary.<sup>9</sup> While **Keyes** marked some progress in the battle against school segregation, the majority chose not to adopt a stronger standard proposed in Justice Powell’s concurring opinion, which viewed racial imbalances in school populations as a proper subject for judicial relief regardless of whether they resulted from explicit policies (*de jure* segregation) or from other factors (*de facto* segregation).<sup>10</sup>

The Burger Court’s focus on *de jure* discrimination left it powerless to address the issue of suburban “white flight” in its 1974 **Milliken v. Bradley** majority decision, which Justice Marshall criticized in his dissent as being “more a reflection of a perceived public mood that we have gone far enough in enforcing the Constitution’s guarantee of equal justice than it is the product of neutral principles of law.”<sup>11</sup> **Milliken** marked a major retreat in the Court’s efforts to integrate schools, as it limited remedies to cases where there was explicit proof of intentional discrimination leading to segregation, closing the courthouse door to other cases of segregation that may have resulted from other sources, such as housing discrimination.<sup>12</sup>

In its 2007 **Parents Involved in Community Schools v. Seattle School District No. 1** decision,<sup>13</sup> the Supreme Court went even further, holding that two school districts’ voluntary integration plans were themselves discriminatory and unconstitutional. In his plurality opinion, Chief Justice Roberts described the key holding of **Brown v. Board of Education** as being that “[t]he way to stop discrimination on the basis of race is to stop discriminating on the basis of race.”<sup>14</sup> In dissent, Justice Breyer warned that

The last half century has witnessed great strides towards racial equality, but we have not yet realized the promise of **Brown**. [Chief Justice Roberts’s] position, I fear, would break that promise. This is a decision that the Court and Nation will come to regret.<sup>15</sup>

In many ways, the **Parents Involved** plurality decision ended the promise of **Brown v. Board of Education** to make public education “available to all on equal terms.”<sup>16</sup> Earlier decisions had limited the Court’s protection to *de jure*, rather than *de facto* discrimination, and now the Court barred even voluntary integration programs by school districts to remedy past segregation.

**B. Affirmative Action in University Admissions Policies**

In 1966, President Johnson issued Executive Order 11246, directing contractors to “take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin.” Many colleges and universities adopted affirmative action into their admissions policies with dramatic results; for example, Columbia University admitted more than twice as many African American students to its 1969 freshman class compared to the previous year.<sup>17</sup> In 1978, however, the Supreme Court held, through Justice Powell’s decisive opinion in **Regents of the University of California v. Bakke**,<sup>18</sup> that public university affirmative action policies based on race were subject to “strict

scrutiny,” and could be found to violate the Constitutional rights of white students barring some compelling justification. The *Bakke* court allowed these universities to consider race as a limited “plus factor” as part of a broader review of student qualifications to promote diversity.<sup>19</sup> In 2003, the Supreme Court (in an opinion by Justice O’Connor) placed even stricter limitations on the use of race in admissions decisions, stating:

We take the Law School at its word that it would “like nothing better than to find a race-neutral admissions formula” and will terminate its race-conscious admissions program as soon as practicable.... It has been 25 years since Justice Powell first approved the use of race to further an interest in student body diversity in the context of public higher education. Since that time, the number of minority applicants with high grades and test scores has indeed increased..... We expect that 25 years from now, the use of racial preferences will no longer be necessary to further the interest approved today.<sup>20</sup>

The Court’s 25-year time limit on this form of affirmative action was consistent with its approach towards school desegregation decrees – in the Court’s view, the losses that white students incurred under affirmative action policies could not be justified absent evidence of a clear connection to prior discrimination against students of color. Subsequent case decisions from the Court, as well as changes in the Court’s composition, validate Justice O’Connor’s prediction; if anything, the end of affirmative action programs may come sooner.<sup>21</sup>

### C. Voting Rights

After Selma, Alabama police violently ended a peaceful civil rights march across the Edmund Pettus Bridge, President Johnson urged Congress to pass a voting rights act with this message:

What happened in Selma is part of a far larger movement which reaches into every section and State of America. It is the effort of American Negroes to secure for themselves the full blessings of American life.

Their cause must be our cause too. Because it is not just Negroes, but really it is all of us, who must overcome the crippling legacy of bigotry and injustice.

And we shall overcome.<sup>22</sup>

The passage of the 1965 Voting Rights Act was, in many ways, the crowning achievement of the civil rights era. In *South Carolina v. Katzenbach*,<sup>23</sup> the Warren Court upheld its broad provisions, rejecting several Constitutional challenges, including one to the Act’s “pre-clearance” requirement of prior federal approval of state-created voting districts in jurisdictions with a prior history of discrimination. The 1965 Act contained a five-year time limit, but Congress subsequently extended and enhanced it with reauthorizations and amendments in 1970, 1975, 1982, and 2006, with the last two reauthorizations for 25 years each.<sup>24</sup> When the Supreme Court reviewed the Act in 2013, however, it held that the extension of the pre-clearance program was an unconstitutional infringement on states’ rights, declaring that the country’s progress since the Act’s original passage in 1965 removed the compelling justification for the legislative remedy that existed at the time it was originally enacted. In dissent, Justice Ginsburg reviewed the serious racial disparities in

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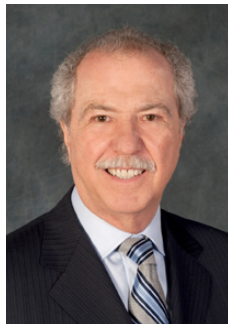
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voting access that remained, famously stating that “[t]hrowing out preclearance when it has worked and is continuing to work to stop discriminatory changes is like throwing away your umbrella in a rainstorm because you are not getting wet.”<sup>25</sup>

#### D. The End of the Civil Rights Era

Dr. King struggled with the slow pace of progress during the civil rights era. During the 1963 March on Washington, he noted that:

We are now faced with the fact that tomorrow is today. We are confronted with the fierce urgency of now. In this unfolding conundrum of life and history, there “is” such a thing as being too late. This is no time for apathy or complacency. This is a time for vigorous and positive action.

At other times, Dr. King took a longer view, such as in one of his final speeches before his untimely death in which he famously stated that “the arc of the moral universe is long, but it bends toward justice.”<sup>26</sup>:

With the retreats and setbacks the cause of civil rights has suffered, both in the Supreme Court and elsewhere, since Dr. King’s passing in 1968, there is ample reason to question whether our country has given up on both “the fierce urgency of now” and “the arc of the moral universe” that he embraced.

#### II. How Professor Kendi Fills the Gaps

Professor Kendi begins his book by describing a speech he presented in high school on the subject of “Dr. King’s message for the millennium.” As a high school student, he viewed Dr. King’s vision as promoting “color blindness,” and the gap in fulfillment of Dr. King’s dream as largely the fault of Black youth. Professor Kendi describes how, over time, he realized his high school ideas represented a failed project that held the country back from true equality. To replace our country’s flagging commitment to civil rights, Professor Kendi provides an alternative analytic framework based on four key definitions and propositions:

1. **Racist:** One who is supporting a racist policy through their actions or inaction or expressing a racist idea.
2. **Antiracist:** One who is supporting an antiracist policy through their actions or expressing an antiracist idea.
3. **By policy, I mean** written and unwritten laws, rules, procedures, processes, regulations and guidelines that govern people. There is no such thing as a nonracist or race-neutral policy. Every policy in every institution in every nation is producing or sustaining either racial inequity or equity between racial groups.
4. **The only remedy to racist discrimination is antiracist discrimination.**

See *HOW TO BE AN ANTI-RACIST*, pp. 13, 17, 18 (2019) (Kindle edition).<sup>27</sup>

As lawyers, we can view Professor Kendi’s framework as a direct response to the shortcomings of the Supreme Court’s Constitutional jurisprudence just described. While the evolution of Constitutional case law confined the ongoing problem of racial discrimination to cases in which there is evidence of ongoing discriminatory intent, with no remedy available for cases of disparate impacts alone, Professor Kendi flips the script, stating people are “racist” *unless* they support policies that actively reduce disparities. In other words, Professor Kendi’s definition shifts the cohort of people with indifferent attitudes



from “non-racist” to “racist.” Also, while the Supreme Court jurisprudence rejects race-based remedies as producing unacceptable “reverse discrimination,” Professor Kendi’s definitions describe those policies as a necessary remedy.

Professor Kendi places his framework within a broader historical tradition, pointing to the earlier work of Kwame Toure and Charles Hamilton, who contrasted the “individual racism” of a White terrorist who bombs a church in Birmingham, Alabama with the “institutional racism” in that city when “500 Black babies die each year because of the lack of proper food, shelter and medical facilities.”<sup>28</sup> Professor Kendi also acknowledges that he is building on the concept of “systemic racism,” which calls out societal racial harms without specifically identifying the discrimination that caused them. Professor Kendi, however, rejects the qualifiers “institutional” and “systemic,” stating that “everyday people” have difficulty with these qualifying terms, and that it is easier just to use the term “racism” to apply to all conditions of inequality, without regard to who or what acted as the cause.<sup>29</sup>

It is not surprising that such a bold framework raises its own issues. At one point, the book asks readers to overcome their initial discomfort with this broader definition of “racism” by stating it is used as a clinical or descriptive term rather than as a pejorative one, but on an adjacent page it describes racism as a “crime.”<sup>30</sup> In rejecting “assimilationism,” Professor Kendi discounts the significance of any cross-racial measures, including the educational goal of “closing the achievement gap.” Instead, Professor Kendi views “the achievement gap” as inherently “racist.” For this reason, he rejects the project of identifying and correcting inequities in standardized testing, as well as the success of visionary educators who succeed in helping children of all backgrounds achieve high test scores. In his review of the book, Harvard Law School Professor Randall Kennedy questions the wisdom of this rejection of cross-racial measurements of skill and accomplishment, asking whether it “mean[s] that the applicant for a professorship who has a Ph.D. should stand on merely a different, not a higher, basis than the applicant who is illiterate?”<sup>31</sup>

In short, Professor Kendi has more work ahead to complete his project of constructing an alternative to fill the gaps in our current jurisprudence. With that said, he offers a trenchant critique of our Nation’s flagging commitment to end racism and its effects.

### III. Conclusion

On the third Monday of January each year, Americans gather to celebrate the civil rights legacy of Dr. King, who helped bring the practice of our country’s institutions closer to the ideals of equality stated in our nation’s founding documents. In the half-century following Dr. King’s passing, the Supreme Court ended many of the legal reforms he advocated to advance and sustain that progress, raising the question of whether the arc of America’s moral universe continues to bend towards justice. Professor Kendi’s book offers a sobering assessment of the optimism of the civil rights era, arguing instead that its ideals will never succeed, and that the vision of a post-racial society is both an illusion and a source of ongoing harm. We can learn much from his book’s thought experiment of redefining racism, even if that experiment does not yield a complete solution to the flaws of the status quo.



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## ENDNOTES

- 1 *During the civil rights era (and since), Congress enacted statutes that authorize judicial remedies based on findings of disparate racial impact without proof of discriminatory intent, such as in certain cases of employment regulated by Title VII of the Civil Rights Act of 1964, see Griggs v. Duke Power Co., 401 U.S. 424 (1971). In Washington v. Davis, 426 U.S. 229 (1976), the Supreme Court held that proof of disparate impact alone is not sufficient to establish a Fourteenth Amendment violation.*
- 2 *Brown v. Board of Education, 347 U.S. 483, 495 (1954). The Brown decision represented the culmination of a brilliant decades-long campaign mounted by the legal team at the National Association for the Advancement of Colored People. See, e.g., Richard Kluger, SIMPLE JUSTICE (1975).*
- 3 *Brown v. Board of Education, 347 U.S. 483, 493 (1954).*
- 4 *Brown v. Board of Education (“Brown II”), 349 U.S. 294, 301 (1955).*
- 5 *Green v. County School Board of New Kent County, Virginia, 391 U.S. 430, 439 (1968) (emphasis added).*
- 6 *Swann v. Charlotte-Mecklenburg County School Board, 402 U.S. 1 (1971).*
- 7 *See Swann, n. 6, supra, 402 U.S. at 28. See generally, Justin Driver, THE SCHOOLHOUSE GATE: PUBLIC EDUCATION, THE SUPREME COURT AND THE BATTLE FOR THE AMERICAN MIND (2018), which provides a thorough historical overview of this evolution.*
- 8 *413 U.S. 189 (1973).*
- 9 *Keyes, n. 8, supra, 413 U.S. at 207-13.*
- 10 *Keyes, n. 8, supra, 413 U.S. at 217-53 (Powell, J. concurring). One must also note, however, that Justice Powell’s concurrence stated his reservations concerning the disruptions caused by busing, which he considered to place limitations on the availability of this remedy. Id.*
- 11 *Milliken v. Bradley, 418 U.S. 717, 741-42 (1974).*
- 12 *See, e.g., Richard Rothstein, THE COLOR OF LAW: A FORGOTTEN HISTORY OF HOW OUR GOVERNMENT SEGREGATED AMERICA (2017).*
- 13 *551 U.S. 701 (2007).*
- 14 *Parents Involved, n. 13, supra, 551 U.S. at 748.*
- 15 *Parents Involved, n. 13, supra, 551 U.S. at 767-68.*
- 16 *See Brown, n. 3, supra.*
- 17 *See 50 Years of Affirmative Action: What Went Right, and What It Got Wrong,” The New York Times, March 30, 2019, viewable at <https://www.nytimes.com/2019/03/30/us/affirmative-action-50-years.html>.*
- 18 *438 U.S. 265 (1978).*
- 19 *In recent years, the lower federal courts have reviewed cases challenging the use of racial criteria in admissions policies at private universities receiving federal funds that raise similar issues. See, e.g., Students for Fair Admissions, Inc. v. President and Fellows of Harvard College, 397 F.Supp. 3d 126 (D. Mass. 2019) (upholding Harvard University’s admissions policy against challenge based on Title VI), aff’d, --- F.3d --- (1st Cir. 2020).*
- 20 *Grutter v. Bollinger, 539 U.S. 306, 343 (2003).*
- 21 *In Fisher v. University of Texas at Austin, 136 S.Ct. 2198 (2016), the Supreme Court upheld a university’s admissions policy that included a race-based component as part of a broader review of student qualifications. The dissenters (Justices Roberts, Alito and Thomas) all would have found the program unconstitutional. The subsequent retirement of Justice Kennedy and the passing of Justice Ginsburg, both of whom voted to uphold the policy, create the possibility that a future court might prohibit any use of race as a factor in university admission policies.*
- 22 *From March 15, 1965 Special Message to Congress, full text and video at <http://www.lbjlibrary.org/lyndon-baines-johnson/speeches-films/president-johnsons-special-message-to-the-congress-the-american-promise>.*
- 23 *383 U.S. 301, 309, 86 S.Ct. 803, 15 L.Ed.2d 769 (1966).*
- 24 *See Shelby County, Alabama v. Holder, 570 U.S. 529, 537-39 (2013).*
- 25 *See Shelby County, n.24, supra 570 U.S. at 590.*
- 26 *Dr. Martin Luther King Jr., “Remaining Awake Through a Great Revolution.” Speech given at the National Cathedral, March 31, 1968.*
- 27 *The book also addresses issues of justice related to class, gender and gender identity, topics that are beyond the scope of this book review.*
- 28 *See Ibram X. Kendi, HOW TO BE AN ANTI-RACIST (2019), p. 219 (Kindle edition), discussing Kwame Toure and Charles Hamilton, BLACK POWER: THE POLITICS OF LIBERATION IN AMERICA (1967).*
- 29 *See Kendi, supra, p. 222.*
- 30 *See Randall Kennedy, “A black academic grapples with his own racism,” The Washington Post, August 23, 2019, viewable at [https://www.washingtonpost.com/outlook/a-black-academic-grapples-with-his-own-racism/2019/08/23/ee1ea2f2-a194-11e9-b8c8-75dae2607e60\\_story.html](https://www.washingtonpost.com/outlook/a-black-academic-grapples-with-his-own-racism/2019/08/23/ee1ea2f2-a194-11e9-b8c8-75dae2607e60_story.html)*
- 31 *See Kennedy, n. 30, supra. ◊*



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# A Word of Caution: Ethical Considerations When Responding to Online Client Criticisms



**John L. Calcagni III, Esq.**  
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Providence

**As human beings, when someone verbally attacks us or make claims or statements we believe to be false or misleading, our instinct is to respond by advocating for ourselves and mounting a defense. The emotional reaction to criticism is further compounded when it is directed toward our professional reputations, which in turn, correlates to our livelihood.**

## A. Introduction

This article is designed to convey a word of caution to my fellow members of the bar, and specifically, those attorneys who are in private practice. After nearly 18 years as a licensed practitioner, I received my first formal disciplinary complaint earlier this year. The basis of the complaint, raised by disciplinary counsel, stemmed from an online posting that I authored and published in response to an online criticism I received from the disgruntled parent of a former client. Fortunately for me, the Screening Panel of the Rhode Island Supreme Court Disciplinary Board summarily dismissed. However, I would be remiss if I did not share this experience and lessons learned with other practitioners to both caution and educate them of important ethical considerations when responding to online client criticisms.

## B. Online Forum for Lawyer and Clients

The internet has become a pervasive dimension of modern society. It offers new and ever-evolving methods for communication, personal and professional business, shopping, entertainment, and more. As such, it is not surprising the internet is also where many attorneys advertise their services, credentials, and accomplishments, and where many clients go to find legal counsel. Google is the predominant internet search engine. It offers lawyers and firms a venue for advertising and promotion. It also allows clients a forum to post reviews regarding their experiences with lawyers. The number of positive reviews received is considered by Google when determining a business's Google rating (rated from 1 to 5 stars). Reviews and ratings are also relied upon by prospective clients when selecting a lawyer.

Google offers businesses the opportunity to reply to individual online reviews. Replying to online reviews is important to any marketing campaign and overall good customer service. Reviews and responses are posted online for the world to see, to include former, current, and future prospective clients. The content of replies, however, is where attorneys must exercise

caution, particularly if replying to a negative review containing client criticism. Lawyers are often the subject of criticism, especially from clients who are unhappy with their case results. This occurs even among the best attorneys and the most diligent representation.

As human beings, when someone verbally attacks us or make claims or statements we believe to be false or misleading, our instinct is to respond by advocating for ourselves and mounting a defense. The emotional reaction to criticism is further compounded when it is directed toward our professional reputations, which in turn, correlates to our livelihood. In sum, no lawyer wants to lose an existing or future prospective client due to the baseless and false remarks of a former, disgruntled client. Giving in to our emotions and instinct to react harshly to unwarranted criticism is tempting. However, as licensed legal professionals, we must exercise restraint to uphold our ethical obligations, and most importantly for the purpose of this article, maintaining client confidentiality.

## C. Confidentiality of Client Information

Rhode Island Rule of Professional Responsibility 1.6, entitled Confidentiality of information, provides as follows:

(a) A lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent, except for disclosures that are impliedly authorized in order to carry out the representation, and except as stated in paragraph (b).

(b) A lawyer may reveal such information to the extent the lawyer reasonably believes necessary:

- (1) to prevent the client from committing a criminal act that the lawyer believes is likely to result in imminent death or substantial bodily harm;
- (2) to establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and the client, to establish a defense to a criminal charge or civil claim against the lawyer based upon conduct in which the client was involved, or to respond to allegations in any proceeding concerning the lawyer's representation of the client;
- (3) to secure legal advice about the lawyer's

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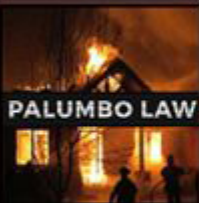
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(4) to comply with other law or a court order.

Rule 1.6 is broader than the evidentiary rule regarding the attorney-client privilege.<sup>1</sup> It covers any information related to a client's representation unless impliedly authorized for disclosure in order to represent the client, or where an applicable exception permitting disclosure exists. The ABA Model Rule of Professional Conduct 1.6, which is similar to the Rhode Island rule, prohibits a lawyer from disclosing any information that relates to a client's representation, whatever its source, without the client's consent, implied authorization, or application of an exception. ABA Formal Opinion 480 (2018) expands the application of the ABA Rule 1.6 to include information obtained from the public record. While Rhode Island has not adopted this expansive interpretation of Rule 1.6, the ABA opinion highlights the importance of this issue.

Rule 1.6 contains four exceptions where a lawyer may disclose information about a client's representation. When considering the plain and ordinary language of the exceptions, only Rule 1.6 (b)(2) has any possible application to lawyers responding to online client criticisms. This limited provision of the rule permits a lawyer to reveal information about the client's representation "to establish a...defense on behalf of the lawyer in a controversy between the lawyer and the client." Notwithstanding some minority state ethics opinions, ABA Formal Opinion 496 (2021) concludes that an online criticism against a lawyer posted by a client does not constitute a controversy between the parties that would authorize the lawyer to publicly disclose information regarding the representation in his or her defense.

Remaining mindful of and adherent to Rule 1.6 are paramount when responding to any online client criticisms. Though your response is directed toward a written posting published by the client, it becomes available for the world to see. This invokes the ethical obligation to maintain client confidentiality when formulating the content of your response, and is what led to my professional scrutiny by the Supreme Court Disciplinary Board.

### D. Responding to Online Client Criticisms

If you receive online criticism from a client, you have the option to either ignore the posting or provide a response. Reasonable minds may differ on how you should proceed, and perhaps each individual criticism should be analyzed on a case-by-case basis. However, recognizing the importance of the internet as a forum for lawyers and legal advertising, I favor responding to all online client reviews, even those containing criticism. After all, each review is considered by Google and other platforms when determining online rankings. Similarly, providing responses to client reviews affects online ranking and placement during internet searches for lawyers.

If you receive a negative review from a client or other person criticizing your representation, you must be mindful of your ethical obligations. Even if you believe the criticism is patently false or misleading, as I did, you must resist the temptation to set the record straight without ensuring that your response complies with Rule 1.6. When faced with an online criticism, consider these practices:

1. If the online review is posted by someone whom you do not recognize and have no record of representing, you may ask Google or the other online platform to review the negative review. You may also make this fact known

in a response, either in the event the online platform does not remove the negative review or while the request for removal is pending.

2. You may contact the client and ask that the negative review or posting be removed. Just as clients have the power to publish these postings, they also have the power to remove them. I suggest calling the client to work through your differences in order to reach a compromise that results in the criticism being removed from the internet.
3. You may respond to the online criticism that its substance is false and misleading, but due to rules of professional responsibility applicable to practicing lawyers, you are restricted from publicly disclosing any further details.
4. You may generally respond that you apologize the client was dissatisfied with the legal representation and/or case results, but that not all legal matters turn out favorably for each client. Though you tried your very best, you regret the efforts were unsuccessful.

### E. Conclusion

As time and technology evolve, the internet will continue to play a larger role in creating a marketplace between attorneys and clients. Successful presence, participation, and competition in this online venue is integral to the survival of privately practicing lawyers. With this comes the need for sound customer service practices that address both satisfied and dissatisfied clients alike. Remember, however, that unlike other businesses, lawyers belong to an esteemed profession that is self-governed by ethical standards. While the business and profession of lawyering often conflict, we must remain vigilant to our rules of professional responsibility to ensure that the nobility and honor of the legal profession continues to withstand the test of time. ♦

#### ENDNOTE

<sup>1</sup> *In Re Ethics Advisory Panel*, 627 A.2d 317 (RI 1993).

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## Proposed Title Standard 8.7 Open for Bar Member Review and Comment

The Rhode Island Bar Association's Real Estate Title Standards and Practices Committee, chaired by John A. Comery, Esq., at their meeting on December 17, 2020, voted unanimously to submit the following Proposed Title Standard 8.7 to the Rhode Island Bar Association's Executive Committee for its consideration. Bar members are invited to comment on these proposed changes, no later than April 1, 2021, by contacting Rhode Island Bar Association Executive Director Helen Desmond McDonald by postal mail: 41 Sharpe Drive, Cranston, RI 02920 or email: hmcDonald@ribar.com.

**SECTION VIII CONTINUED  
STANDARD 8.7  
AFFIDAVIT REGARDING OCCUPANCY**

Where the validity of an action or proceeding resulting in the transfer of title to property involves a determination of whether that property was or was not occupied by a person as of a particular date or period of time, an affidavit stating that the property was vacant, abandoned or words to that effect on the pertinent date or during the period of time shall be deemed acceptable for title purposes, despite the omission of facts supporting that statement, provided that: (a) the affidavit discloses the basis of the affiant's personal knowledge; (b) more than two years have elapsed since the date of recording of the affidavit or a document of which the affidavit is a part; and (c) no record evidence exists of a challenge of any kind to the action or proceeding that led to the recording of the affidavit.

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## An Interview with Kaylin Pelletier-Koenig, Esq.

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

Focus on the Future is a new 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 Staff Attorney at Operation Stand Down Rhode Island (OSDRI) which is a veteran-founded, veteran-run 503(c) non-profit organization that provides “wrap-around services” for veterans, military families, and currently enlisted service people. “Wrap-around services” is a broad term that could include food from our food pantry, clothing from our clothing shed, employment services, housing/rental assistance, and legal assistance.

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

I am one of four attorneys who work on a variety of matters such as screening new clients, pro bono work, legal work for reduced fees, criminal record expungement, family law, eviction work, social security hearings, and traffic tribunal cases. In the course of a day, I might be in client meetings, reviewing medical records, in administrative hearings, or in court proceedings. We get cases as referrals from the Providence VA Medical Center, the Department of Veterans Affairs, the Veterans Treatment Court, and a network of community providers.

> **Who is your biggest role model in or out of the law?**

Definitely my father. My dad is the hardest working person. He is my best friend, my confidant, and my go-to for everything from job advice, to life advice, to marriage advice. He is one of the only people I have been able to count on. He is a single dad, business owner, and mechanic. My heart of gold comes from him.

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

I play with my 6-year-old, 50 pound black Labrador Retriever named Chevy. Although COVID has changed some things, I like to go to the shooting range and the beach. I also have dinner at my Gram’s every Monday night and have volunteered once a week for the last 9 years at the St. Charles Church Soup Kitchen in Providence. Time with my family and volunteering helps me to stay humble and appreciate all I have in my life.

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

I go through phases but I was fairly obsessed with Black Oak Kitchen and Drinks in Coventry. When my husband was deployed, I would take myself out to date night there!

> **Name one thing that you could not live without and why?**

My husband. My husband was deployed to Kuwait, Iraq, and Syria from January to Thanksgiving of 2020. It was hard for me but even harder for him. The 11 months or so he was gone is one of the hardest things we have ever gone through as a couple but it was his dream. He had so much instability growing up that it was my pleasure to support his dream to enlist as a paratrooper. I am so thankful to have him home and safe.

> **What do you find most rewarding about your job?**

I wanted to enlist in college but I have a medical condition which makes me unable to serve. This job is a way to give back. In law school, I was looking for ways to serve this community and started working at Rhode Island Legal Services where I worked with a few veterans. I can’t put on the uniform and serve in the traditional sense, but I can use my law degree to



KAYLIN PELLETIER-KOENIG, ESQ.

help others who can and have. The most rewarding part is when a veteran comes to me at his or her worst, dealing with homelessness or unemployment or legal issues, and you can help him or her to the point where he or she is happy and healthy and providing for him or herself. It makes me feel like Wonder Woman!

> **What do you think attorneys need to know when working with a veteran?**

You cannot be a lawyer or do your job in this country without veterans and their service. When veterans get home, they get cut loose into society with very little support. By the time they get to us as lawyers, they don’t just have legal issues, they have economic, social, housing, and family issues. Unfortunately, more often than not, we can’t just fix one legal issue we need to take a holistic approach, which is OSDRI’s model. Sometimes veterans can get a bad reputation, but they are just regular people. We need to have compassion and gratitude for them.

> **Finally, what do you think this country needs to do to better support its veterans?**

I have always been told that most veterans who commit suicide are actually already enrolled in the VA Healthcare System. The problem is that veterans are sometimes too proud to take the help available to them. We need to not only apprise them of the available services and resources, but we also need to ENCOURAGE them to use these services and destigmatize asking for help. They served our country; now it is our turn to serve them. That’s actually one of OSDRI’s mottos. We can only serve them if we encourage them and convince them they aren’t “weak” for needing help.



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**TO CHOOSE YOUR OAR OPTION:**

- Bar members with questions about a particular area of the law.
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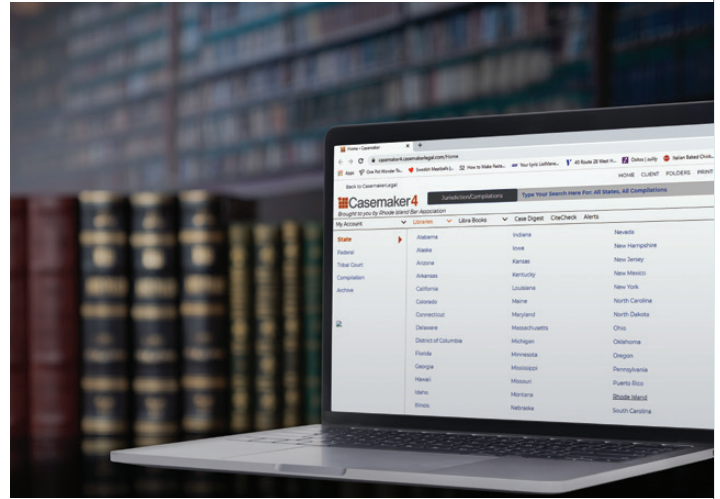
## Casemaker Tip: Tracking

Casemaker4 offers a number of ways to keep control of your research. This issue we will talk about tracking research by client.

In the **Features Toolbar** there is a link to your **Clients**. In the **Clients** menu you can create and store a list of clients you will be doing research for. Click **Add** next to the client field, type in your client's name, and click **Save**. You also have the ability to set up several matters you are working on for that client. To add different matters to your clients, you will go through the same process of clicking **Add**, typing a title, and clicking **Save**.

Once you have made your selections, choose **Continue**. You have now effectively logged in to do research for this client. The **Client** link will display the client's name, letting you know that from this point forward any research you do, or any documents you view, are being labeled as research for this client. When you view your history, documents and search queries will be tagged with the time, date and client you had selected. Later, upon clicking our **Sign Out** link you will be logged out of the system and provided with a **Session Summary**. Like history, the session summary is a listing of everything you did while logged in – complete with a date, time, and client labels, however, it is limited to only what you have done during this session. It is useful for some to sign out after completing research for that client. This way, every session summary is client-specific and you can print a copy of your session summary for your client files.

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# SPOTLIGHT ON THE DIVERSITY & INCLUSION TASK FORCE

## A conversation with Hon. Linda Rekas Sloan, Chairperson

Linda Rekas Sloan of West Greenwich is the first Asian-American woman to serve on the Rhode Island Superior Court and was sworn in on January 28, 2021. A graduate of Providence College and Boston University School of Law with nearly 30 years of legal experience, Linda previously worked as Assistant Vice President and Counsel at Fidelity National Title Group and part-time as the sole member of Linda Rekas Sloan, LLC. She is a past president of the Rhode Island Bar Association and currently chairs the Bar Association's Task Force on Diversity and Inclusion.

### **What do diversity and inclusion mean to you, both personally and professionally?**

Diversity is the presence, at all levels in the legal profession, of different kinds of people, usually referring to a mix of culture, socioeconomic background, race, ethnicity, gender, gender identity, sexual orientation, disabilities, religion, and life experience. It does not mean just having a few ethnic or other minorities in the office, nor does it mean a group comprised only of minorities. Inclusion is about respecting and including others, being compassionate to all and being self-aware.

### **How have the views of people from other cultures enhanced your work and personal experience?**

It allows me to experience what it is like to be a part of a community other than my own. Sometimes human nature draws us to people who are similar to us and like-minded, but being open to interacting with people of different backgrounds brings cultural awareness and acceptance, which helps break down cultural barriers as well as pre-conceived implicit biases.

### **What has been your greatest learning experience as it relates to diversity and inclusion?**

My "ah ha" moment was when I participated in a New England Bar Association conference at Yale. I attended a session on diversity whose panelists included the Dean of admissions for Yale Law School, the Dean of Students at the University of Connecticut School of Law and an African American woman from a very large firm in Connecticut. I remember the woman from the law firm talking about how her firm was forcing all partners to participate in implicit bias training and she said she was offended that she was required to attend this training since she, as an African American woman who had rose to become a partner at a large law firm in Hartford, Connecticut was pretty well educated about bias. Nevertheless, she did the training and told us she was horrified to find out that one of the exercises showed that she was particularly harder on women associates than she was on men associates. Powerful stuff. Implicit bias does not mean you are a racist, it means your brain is influenced in a systemic manner even though you do not intend to be so influenced.



### **What are your initial goals for the RI Bar Association Task Force on Diversity & Inclusion?**

Simple awareness and to show our members that we do care about this issue. Initial results from the survey we sent out indicate that our members are not aware of the many things we already do to reinforce diversity and inclusion so we need to work on communicating better and this newsletter is just one way we are trying to correct that. I also hope to start more programs educating about implicit bias.

### **What do you think the Bar can do to raise awareness regarding Diversity & Inclusion?**

I think it is crucial to provide our members with education or at least resources for self-education which I hope leads to reflection, being inquisitive and having the ability to think critically, fairly and without prejudice and reflecting this in our actions.

## A Conversation with Task Force member Kara DiPaola, Esq.

Kara DiPaola is the Senior Legal Counsel in the Office of the General Treasurer of the State of Rhode Island. A Rhode Island native, she attended St. Mary Academy-Bay View and Salve Regina University. She graduated from Brooklyn Law School in 2013 and during her time there was awarded the Gold Public Service Award for 1000+ hours of public service. In her role at Treasury, she serves as the chairperson of the agency's Equal Opportunity Advisory Committee and leads a team of Search Advocates who work to minimize the impact of bias in the hiring process. Recently, she was a coach for two middle school mock trial teams and volunteered as a poll worker in the 2020 presidential election.

### Why did you choose to join the Task Force on Diversity & Inclusion?

Something I heard at a transgender allyship training has always stuck with me. To paraphrase slightly, the speaker said, "Those of you who are cis-gender – you have the energy for this work. Those of us who are transgender have been fighting this fight every day; some days we are just trying to survive." I believe this message can hold true for all marginalized or underrepresented people and identities. The work and the fight for progress and change cannot solely rely on those who are oppressed. So, as a white, able-bodied, cis-gender person, I know I have the energy for this work. I am glad to see that the Bar Association is ready to tackle issues related to diversity, equity and inclusion, and I am eager to be a part of it.

### What motivates you to be a diversity advocate?

The data is clear: diversity, equity and inclusion (DEI) in the workplace benefits all – employers, employees, and those we serve. There are measurable, positive results to an increase of DEI in the workplace. And I see no reason that known injustices should remain unaddressed. As lawyers, we are supposed to be advocates. We are supposed to fight injustice. We have the skill set and the positions of relative power to advocate, to push for change, and to assist those who need it. I could argue that there is no group better situated to make meaningful change. Each of us has the power to work towards the betterment of our profession, and I feel strongly that using my voice, my position and my privilege in this area is a duty.

### What does it mean to you to have a commitment to diversity and inclusion in the workplace?

A commitment to diversity and inclusion in the workplace means taking meaningful action to address and reinforce diversity, equity and inclusion in all my spheres of influence. As lawyers, we carry with us a certain amount of credibility, trust, and authority that carries weight. We are in privileged positions, and I feel it is important to use my privilege and my voice to make change. What the work looks like day-to-day may differ, but ultimately action in my spheres is at the heart of my commitment.



### What do you think is the future of diversity in the legal profession?

I think diversity within the legal profession will happen, but it will take true commitment and hard work. We cannot ignore the fact that there are plenty of people in the legal profession that simply see no issue with the state of diversity in the profession as it currently stands. However, I am hopeful. 2020 was a watershed moment and opened many eyes to the injustices that are prevalent in our society, specifically racial injustice. Individuals and businesses alike are engaging in this conversation like nothing I have seen before. Diversity in the legal profession must start at all levels – engagement with all types of young students, increased equity in admission and internships in colleges and law schools, mentorship of young lawyers, inclusion between colleagues, equitable hiring practices, and swift disciplinary action in cases of harm. I believe that we can all take action to improve diversity in the legal profession, and I am confident that we will get there someday.

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## Former Bar President Donates 100 Gallons to RI Blood Center

On Saturday, January 30th, Attorney Vincent A. DiMonte, 2001-2002 Bar President, achieved his 100th gallon (800 pints) of donations to the Rhode Island Blood Center. Vin first donated in 1989 and has continued ever since with whole blood, platelet and plasma donations. Rhode Island Blood Center employee Kara LeBlanc explained the benefits of all types of donation: "There is not one type of patient each specifically assists. Blood is transfused based on each patient's medical needs. If they are low on red cells, they will receive a red cell transfusion. Blood products are a critical component of patient care. The blood that's on the shelf today is the blood needed to help women and newborns during complications with childbirth; people battling cancer or undergoing chemotherapy; people who have suffered trauma or severe burns; people with heart and kidney disease and blood disorders like sickle cell anemia; and individuals who need surgery and organ transplants."

Vin explained that part of the reason he donates so frequently is that it is such a quick and easy way to make a difference in people's lives. One example is one-year-old Aria, of North Providence, who has greatly benefitted from blood donations. She suffered severe jaundice as a newborn and required over 50 pediatric red cell blood transfusions. Stories like this have motivated Vin to make regular donations for over thirty years and counting.

**"I was blessed with good health and no debilitating conditions which would prevent me from donating. It was important for me, therefore, to be consistent in donating because so many other people needed the donations, from youngsters to adults. If it were me who needed blood, plasma, or platelets, it would be important others donated because it would depend on them. That is why I was so driven."**

Donations of whole blood, the quickest type of blood donation, can be used for multiple blood products, and each donation can help up to three people. Donations of whole blood may be repeated every eight weeks. Plasma donations can take anywhere from 25 minutes to an hour and may be repeated every 28 days. Donations of platelets take anywhere from one to two hours, depending on platelet counts, and may be repeated every two weeks up to 24 times a year. If you would like more information on the benefits of blood donation, please contact the RI Blood Center at 401-453-8383.

Ms. LeBlanc noted that Vin is only the seventh person to achieve the milestone of 100-gallon donor with the Blood Center. Congratulations to Vin on his inspirational accomplishment!



ABOVE: Past Bar President Vin DiMonte (seated) receives a celebratory cake from RI Blood Center staff for donating 100 gallons.



*You are special and so is your blood type. Please ask about giving just the part of your blood patients need the most – double red cells, platelets or plasma.*

LEFT: Ari, a North Providence girl, is now the picture of health!

## 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**.

## What's A Business Worth?



Jennifer Baptista  
CPA, CFE, CVA



Kevin Papa  
CPA, CVA, ABV, CFF



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## Do You Have an Idea for an Article, or a Point/Counterpoint Article?

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 Deputy Director Kathleen Bridge at 401-421-5740 or [kbridge@ribar.com](mailto:kbridge@ribar.com) if you have any questions.



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

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

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

When contacting Coastline EAP, please identify yourself as a Rhode Island Bar Association member or family member. A Coastline EAP Consultant will

briefly discuss your concerns to determine if your situation needs immediate attention. If not, initial appointments are made within 24 to 48 hours at a location convenient to you. Or, visit our website at **coastlineeap.com** (company name login is "RIBAR"). Please contact Coastline EAP by telephone: 401-732-9444 or toll-free: 1-800-445-1195.

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

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

Brian Adae, Esq.	(401) 831-3150
Neville J. Bedford, Esq.	(401) 348-6723
Susan Leach DeBlasio, Esq.	(401) 274-7200
Misty Delgado, Esq.	(401) 572-1464
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Henry S. Monti, Esq.	(401) 467-2300

Adrienne G. Southgate, Esq.	(401) 301-7823
Elizabeth Stone, Esq.	(401) 533-9524
Dana N. Weiner, Esq.	(401) 331-6300
Judith G. Hoffman, LCSW, CEAP, Coastline EAP	732-9444

## Lawyers Helping Lawyers Committee Members Protect Your Privacy

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

## SOLACE ..... Helping Bar Members in Times of Need

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

## March Compare & Contrast Free, Non-Credit Program: Cloud Computing

The third session in the new, **FREE, non-credit**, technology program series, **Compare & Contrast: Cloud Storage**, is scheduled for **Wednesday, March 31 at 12:30 pm**. 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 three top cloud storage system providers, 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](#).



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# In Memoriam

## **Hon. Victor J. Beretta, Sr.**

The Honorable Victor J. Beretta, Sr., Associate Justice of the Rhode Island District Court (ret.), 92, died on January 23, 2021. He leaves his wife of 67 years, Dolores (nee Cottrell). Judge Beretta was born to Victor R. and Chiara Beretta of Providence. He was a graduate of Providence College, with a Bachelor of Arts degree, and Boston University Law School, where he earned a Juris Doctorate. He enlisted in the United States Army in 1955, serving as an Administrative Specialist until his discharge in 1957. Judge Beretta was admitted to practice law by the Rhode Island Bar in 1957. He served as a clerk to Justice Thomas J. Paolino of the Rhode Island Supreme Court from 1958 to 1959. He was an associate with the Providence law firm of Arcaro, Bellilove and Koledney from 1960 to 1966. In 1966, he was appointed City Solicitor for the City of Pawtucket by Mayor Robert F. Burns. In 1972, he was sworn in as Associate Justice of the Rhode Island District Court by Governor Frank Licht. He was on the bench for 25 years. Judge Beretta also served as president on numerous boards, including the Equitable Credit Union of Pawtucket; the Parish Council of Saint Maria Goretti Church; the Fox Hill Lane Association of Franconia, NH; the North Farm Homeowners' Association of Bristol; and the Windstar Board of Directors of Naples, FL. Additionally, he was Rhode Island State Chairman of the National Institute of Municipal Law Officers and a member of the Knights of Columbus. In addition to his wife, Victor leaves behind his six children, Lisanne (Hans-Christian Ritter), Victor, Jr. (Dayna), Lili, Maria, Melissa (Jean Labrecque), and Melinda (Bruce Namenson); nine grandchildren, and a great grandson. Victor is also survived by his two brothers, Aldo (Elaine) and Raymond (Joan), and many nieces and nephews.

## **Robert H. Breslin Jr., Esq.**

Robert H. "Bob" Breslin died on January 11, 2021. He leaves his wife of 53 years, Carol Ann (Hathaway). Born in Providence to Dr. Robert Henry Breslin and Dr. Kate Elizabeth Breslin, Bob grew up in Warwick with his younger brother, Dr. Thomas Breslin (deceased March, 2020). Bob attended Moses Brown '46, Brown University '50, and then studied law at Boston College '54. He worked for the City of Warwick and the citizens of Warwick until the age of 90, beginning as Warwick's Assistant City Solicitor in 1957. He worked until the age of 90 and was most recently of counsel at Sullivan & Sullivan. Bob served in the Rhode Island State Legislature from 1961 until 1970. He was elected Member of the Rhode Island Constitutional Convention in 1973. He was a founding partner at Saxon, Butler and Breslin from 1959-1970, and then at Breslin, Sweeney and Earle from 1970-2007. He was president of the Warwick Rotary Club, trustee of Rocky Hill School, trustee of the Gilbert Stuart Birthplace, trustee of the Willett Free Library in Saunderstown, commissioner on Judicial Tenure and Discipline, and board member of the Quonset Development Corporation (appointed by Governors Carcieri and Chafee.) He leaves his children, Pamela (Byrne) Murphy of Washington, D.C.; Melissa (Quentin) Chafee of Saunderstown, RI; and Robert (Jennifer) Henry Breslin III of Saunderstown, RI, and ten grandchildren.

## **Valerie E. DeMarco, Esq.**

Valerie E. Demarco, 56, of Providence and Matunuck, died on Wednesday, December 23, 2020. She was the wife of Anthony F. DeMarco for the last 21 years. She was the daughter of Vincent J. and the late Nancy E. (Gormley) Michael. Valerie was a graduate of Classical High School, Rhode Island College, and Quinnipiac University School of Law. She began her legal career with the Gemma Law Offices. Soon afterward, she became an associate at Hanson, Carrant, Parks, and Whitman, defending civil cases. Subsequently, she worked at the John Madden Law Offices. As a solo practitioner, she spent most of her time representing indigents, pro bono. While practicing law, she attended

Providence College and received her teaching certificate. She went on to get a full-time teaching position with the Burrillville High School system. She was the sister of Janine (Brad) Van Antwerp, Bethany (Todd) Stockmal, Vincent (Stacey), and Michael, and aunt of many. She is also survived by her brother-in-law Ralph DeMarco and his wife, Mary, and her sister-in-law Sylvia White.

## **Marvin R. Hodosh, Esq.**

Marvin R. Hodosh, 85, died on January 25, 2021. He was the husband of the late Linda (Lincourt) Hodosh. He is survived by his sons, Michael and Paul Hodosh, his stepsons, Jon and Jason Dewar, and 5 grandchildren.

## **Joseph G. Miller, Esq.**

Joseph G. Miller, 89, died on Wednesday, January 6, 2021. He was the husband of the late Nancy L. (Beagan) Miller and the late Mary E. (McSherry) Miller. Born in Providence, a son of the late Joseph M. and M. Jeannette (Cote) Miller, he lived in Warwick for over 60 years. He was a U.S. Navy veteran and a graduate of the University of Connecticut School of Law. Mr. Miller was a practicing attorney in Warwick for over 60 years and served as a special counsel to the RI Director of Health. He was a member of the Rhode Island Trial Lawyers Association. He also served in the RI General Assembly for three terms as a representative from Warwick. He is survived by a daughter, Nancy M. Vanasse (wife of the late Richard Vanasse) of Warwick; a son, Steven J. Miller (wife Tracey) of Mansfield, MA; and four grandchildren. He was the brother of the late Edmund W. Miller.

## **William T. Murphy, Esq.**

William Thomas Murphy, 73, died on January 20, 2021. Born in Rhode Island, he lived in Plantation, Florida until his death. He is survived by his wife, Karen Murphy; four children: Kerri-Lynn Kriz (Harry), Bill Murphy, Becky Murphy and Caitlin Martufi (Pete); first wife, Lynn Bonneau (Mike); step-children: Valerie Prieto (Tony), Kenneth McClary (Kate), Matthew McClary and Jennifer Pardo (Gabe); seven grandchildren and seven step-grandchildren. He was preceded in death by his parents, Joseph and Irene Murphy, and his brother, Joseph Murphy.

## **Douglas B. Weilding, Esq.**

Douglas B. Weilding, 81, of Norton, MA, died December 24, 2020. He was the husband of 37 years of Susan J. (Brown) Weilding. He was a son of the late Frank and Thelma M. (Smith) Weilding. He was a graduate of Boston University where he received a Bachelor of Science Degree. He was a graduate of the Officer's Candidate School at the Naval Academy in Newport. He served four years of active duty and was on board one of the ships during the Cuban Blockade. He continued to serve as a reservist and retired as a Lieutenant Commander on or about 1983. Mr. Weilding attended Suffolk University Law School where he received his Juris Doctor Degree and a Master of Law Degree. He has been a practicing attorney in Attleboro for approximately 50 years. As a youth, he rose to the prestigious rank of Eagle Scout. On March 30, 2003, he was awarded the Silver Beaver Award from the Annawon Council of the Boy Scouts of America for distinguished service to youth. He also served on the Executive Board of the Annawon Council for approximately 35 years. In addition to his wife, he is survived by his children: Keith D. Weilding and his wife Michelle of Hopkinton and Jennifer L. Sloan and her husband Paul of Coventry, and five grandchildren. He was the brother of Katherine Tackabury and her husband Wayne of Martha's Vineyard, Debra Gorselene of Valrico, FL, and the late Rebecca Smith.

# 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 [kbridge@ribar.com](mailto:kbridge@ribar.com) with "Caption Contest for March/April" in the subject line.

**Deadline for entry:** Contest entries must be submitted by April 1st, 2021.

*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 January/February



"Did you or did you not watch every single 2020 Red Sox game in its entirety?"  
SCOTT A. RITCH, ESQ.

## Lawyers on the Move

**John L. Calcagni, III, Esq.** is pleased to announce that he has relocated his office to 72 Clifford Street, Suite 300, Providence, RI 02903.

401-351-5100 [jc@calcagnilaw.com](mailto:jc@calcagnilaw.com) [calcagnilaw.com](http://calcagnilaw.com)

**John R. Grasso, Esq.** is pleased to announce that he has relocated his office to 72 Clifford Street, Suite 300, Providence, RI 02903.

401-272-4001 [jrg@johngrassolaw.com](mailto:jrg@johngrassolaw.com) [johngrassolaw.com](http://johngrassolaw.com)

**Allyson M. Quay, Esq.** is now an associate at **The Law Offices of Howe & Garside, Ltd.** at their Newport and Lincoln offices.

401-841-5700 [aquay@Counsel1st.com](mailto:aquay@Counsel1st.com) [counsel1st.com](http://counsel1st.com)

**Steven D. Zubiago, Esq.,** of **Nixon Peabody LLP**, has been elected CEO and Managing Partner of the firm.

401-454-1017 [szubiago@nixonpeabody.com](mailto:szubiago@nixonpeabody.com) [nixonpeabody.com](http://nixonpeabody.com)

## Keep Your Directory Listing Up to Date!

The Bar's online Attorney Directory is available for the convenience of Bar members, clients, and potential clients, so be sure to keep your listing up to date! Attorney Directory contact information may include the Bar member's name, photograph, law office name, postal address, email address, telephone number, and facsimile number. Have your photo taken at the Bar Association, or send in your own headshot to Erin Cute at [ecute@ribar.com](mailto:ecute@ribar.com). Photographs must be provided in a jpg format of at least 300 dpi.

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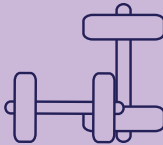
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# Spring into Self Care

Tips for a happier, healthier you this season!

## Physical

- Drink more water
- Start a workout routine
- Maintain a healthy diet



## Learn

- Take a virtual class
- Listen to a podcast
- Learn a new language



## Connect

- Facetime a loved one
- Plan a virtual date night
- Connect with a friend



## Mental

- Prioritize sleep
- Turn off your phone for a day
- Take breaks from the news



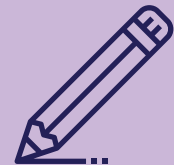
## Reduce Stress

- Indulge in 'me time'
- Practice breathing exercises
- Do something regularly that brings you joy



## Try a New Hobby

- Keep a journal
- Start a craft project
- Learn to garden



## Find Balance

- Balance routine & flexibility
- Practice gratitude
- Be mindful & focus on the moment



## Spring Clean

- Clean out a closet
- Organize the garage
- Rearrange some of your furniture



## Lawyers Helping Lawyers

A Rhode Island Bar Association Member Benefit. For more information, visit our website at [ribar.com](http://ribar.com), and the *Do You Need Confidential Help Quick Link*. Also, learn how to log in to *Coastline EAP*, a private non-profit consulting service contracted by the Association to assist you at no charge.

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