

A portrait of an elderly woman with short, wavy grey hair, wearing glasses and a red top. She is looking directly at the camera with a neutral expression. The background is a soft, out-of-focus grey.

# Rhode Island Bar Journal

Rhode Island Bar Association Volume 70. Number 5. March/April 2022

**May a State Court Adopt  
a Common Law Duty to  
Install Passenger Seatbelts  
on School Buses? Part I**

**Article Update: Revisiting  
the Rhode Island Acquired  
Real Estate Company  
Conveyance Tax**

**A Review of the Senate  
Discovery Task Force**

**March is Women's  
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Front Cover Photograph

**Ada L. Sawyer** was the first woman to take and pass the bar exam and the first woman admitted to practice in Rhode Island. She became a lawyer in the office of Percy Gardner in the Turks Head Building.



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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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## Law Day



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

**The Law Day program provides the opportunity to help students better understand the legal system and encourages them to consider a future in the legal profession.**

Law Day is approaching! This year, Rhode Island Law Day is scheduled on Friday, May 6, 2022. President Dwight Eisenhower first established Law Day in 1958 to mark the nation's commitment to the rule of law and it's celebrated annually on or around May 1st. The American Bar Association (ABA) promotes the extension of Law Day into middle and high school classrooms to honor the role of law in our society and to cultivate a deeper understanding of the legal profession. Rhode Island Law Day classroom program lessons are open to all public, independent, private, and parochial Rhode Island middle and upper schools' 7th to 12th grade classes, and feature in-school, one classroom period participation of a Rhode Island judge and lawyer team. This year's topic, set by the ABA, is *Toward a More Perfect Union: The Constitution in Times of Change*.

I have participated in Law Day in the past and find it to be a very rewarding experience. The program provides an opportunity to give back to the community by sharing our experiences and expertise with the students, who always come prepared with great questions proving just how much the legal system impacts their lives. I hope you will consider participating in this year's Law Day program!

This year's theme reminds the public that the Constitution is "neither perfect, nor exhaustive, as our nation's history makes clear. Legislation, court rulings, amendments, lawyers, and 'we the people' have built upon those original words across generations to attempt to make the 'more perfect union more real.'" The topic will explore the many facets of the Constitution, a document that not only outlines a blueprint for government, but also delegates power, articulates rights, and offers mechanisms for change.

Each year the ABA and our state Law Day Committee, chaired by Justice Indeglia, develop educational materials for the Bar and the Judiciary to use during their classroom programs along with a PowerPoint presentation. When speaking to the students, you can connect with them and hear their concerns about the legal system. The Law Day program provides the opportunity to help students better understand the legal system and encourages them to consider a future in the legal profession. Don't be afraid to volunteer to

participate if you have never done so in the past. The Law Day Committee will pair you with a member of the Judiciary, and as a team, you will work to prepare your presentation. Experienced Law Day volunteers are always available to help you prepare if you need extra assistance.

In an effort to be more inclusive, this year the RI Law Day Committee tried expanding its scope and reached out to schools who have programs for students with disabilities inviting them to participate in the program. The committee also sent a special communication from me, as president, to schools who have not participated in the past, urging them to do so this year to increase participation.

The RIBA also co-sponsors the Francis J. Darigan, Jr. Law Day Essay Contest. The contest is open to all 10th, 11th, and 12th grade students in Rhode Island. The winning essay author receives a \$1,000 scholastic award and a trophy. The winner's school receives a permanent plaque and the annual Law Day Essay Award Trophy to display until the next Contest. The second-place essay author will also be recognized with a \$250 scholastic award. All essay entries must be received by May 16, 2022. Please help us encourage participation in this contest.

The Rhode Island Law Day program receives the most participation from our membership, but it is not the only Law Related Education (LRE) program the RIBA offers. The Speakers Bureau and Lawyers in the Classroom programs offer speaking engagements on a variety of topics throughout the year to schools and other adult organizations. In a response to requests, the Bar Association contacts appropriate Bar volunteers, based on their geographic location (proximity to attorney's home and/or law office) and noted areas of law to determine the volunteer's interest and availability. Bar members can volunteer to speak on topics such as business law, criminal law, family law, elder law, constitutional law, and more. Our Task Force on Diversity and Inclusion

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

recommended expanding the topics to include Title VII, equal opportunity, and affirmative action which we have recently included in our attorney volunteer sign-up forms. These Law Related Education programs are a resource for schools and organizations interested in learning about a particular area of the law. The vitality and success of these programs depends on our valued Bar member volunteers. The RIBA hopes the LRE programs inspire others to become attorneys and help better educate the public about the legal system.

While programs, such as Law Day, help to inspire students to pursue a career in the law, the pipeline continues through higher and specialized education. Thanks to our generous donors, the Rhode Island Bar Foundation is able to offer four law school scholarships annually, including two for candidates who identify as black, indigenous, or people of color. The objective of the Bar Foundation's Scholarship Program is to support high legal practice standards in our state by providing financial

assistance to Rhode Island residents who show promise that they are likely to become outstanding lawyers and who will, hopefully, remain in our state to practice.

Please consider volunteering to help support our early education pipeline and community-based programs. To become an LRE volunteer, please visit the Bar's website under the For Attorneys section and click on the Law Related Education page. There you will find a link to the Attorney LRE Volunteer Application. If you have any questions regarding the Bar's LRE programs please contact Erin Cute, Director of Communications, by phone 401-421-5740 or by email at [ecute@ribar.com](mailto:ecute@ribar.com). By volunteering, you can participate in the rewarding experience of educating Rhode Island students and adults on various areas of the law. We hope that the LRE programs improve the public perception of the practice of law and give them an understanding of the law, the legal process, and the legal system. ◇

## Rhode Island Bar Journal

### Editorial Statement

The *Rhode Island Bar Journal* is the Rhode Island Bar Association's official magazine for Rhode Island attorneys, judges and others interested in Rhode Island law. The *Bar Journal* is a paid, subscription magazine published bi-monthly, six times annually and sent to, among others, all practicing attorneys and sitting judges, in Rhode Island. This constitutes an audience of over 6,000 individuals. Covering issues of relevance and providing updates on events, programs and meetings, the *Rhode Island Bar Journal* is a magazine that is read on arrival and, most often, kept for future reference. The *Bar Journal* publishes scholarly discourses, commentary on the law and Bar activities, and articles on the administration of justice. While the *Journal* is a serious magazine, our articles are not dull or somber. We strive to publish a topical, thought-provoking magazine that addresses issues of interest to significant segments of the Bar. We aim to publish a magazine that is read, quoted and retained. The *Bar Journal* encourages the free expression of ideas by Rhode Island Bar members. The *Bar Journal* assumes no responsibility for opinions, statements, and facts in any article, editorial, column, or book review, except to the extent that, by publication, the subject matter merits attention. Neither the opinions expressed in any article, editorial, column, or book review nor their content represent the official view of the Rhode Island Bar Association or the views of its members.

### Article Selection Criteria

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

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

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## Build your Client Base and Serve Your Community with the Bar's Lawyer Referral Service!



Attorney Lauri Medwin Fine, a member of the Lawyer Referral Service, enthusiastically supports the program. *"The Lawyer Referral Service offers an excellent opportunity for qualified attorneys to connect with a pool of potential clients who might otherwise not know how to access their services. It has provided me with the opportunity to assist those who might not be in a position to afford my normal hourly rate or might not know that there are attorneys out there to help them with their particular situation. Working with the LRS has been a benefit to both the RIBA as well as my own practice, by not only allowing me to grow my client base but to also support the Bar in giving a wide variety of Rhode Islanders access to skilled legal advice. I highly recommend getting involved with the LRS!"*

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

**Applications and more detailed program information and qualifications may be found on our website [ribar.com](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 Association Volunteer Lawyer Program 35 Years of Pro Bono Service 1986-2021 2021 Highlights and Accomplishments

## Program Summary

2021 marked the 35th anniversary of the Rhode Island Bar Association's administration of the Volunteer Lawyer Program (VLP). Our members continue to tirelessly provide legal assistance to those who cannot obtain legal representation either on their own or through other legal resources. The Bar Association continues to support and applaud its members in recognition of the key role they play every day by using their skills to develop a more just society through VLP membership. Annually, VLP attorneys impact the quality of their clients' lives positively by providing critically needed representation and protections through this structured program. These contributions are essential to our system of justice.



## Resource Update

For over 15 years, dedicated bilingual staff have fielded calls and completed intakes for Spanish speaking clients. This year we are extremely grateful that all VLP written client communication was translated into Spanish. This was accomplished

due to the pro bono commitment of Attorney Zachary Lyons and the Gonzalez & Lyons Law Offices. Having the necessary initial paperwork, as well as the additional required correspondence produced in Spanish, has made a positive difference in our ability to communicate a greater understanding of the program requirements. In turn, this has led to a quicker return of the required documents from the client and increased case placement.

Also, throughout the spring of 2021, several email appeals highlighting the need for bilingual volunteer attorneys were sent to our members. An email expressing interest in assisting from One Voice Interpreting Service in Providence was received from the owner and interpreter, Maria Valdez. She has since joined the pro bono effort to assist VLP attorneys agreeing to accept a pro bono case contingent upon having the assistance of an interpreter. Her contribution is a major plus for the Volunteer Lawyer Program.

We are still in need of additional bilingual volunteer attorneys and regularly pursue recruitment.

## Mentoring

During 2021, efforts were ongoing to communicate the availability of seasoned practitioners for any volunteer attorney interested in accepting a case in an area of law that is of interest but not part of their regular practice. The requests for mentors from VLP attorneys for pro bono cases ranged from those changing the focus of their current practice to those wanting to expand their areas of expertise.

## 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 recruitment and retention of current members is through sponsoring and providing the benefit of free continuing legal education. This is accomplished annually 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 a collaborative effort with Rhode Island Legal Services, a landlord/tenant webinar, *An Overview of Tenant Protections & Strategies for Successful Results*, held in May 2021 gave volunteer attorneys an up to the minute overview of tenant protections, including protections due to COVID-19. Successful negotiation strategies were also discussed. This 1.5 credit program was offered virtually via Zoom. The forty-plus attending had the benefit of hearing from RI District Court Associate Judge Christopher K. Smith, Michael D. Crane, Esq., Steven S. Flores Esq., and Jennifer L. Wood, Esq.

In October 2021, 25 volunteer attorneys were given the opportunity to attend the free three-credit seminar, *The Cares Act & Implications for Family Law*. This program was available as a live webinar or in person at the RI Law Center. The speakers discussed the family law issues connected to The Cares Act signed into law in 2020. The panelists, William J. Balkun, Esq., Benjamin E. Reiss, Esq., Elizabeth W. Segovis, Esq., Kerry Reilley Travers, Esq., and Barbara L. Margolis, Esq. (moderator), discussed parallel issues that surface relating to child support, divorce, and their strategies for handling these matters.

Seminars sponsored by the VLP are available to view after the program for volunteer attorneys unable to attend who are willing to accept pro bono cases.

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

Our 2021 and 2020 remarkable Pro Bono Award recipients were honored together at the Bar Association's Annual Awards Luncheon at the Crowne Plaza on June 25. The amount of the pro bono hours contributed by these volunteer attorneys was over 800.





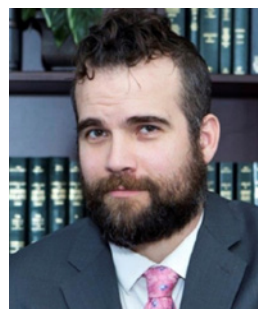
Phillip C. Koutsogiane, Esq.



Doris A. Lavallee, Esq.



Gregory P. Sorbello, Esq.



James J. Bagley, Esq.



Janne Reisch, Esq.

Phillip C. Koutsogiane, Esq., a prior recipient of the Pro Bono Publico Award, received the 2020 Continuing Service Award for his extensive contributions for five-plus years. Doris A. Lavallee, Esq. and Gregory P. Sorbello, Esq. were the recipients of the 2020 Pro Bono Publico Award and James J. Bagley, Esq. and Janne Reisch, Esq. received the 2021 Pro Bono Publico Award. These four attorneys were recognized for their dedication and service through the Volunteer Lawyer Program during the past two years.

Please note all five of these dedicated award recipients have accepted cases throughout the years of the pandemic without hesitation.

### Cases & Placement Strategies

Given the restrictions surrounding in-person recruitment events over the past year, emphasis was given to preparing and distributing pro bono case summaries 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. Themed appeals such as March Madness, National Volunteer Month, Thanks for Giving, and the 12 Days of Pro Bono were successful case placement promotions.

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 2021, the public was assisted by volunteer attorneys with bankruptcy, collections, consumer, education, employment, guardianships, landlord/tenant, license registry, non-profit, probate, tort defense, family law, and COVID related issues. Although there is no longer specific funding available for foreclosure-related matters, we received requests from clients desperate to save their homes during COVID and will continue to conduct intake for these matters, within the parameters allowed.

### Collaboration

We continue to receive many requests for assistance with domestic violence, landlord/tenant, bankruptcy, divorce, custody, collections, guardianships, probate matters, etc. Annually we work closely with Rhode Island Legal Services in the placement of cases, as well as the development of CLE seminars for the recruitment and retention of VLP attorneys.

### Join for Justice

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.

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## Overcoming Adversity



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

**As human beings we have the capacity to overcome tremendous adversity, but in nearly every case we receive a great deal of help from others.**

My wife and I recently downsized to a condo in Smithfield after raising three children in our Providence home where we lived for 38 years. We accumulated bookcases filled with many books. Now, with access to nearly every book in the world by way of the internet, it seemed unnecessary to keep hard copies of books. Nevertheless, there were a handful of books that I could not force myself to part with. Looking back, I realize that these particular books all had one unifying central theme – overcoming adversity. I have always loved a good story about perseverance against all odds and I especially love such books that are true stories.

*The Boys in the Boat – Nine Americans and their Epic Quest for Gold at the 1936 Berlin Olympics* is written by Daniel James Brown. This was the famous “Hitler” Olympics where Jesse Owens made his historic mark. In part, I loved this book because it is the true story of the 1936 U.S. Olympic rowing team. Of course, the fact that I rowed in college and beyond made the story initially attractive to me, but the story is really not about rowing or even the Hitler Olympics. Instead, it is really about poverty-stricken college boys overcoming adversity. In particular, the central character, Joe Rantz, overcame bitter poverty and even abandonment by his family as a very young teenager. If the story were not true it would not be believable.

*Chickenhawk* is by Robert Mason. He flew a U.S. Army helicopter on more than 1,000 combat missions in Vietnam and lived to tell his awe-inspiring stories of heroism. He also had to deal with the post-war challenges faced by so many of our combat veterans.

*Submarine!* is by Captain Edward L. Beach of the United States Navy. This book is the true story of terrifying submarine battles in the Pacific during World War II, and the brave men who fought them.

In reading these books, and in living my life, I’ve come to realize that as human beings we have the capacity to overcome tremendous adversity, but in nearly every case we receive a great deal of help from others. That help can come from many places – family members, friends, teammates, coaches, teachers, the soldier next to us, or the athlete pulling an oar behind us in a boat. These

people selflessly rise up to guide and support us, often in extraordinary ways.

In my years serving on the Board of Directors of your Bar Foundation, and now in my third year as your Foundation President, I am constantly amazed by the day-to-day adversity which has been overcome by those we serve. For example, the obstacles faced by our law school scholarship applicants include not just financial adversity in their lives, but often physical, emotional, and other sometimes staggering challenges. Yet when they apply for a Foundation scholarship, they have managed to graduate from college and are doggedly proceeding on the road to law school, despite what seem to be insurmountable challenges in their personal lives.

When we read the scholarship applications, all of us on the scholarship committee always have the same feeling – we wish we could give a scholarship to virtually every applicant because they are all so deserving.

When I first became your President, I asked all of our IOLTA nonprofit grantees, to whom we award grants every year, to outline how they are utilizing your grant dollars. It was almost overwhelming to me to learn how much dire need exists in our community. It is very gratifying to be in a position to award grants that will in small part help to meet some of those needs, such as homelessness, poverty, abuse, and equal access to justice.

But the ability of our Foundation to fund those grants and scholarships is dependent on the earnings of your IOLTA accounts and the generosity of those who donate to the Foundation, including our generous Fellows. If you are in a position to assist those who need help in overcoming the adversity they face in their lives, and you would like to make a tax-deductible contribution to the Foundation, there is a form in this *Bar Journal* that you can use to make a donation. Any contribution at all, no matter how small, will be greatly appreciated by those who struggle every day. ◇

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



## Rhode Island Bar Foundation

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

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

*Help Our Bar Foundation Help Others*

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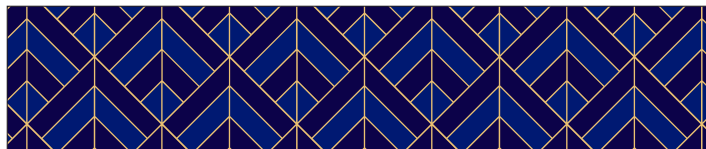
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Questions? Please contact Theresa Gallo at 421-6541

or [tgallo@ribar.com](mailto:tgallo@ribar.com)



RHODE ISLAND  
Bar Association

1898

# Thank You!



Thank you to Rhode Island Lawyers Weekly readers for voting the Rhode Island Bar Association #1 in legal education for four years in a row!

We offer close to 40 CLE programs and live webcasts per year, as well as MESA CLE programs. We provide low-cost, RI specific programming to more than 2,500 attorneys annually!

We welcome speaker volunteers and new topic ideas. Email [cle@ribar.com](mailto:cle@ribar.com) for more info!

Visit our website at [ribar.com](http://ribar.com) to check out our CLE calendar!



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

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



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

## PART 1



**Thomas R. Bender, Esq.**  
Counselor at Law  
Cranston

**The asserted common law actions – premised on a common law duty to install passenger seatbelts when designing and manufacturing a school bus – effectively seek to step into the regulations’ silence.**

### Introduction

Thinking back to pre-COVID times, one morning a standard-sized school bus<sup>1</sup> full of elementary school children is on its way to a Tiverton elementary school. A small pickup truck is traveling in the opposite lane toward the school bus. The driver has just finished a 12-hour work shift. Exhausted, drowsy, and struggling to stay awake, his head drops for a second just before the gap will close between his truck and the school bus and he drifts toward the oncoming bus. But the school bus driver, doing the only thing she can, escapes a terrible collision by swerving away from the oncoming pickup. But, the swerve is enough to take the school bus off the narrow road and on to a small embankment where the bus momentum causes it to rollover before coming to a stop. While the school bus driver escaped injury, many students did not. The bus manufacturer had equipped the school bus with a driver’s seat belt, but not passenger seatbelts, and a suit is brought in state court on behalf of the injured school children. Included in the complaint is a common law claim against the manufacturer for negligently designing the bus, based upon an alleged common law duty to install passenger seatbelts in school buses.

Is that a common law duty that the Rhode Island Supreme Court can recognize and enforce? The answer is, it depends, and it depends on whether the question is analyzed under federal or state constitutional law.

School bus design is subject to both federal and state regulation. Both federal and state law expressly mandate seat belts for the driver’s seat position, but not for the passenger seats. But neither are they expressly prohibited. With respect to passenger seatbelts on standard-sized school buses, the regulations are silent. The asserted common law actions – premised on a common law duty to install passenger seatbelts when designing and manufacturing a school bus – effectively seek to step into the regulations’ silence. They would ask a court to recognize a duty under Rhode Island common law that would effectively require school bus manufacturers – if they want to avoid potential common law liability – to install passenger seatbelts on any school bus sold in Rhode Island. Thus, by exercising its common law

authority, the judicial branch would add a school bus design requirement that the legislative and executive branches, at both the federal and state level, did not. Is that within the judiciary’s constitutional power?

As previously stated, it depends. This is because the analysis for the constitutional question – regarding the reach of the judicial branch’s common law authority – is different depending on whether you are considering federal regulatory and constitutional law, or state regulatory and constitutional law. This article, Part I of II, will address the effect of federal regulatory design requirements for school buses. The relevant constitutional principle in the federal context is federalism – the separate powers of the federal and state governments – and more specifically the principles governing the federal pre-emption of state law arising from the Supremacy Clause. But the starting point is identifying the federal school bus seat belt standard.

### Federal School Bus Safety Standards – “Compartmentalization” vs. Seatbelts

In 1966, Congress enacted the National Traffic and Motor Vehicle Safety Act<sup>2</sup> (“Vehicle Safety Act”) to reduce death and injury from traffic accidents, directing the Secretary of Transportation to prescribe “minimum safety standard[s] for motor vehicles or motor vehicle equipment performance.”<sup>3</sup> The Secretary, in turn, delegated its authority to the National Highway Traffic Safety Administration (NHTSA),<sup>4</sup> which promulgated, and continues to promulgate, detailed “Federal Motor Vehicle Safety Standards.”<sup>5</sup>

The primary safety standard for school buses is 49 C.F.R. § 571.222, entitled, “School bus passenger seating and crash protection[.]”<sup>6</sup> Commonly referred to as Federal Motor Vehicle Safety Standard 222 or FMVSS 222 (“Standard 222”), it prescribes extensive design and equipment standards intended to create “a passive system of occupant

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containment” called “compartmentalization” – a specific seating configuration, seat construction, restraining barrier, and impact specifications designed to protect student passengers in the event of a crash.<sup>7</sup> Standard 222 does not, however, address seatbelts. Seatbelts are addressed in Federal Motor Vehicle Safety Standard 208 or FMVSS 208 (“Standard 208”), entitled “Occupant Crash Protection,”<sup>8</sup> which mandates “crashworthiness” and “active and passive restraint system requirements” for all vehicles including buses.<sup>9</sup> For standard-size school buses with a gross vehicle weight rating of more than 10,000 pounds, as used in our example, Standard 208 requires that they be equipped with a seatbelt for the driver’s designated seating position.<sup>10</sup> It is silent, however, with respect to passenger seatbelts.

The question left open is whether a state court has the constitutional authority to step into the regulation’s silence and impose a common law tort duty on school bus manufacturers to include passenger seatbelts in their buses – require the state’s school buses to have passenger seatbelts – where the federal regulations do not. In other words, whether Standard 208 expressly or impliedly “pre-empts” enforcement of such a common law duty under the Supremacy Clause.

**The Supremacy Clause, Federalism, and Federal Preemption**

“Federalism, central to the constitutional design, adopts the principle that both the National and State Governments have elements of sovereignty the other is bound to respect.”<sup>11</sup> The Supremacy Clause creates a clear constitutional rule that when federal and state laws conflict, or are at cross-purposes, federal law “shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any thing in the Constitution or Laws of any state to the Contrary notwithstanding.”<sup>12</sup> This principle gives Congress the power to preempt state law, either expressly or impliedly.<sup>13</sup> A state law must give way to federal law where Congress expressly declares its intent to preempt state law – express preemption – and, even without an express preemption clause, if it would “stand as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress” when it enacted the federal law – conflict preemption.<sup>14</sup> Congress intent to preempt state law is expressed in the former, and implied in the latter.

Preemption applies to a state’s judicially fashioned common law rules as well as its legislative enactments. Although Congress possesses the power “to oust state courts of their traditional jurisdiction over common-law tort actions[,]”<sup>15</sup> federalism requires that it “exercise lightly” the power to “legislate in areas traditionally regulated by the States.”<sup>16</sup> Thus, there is a presumption under the Supremacy Clause “that state laws – particularly those, such as the provision of tort remedies to compensate for personal injuries, that are within the scope of the States’ historic police powers – are not to be preempted by a federal statute unless it is the clear and manifest purpose of Congress to do so.”<sup>17</sup>

The Vehicle Safety Act does in fact include an express statutory preemption clause manifesting Congress *limited* intent to preempt state law in conflict with the federal safety standards promulgated pursuant to the Act. Therefore, to analyze whether a state court can enforce common law duty requiring school bus manufacturers to design and construct a school bus with passenger seatbelts – where Standard 208 does not require that – the first step is to determine whether that state common law duty falls within the Act’s express preemption clause. If the answer



is no, the next step is to determine whether such a state common law duty would “stand as an obstacle to the accomplishment and execution of the full purposes and objectives” of Standards 222 and 208 that is sufficient to require its preemption by implication.

### Standard 208 and Express Preemption

The Vehicle Safety Act’s express preemption clause applies globally to all safety standards adopted pursuant to the Act, and states in pertinent part:

(1) Whenever a Federal motor vehicle safety standard established under this subchapter is in effect, no State or political subdivision of a State shall have any authority to establish, or to continue in effect, with respect to any motor vehicle or item of motor vehicle equipment [,] any safety standard applicable to the same aspect of performance of such vehicle or item of equipment which is not identical to the Federal standard.

(2) A State may enforce a standard that is identical to a standard prescribed under this chapter.<sup>18</sup>

But this preempting clause is modified by a separate “savings clause,”<sup>19</sup> that preserves a state’s authority to impose common law liability notwithstanding compliance with a federal safety standard, Congress expressly stating that:

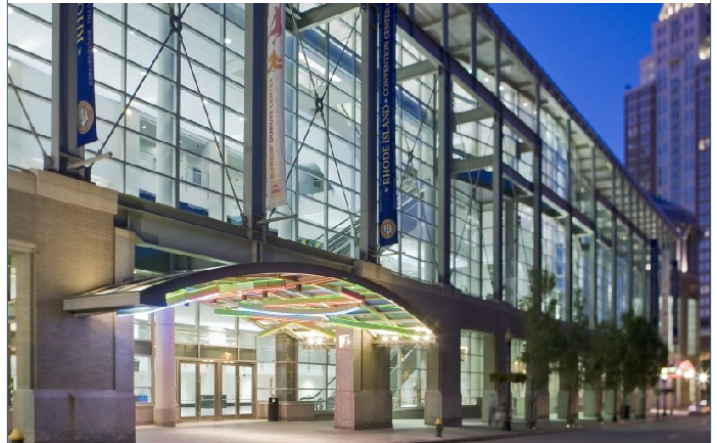
“[c]ompliance with a motor vehicle safety standard prescribed under this chapter *does not exempt any person from liability under common law*.”<sup>20</sup>

In *Geier v. American Honda Motor Co., Inc.*,<sup>21</sup> the United States Supreme Court construed the savings clause to mean “that there are some significant number of common-law tort liability cases” that were not expressly preempted by the Act, and Congress intended to expressly preempt only state *statutes or regulations* in conflict with the federal regulatory and safety standards.<sup>22</sup> Common law actions, on the other hand, were not expressly preempted by Congress even if based on a standard of care that would effectively require motor vehicle manufacturers to do more than what was required by the federal regulatory standards,<sup>23</sup> notwithstanding that “uncertainty and even conflict” might result by permitting states to adopt different common law duties, adjudicated by different juries reaching different conclusions on similar facts.<sup>24</sup> The preemption and savings clauses that were enacted as part of the Act “reflect[ed] a congressional determination that occasional nonuniformity is a small price to pay for a system in which juries not only create, but also enforce, safety standards, while simultaneously providing necessary compensation to victims[,]”<sup>25</sup> and thus Congress intended to preserve “those actions that seek to establish greater safety than the minimum standards achieved by a federal regulation[.]”<sup>26</sup> In sum, although Standard 208 does not require seatbelts on school bus passenger seats, Congress has not expressly preempted state courts from recognizing and enforcing a common law duty effectively requiring school bus manufacturers to install them nevertheless.

But, according to the Supreme Court, finding that Congress may not have *expressly* preempted a state court from adopting a common law duty that sets a higher safety standard than Standard 208, does not quite end the preemption analysis. There is still the question of whether Congress *impliedly* preempted a conflicting common law duty.

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### **Standard 208 and Implied Preemption**

Although the Supreme Court in *Geier* found that Congress did not *expressly* preempt common law tort duties that conflicted with the federal motor vehicle safety standards, it found that Congress did not intend to foreclose the possibility that a common law duty might be *impliedly* preempted by “the operation of ordinary pre-emption principles insofar as those principles instruct us to read statutes as preempting state laws (including common law rules) that ‘actually conflict’” with the statute or the federal standards promulgated thereunder[.]”<sup>27</sup>

If enforcement of a state law would stand “as an obstacle to the accomplishment and execution of the full purposes and objectives” of a federal law, under “ordinary pre-emption principles” Congress is understood to have implicitly intended to preempt enforcement of the state law.<sup>28</sup> With respect to the federal safety standards under the Motor Vehicle Act, whether a common law duty poses an obstacle to the execution of a safety standard is determined by examining the standard’s “history, the promulgating agency’s contemporaneous explanation of its objectives, and the agency’s current views of the regulation’s [preemptive] effect.”<sup>29</sup> The Supreme Court has not specifically addressed the preemptive effect of the active and passive restraint requirements for school buses under Standard 208, but it has twice addressed the preemptive effect of the Standard’s active and passive restraint requirements for passenger vehicles – first in 2000 in *Geier*,<sup>30</sup> and then in 2011 in *Williamson v. Mazda Motor of America, Inc.* in 2011.<sup>31</sup>

*Geier* involved a 1987 Honda Accord equipped with a manual shoulder and lap belt, but no airbags or other passive restraint devices.<sup>32</sup> Standard 208 required manufacturers at that time to equip some, but not all, of their vehicles with passive restraints, and Honda met that standard.<sup>33</sup> Buckled up with the manual seatbelt, the plaintiff lost control of the vehicle and was seriously injured when she struck a tree.<sup>34</sup> Relying on District of Columbia common law, she sued Honda alleging they negligently designed her car by not including a driver’s side airbag.<sup>35</sup> The issue was whether her tort action was preempted by Standard 208.<sup>36</sup> The Court held that it was because requiring the manufacturer to install airbags was in conflict with the objective and purpose of Standard 208 with respect to passenger vehicles as they existed at the relevant time.<sup>37</sup> The regulatory history demonstrated that the purpose of passenger vehicle safety standards was to “deliberately provid[e] the manufacturer with a range of choices among different passive restraint devices[,]” with the expectation that “[t]hose choices would bring about a mix of different devices introduced gradually over time;” and “thereby lower costs, overcome technical safety problems, encourage technological development, and win widespread consumer acceptance” – all of which would promote Standard 208’s safety objectives.<sup>38</sup>

The Court found that a tort action based on a common law duty to install airbags would effectively eliminate the manufacturer’s choice to install other types of passive restraint systems, and thus become “an obstacle to the variety and mix of devices that the federal regulation sought;” as well as “the gradual phase-in that the federal regulation deliberately imposed.”<sup>39</sup> It, therefore, was preempted by Standard 208 because it would substantially conflict with “the accomplishment and execution” of the “important means-related federal objectives” of Standard 208.<sup>40</sup> At “the heart” of *Geier* was the “determination that

giving auto manufacturers a choice among different kinds of passive restraint devices was a *significant objective* of the federal regulation.”<sup>41</sup>

Eleven years later, **Williamson** involved a minivan and Standard 208’s seatbelt requirements for the rear seats in passenger vehicles,<sup>42</sup> and manufacturers were required to install seatbelts in all rear seat positions.<sup>43</sup> Lap-and-shoulder belts were required for seats next to the vehicle’s doors or frame,<sup>44</sup> but for the “rear inner seats” (i.e., middle seats or seats next to a minivan’s aisle) manufacturers had a choice: they could install either simple lap belts or lap-and-shoulder belts.<sup>45</sup> For this model, Mazda chose simple lap belts for the middle seats.<sup>46</sup> The plaintiff was in the middle aisle seat wearing the lap belt and was killed when the van was struck head on by another vehicle, while the passengers in rear seats next to the frame wearing the lap-and-shoulder belts survived.<sup>47</sup> A tort action was brought under California common law alleging Mazda had a duty to equip the middle seats with lap-and-shoulder belts notwithstanding Standard 208.<sup>48</sup>

After considering the Standard’s regulatory history with respect to minivans, and official agency position expressed in the litigation, the Court held that, although Standard 208 gave the manufacturer a choice of which type of seatbelt to install in the rear middle seats, providing that choice “not a significant objective of the federal regulation[,]” and the plaintiff’s common law claim was not preempted.<sup>49</sup> Put another way, the state was not preempted from adopting a common law rule that would effectively require all manufacturers to install lap-and-shoulder belts in middle seats of minivans. In the case of these particular safety standards, the state was free to impose a more rigorous standard through its common law because it would not stand “as an obstacle to the accomplishment and execution” of the “full purposes and objectives” of the seatbelt requirements for minivans.<sup>50</sup> Like the regulation in **Geier**, the regulation in **Williamson** gave the manufacturer a choice.

Although both **Geier** and **Williamson** involved tort actions based on a common law duty that would effectively eliminate a choice that manufacturers were permitted to make under Standard 208. But the regulatory significance of the choice was different. That choice, the distinction that resulted in the pre-emption of one claim but not the other, was that “manufacturer choice” was a “significant regulatory objective” of the safety standard in one case but not the other.<sup>51</sup> The lesson of the two decisions is that, where Standard 208 gives the manufacturer a choice, that regulatory decision preempts a state common law duty effectively eliminating the manufacturer’s choice only when affording the choice is a “significant objective of the regulation.”<sup>52</sup> Articulating that point in her **Williamson** concurrence, Justice Sotomayor wrote:

The mere fact that an agency regulation allows manufacturers a choice between options is insufficient to justify implied pre-emption; courts should only find pre-emption where evidence exists that an agency has a regulatory objective... whose achievement depends on manufacturers having a choice between options. A link between a regulatory objective and the need for manufacturer choice to achieve that objective is the linchpin...<sup>53</sup>

Another important aspect of **Williamson** is its discussion of the weight to give an NHTSA decision declining to mandate a safety feature, based on its conclusion that the additional cost

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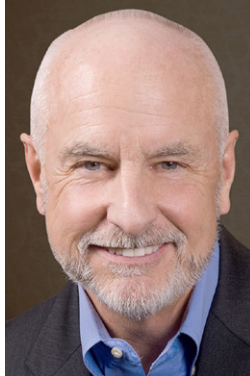
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outweighed the feature’s added benefit. In that case, cost was the primary reason the NHTSA decided not to require minivan manufacturers to install lap-and-shoulder belts in the middle aisle seats. Lap-and-shoulder belts would be considerably more expensive to design and install for rear middle seats in the aisle than on seats positioned against the doors or the frame, and, on balance, requiring them would not be cost-effective.<sup>54</sup> Acknowledging that a cost-benefit analysis was a frequent factor in setting the safety standards, the Court determined that the NHTSA’s “negative judgment about cost-effectiveness” of a safety feature was insufficient by itself to show that the agency intended to preempt a common law tort claim “which a judge or jury might reach a different conclusion” about a manufacturer’s decision not to include a safety feature based on its cost.<sup>55</sup> The Court acknowledged that “many, perhaps most, federal safety regulations embody some kind of cost-effectiveness judgment[,]” and that an agency could validly base a decision to preempt common law claims that would effectively impose requirements beyond the standard, the rule-making record in *Williamson* disclosed no such intent.<sup>56</sup>

The Court reasoned that, to infer that the NHTSA intended to bar states from imposing stricter standards through its common law, from the “mere existence” of a cost-effectiveness judgment, was inconsistent with the Vehicle Safety Act’s Savings Clause – a clause that preserved state common law actions that could potentially supplement the federal safety standards.<sup>57</sup> Applying an inference of preemption based on a cost-benefit decision by the NHTSA would all too frequently treat the federal standards “as if they were *maximum* standards, eliminating the possibility that the federal agency [sought] only to set forth a *minimum* standard potentially supplemented through state tort law.”<sup>58</sup> Thus, few, if any, common law tort actions would be “saved” from preemption by the Savings Clause.

In sum, *Geier* and *Williamson* teach that where Standard 208 allows manufacturers to choose to install a particular safety feature or not, a tort action based on a common law duty that would effectively require the manufacturer to install that safety feature, and eliminate the choice Standard 208 allows, the tort action is nevertheless not preempted unless the regulatory history shows that giving the manufacturer a choice was essential to implementing a significant regulatory objective. If it was not, a tort action that would eliminate that choice does create a “conflict” between the federal standard and the common law duty that requires preemption under the Supremacy Clause.

## Standard 208 and School Bus Passenger Seatbelts

Standard 208 does not require school buses to have passenger seatbelts, but it does not expressly prohibit their installation and use either;<sup>59</sup> thus manufacturers do have a choice under the federal regulatory standard to either design school buses with, or without, passenger seatbelts. The question I present is whether state courts can adopt a common law duty that would effectively eliminate that choice, requiring school bus manufacturers to install passenger seatbelts when Standard 208 does not. Under *Geier* and *Williamson*, the answer depends on whether giving the “manufacturer [a] choice” to install passenger seatbelts or not was a significant regulatory objective of Standard 208. In my judgment, it was not.

The regulatory history regarding seatbelts in school buses begins in 1973. That year the NHTSA issued proposed rules that

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would require higher, stronger, and softer passenger seats for all buses generally – for example, school buses, intercity buses, highway transit buses, and prison buses.<sup>60</sup> The NHTSA received suggestions that seatbelts should be required, and proposed adding them as an alternative restraint mechanism in all buses, plus a detection system that warned both passenger and driver if the seatbelt was unfastened.<sup>61</sup> Comments on the proposed rules focused on the difference between intercity and transit buses as compared to buses carrying children to and from school – their structure, operating speeds and conditions, and their accident modes.<sup>62</sup> After studying the issue for over a year, the NHTSA withdrew the proposed seat design requirements for intercity and transit buses because of cost concerns, and studies showing that seating improvements would not substantially reduce injuries on such buses.<sup>63</sup> The agency also withdrew the seatbelt requirement because their surveys indicated that few passengers would use them even if provided.<sup>64</sup> But the NHTSA continued to advance new seating design standards exclusively for school buses,<sup>65</sup> which subsequently became Standard 222, creating a “passive system of occupant containment” offering the most reliable crash protection for student school bus passengers.<sup>66</sup>

A decade later the NHTSA denied a petition for rulemaking that would have mandated passenger seatbelts on school buses.<sup>67</sup> Five years after that, it proposed, and two years later adopted, a rule that would require lap-and-shoulder belts for the passenger seats in “passenger cars, light trucks, multipurpose passenger vehicles, and small buses” less than 10,000 lbs.,<sup>68</sup> but specifically excluded large buses over 10,000 lbs.<sup>69</sup> For several decades now, the NHTSA has consistently concluded that for conventional standard-size school buses over 10,000 lbs., “compartmentalization”<sup>70</sup> – the specific seating configuration, seat construction, restraining barrier, and impact zone requirements required by Standard 222<sup>71</sup> – “provides a high level of safety protection that obviates the safety need for a Federal requirement necessitating the installation of [passenger] seatbelts.”<sup>72</sup> Does that mean a state court is preempted from recognizing a common law duty that would effectively require passenger seatbelts in conventional standard-size school buses?

I do not think it does. Neither the United States Supreme Court nor any other court that I am aware of has addressed whether Standard 208 preempts a common law “no passenger seatbelt” claim in the context of school buses. There are, however, four judicial decisions addressing whether Standard 208 preempts “no passenger seatbelt” actions involving other types of large buses – an airport shuttle bus;<sup>73</sup> a prison bus;<sup>74</sup> a chartered motorcoach;<sup>75</sup> and a greyhound bus.<sup>76</sup> Because the regulatory history with respect to passenger seatbelt requirements in all buses over 10,000 lbs. is the same regulatory history for conventional standard-size school buses, those four decisions point the way. In each case the court held that the state tort action was not preempted, permitting the judicial enforcement of a common law duty that would effectively require passenger seatbelts in large buses traveling in those states. I believe the results would have been the same if the buses at issue had been school buses.

The decision that is most representative and complete is found in *Lake v. Memphis Landmen, LLC*, which is the only one that post-dated the Supreme Court’s decision in *Williams*. The Tennessee Supreme Court found no indication in the regulatory history regarding passenger seatbelts in large buses, gener-

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ally, that the NHTSA was trying to preserve a manufacturer's choice to install, or not to install, passenger seatbelts for some larger regulatory goal.<sup>77</sup> The court found that the NHTSA simply determined that the relevant data regarding the potential costs and safety benefits did not warrant a passenger seat belt requirement, but did not take the further step of deciding as a matter of policy that states should not be permitted to impose such a requirement in a common law action.<sup>78</sup> The court's decision was also informed by an amicus brief on behalf of the Department of Transportation view in **Williamson**, that described the agency's long-standing view that, consistent with the statutory directive that the safety standards were "minimum standard[s],"<sup>79</sup> in the absence of "specific features" that show an "affirmative intent" to create a range of permissible options, "a state common law duty of care that effectively establishes a higher minimum does not create a conflict with federal law[.]"<sup>80</sup> The court noted that, while the agency's view was not determinative, its thorough understanding, and "unique qualification to comprehend the likely impact of state requirements," required that it give weight to the agency's view on the preemptive effect of the regulation.<sup>81</sup> I think that, given the agency's long-standing view of the Standards it has promulgated, **Geier** can be treated as an outlier, while **Williamson** is the norm. The result: Standard 208 would not preempt a state court from adopting a common law rule that effectively requires bus manufacturers to install passenger seatbelts in school buses operated in that state.

The story is not over, however. The Rhode Island General Assembly also regulates school bus design and like the federal standard state law and regulation, requires a seatbelt for the driver's seat in conventional standard-size school buses but is silent with respect to passenger seats. Whether the Rhode Island Supreme Court would be free to recognize a common law duty effectively requiring manufacturers to install passenger seatbelts in conventional size school buses operated in Rhode Island will be addressed in Part II of this article.

### ENDNOTES

1 For the purposes of this article "standard-size school bus" means a bus that has a gross vehicle weight rating of over 10,000 pounds, either a Type B bus, or the larger conventional Type C bus.

2 49 U.S.C. § 30101, et seq.

3 See 49 U.S.C. § 30101(1), 30102(a)(10), 30111(a).

4 See 49 C.F.R. 1.5(a) (2012).

5 See *Lake v. Memphis Landsmen, LLC*, 405 S.W.3d 47, 51, 57 (Tenn. 2013).

6 See *Price v. Thomas Built Buses, Inc.*, 370 Ark. 405, 409, 260 S.W.3d 300, 304 (2007).

7 See *Price*, 370 Ark. at 409, 260 S.W.3d at 304; *MCI Sales and Services, Inc. v. Hinton*, 272 S.W.3d 17, 24 (Tex. App.-Waco 2008).

8 49 C.F.R. § 571.208.

9 49 C.F.R. § 571.208, S.2, S.3.

10 See 49 C.F.R. § 571.208, S4.4.4.2; but see 49 C.F.R. § 571.208, S4.4.3.2, S4.4.3.2.1, S4.4.3.2.2. (If the school bus is smaller, however, and weighs 10,000 pounds or less, the passenger seats must have seatbelts as well.)

11 *Arizona v. United States*, 567 U.S. 387, 398-99 (2012) (citing *Gregory vs. Ashcroft*, 501 U.S. 452, 457 (1991)).

12 *Id.* at 399 (quoting Art. VI, cl. 2).

13 *Id.*

14 *Id.* (quoting *Hines v. Davidowitz*, 312 U.S. 52, 67 (1941)).

15 See *Geier v. American Honda Motor Co.*, 529 U.S. 861, 887 (2000) (Stevens, J., dissenting).

16 *Arizona v. Inter Tribal Council of Arizona*, 570 U.S. 1, 13 (2013) (quoting *Gregory*, 501 U.S. at 460) (emphasis added).

17 *Id.* at 894 (Stevens, J., dissenting) (citing *Medtronic, Inc. v. Lohr*, 518 U.S. 470, 485 (1996)).

18 49 U.S.C. § 30103(b).

19 49 U.S.C. § 30103(e).  
 20 *Id.* (emphasis added).  
 21 529 U.S. 861 (2000).  
 22 529 U.S. at 868.  
 23 *Id.*  
 24 *Id.* at 871.  
 25 *Id.*  
 26 *Id.* at 870.  
 27 *Id.* at 869.  
 28 See *Williamson v. Mazda Motor of America, Inc.*, 562 U.S. 323, 330 (2011).  
 29 *Id.* at 330. But because only Congress (and not the judiciary) may constitutionally preempt state law with a federal law, the Court has cautioned that the “purposes and objectives” analysis does not license a “free-wheeling judicial inquiry into whether a state statute [or common law rule] is in tension with federal objectives[.]” See *Gade v. National Solid Waste Management Assn.*, 505 U.S. 88, 110 (1992) (Kennedy, J., concurring in part and concurring in judgment).  
 30 529 U.S. 861 (2000).  
 31 562 U.S. 323 (2011).  
 32 529 U.S. at 865.  
 33 *Id.*  
 34 *Id.*  
 35 *Id.*  
 36 *Id.*  
 37 *Id.* at 865, 874.  
 38 *Id.* at 875.  
 39 *Id.* at 881.  
 40 *Id.*  
 41 562 U.S. at 331.  
 42 526 U.S. at 326.  
 43 *Id.* (citing 54 Fed. Reg. 46257-46258 (1989); 49 C.F.R. § 571.208 (1993)).  
 44 *Id.*  
 45 *Id.*  
 46 *Id.*  
 47 *Id.*  
 48 *Id.* at 326-27.  
 49 *Id.* at 326.  
 50 *Id.* at 326, 330, 332, 336.  
 51 See 562 U.S. at 332.  
 52 See *id.*  
 53 *Id.* at 338 (Sotomayor, J., concurring).  
 54 *Id.* at 335.  
 55 *Id.*  
 56 *Id.*  
 57 *Id.*  
 58 *Id.* (emphasis in original).  
 59 See 49 C.F.R. § 571.208, S4.4.4.2.  
 60 *Bus Passenger Seating and Crash Protection*, 38 Fed. Reg. 4776 (February 22, 1973); see also *MCI Sales and Services, Inc. v. Hinton*, 329 S.W.3d 475, 483-84 (Tex. 2010).  
 61 *Id.*  
 62 39 Fed. Reg. 147 (July 30, 1974); see also *Soto v. Tu Phuoc Nguyen*, 634 F.Supp.2d 1096, 1101-1102 (E.D. Cal. 2009).  
 63 *Id.*  
 64 *Id.*  
 65 *School Bus Passenger Crash Protection*, 39 Fed. Reg. 27,585 (July 30, 1974); see also *MCI Sales and Services, Inc. v. Hinton*, 329 S.W.3d at 491.  
 66 See *MCI Sales and Services, Inc. v. Hinton*, 272 S.W.3d 17, 24 (Tex. App.-Waco 2008) (citing 39 Fed. Reg. 27,585-86); *MCI Sales and Services, Inc. v. Hinton*, 329 S.W.3d at 493.  
 67 *Id.* (citing 48 Fed. Reg. 47,032 (Oct. 17, 1983)).  
 68 *Occupant Crash Protection*, 53 Fed. Reg. 47,982 (November 29, 1988); see also *Lake v. Memphis Landsmen, LLC*, 405 S.W.3d at 58.  
 69 *Id.*; *Occupant Crash Protection*, 54 Fed. Reg. 46,527 (November 2, 1989).  
 70 *Dorsey v. Bluebird Corp.*, 74 F.Supp.3d 779, 782 (N.D. Miss. 2014) (quoting, National Association for Pupil Transportation and National School Transportation Association “Joint Response to National Highway Traffic Administration’s Recommendations for Further Improving Safety of School Bus Occupants, Dec. 9, 2013, which in turn cited, NHTSA 2010 Final Rule, 49 C.F.R. Part 571, “School Bus Seating and Crash Protection”).

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71 See Price, 370 Ark. at 409, 260 S.W.3d at 304; MCI Sales and Services, Inc., 272 S.W.3d at 24 (Tex. App.-Waco 2008).

72 See supra, n. 70.

73 Lake v. Memphis Landmen, LLC, 405 S.W.3d at 47-48.

74 Doomes v. Best Transit Corp., 17 N.Y.3d 594, 958 N.E.2d 1183, 935 N.Y.S.2d 268 (2011).

75 MCI Sales and Services, Inc. v. Hinton, 329 S.W.3d 475, 475-76 (Tex. 2010).

76 Soto v. Tu Phuoc Nguyen, 634 F.Supp.2d 1096, 1096-97 (E.D. Cal. 2009).  
77 405 S.W.3d at 62.

78 Id. at 61.

79 2010 WL 1653014 at \* 9 (citing 49 U.S.C. § 30102(a)).

80 Id.

81 Id. at 62 (citing Geier, 529 U.S. at 883 (internal citation omitted)). ◇

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## CENTENNIAL TRIBUTE Ada L. Sawyer



**WOMEN'S HISTORY MONTH** has been observed annually in the month of March in the United States since 1987 and is a celebration of the contributions women have made to American history, culture, and society. In honor of Women's History Month, the Rhode Island Bar Association would like to recognize the significant achievement of Ada L. Sawyer, the first woman to pass the bar exam and be admitted to practice law in Rhode Island.

The fall of 2020 marked the 100th anniversary of this important moment in our state's history. Ada sat for the Rhode Island Bar exam on September 24, 1920. She did so without attending college or law school and out of the 22 candidates who took the exam, she was the only woman. At this time, Rhode Island still allowed its applicants to read the law. This process entailed spending three years under the tutelage of a Bar member after filing a registration with the Bar Association. Ada worked for Percy W. Gardner as a stenographer, and he became her mentor and tutor.

When Ada was ready to sit for the bar exam in 1920, the bar's examiners realized that A. Sawyer was in fact a female and an argument was made that the noun "person" used in the bar rules was meant to apply to men but not to women. After the Rhode Island Supreme Court debated this case, Justice William H. Sweetland made the famous finding that the term "person" includes a woman, an important finding as women then still did not have full legal rights.

In November of 1920 Ada became the first woman in the state of Rhode Island to take and successfully complete the bar examination. She was one out of twelve candidates to pass the bar that year. Ada went on to focus her law career on trust estates, banking, corporations, and probate cases. The hard work and dedication of Ada L. Sawyer paved the way for future women in the legal profession and her courageous actions changed the future of the profession in our state.

To commemorate Ada's significant contributions to the Rhode Island legal profession, the Rhode Island Bar Association, supported by the Women's Bar Association and the Roger Williams University School of Law, had planned to celebrate the 100th anniversary of Ada passing the bar exam in the fall of 2020. Due to COVID restrictions and the worsening pandemic the event was postponed multiple times over the last two years. Bar leadership has decided to cancel the event and instead dedicate a portion of the 2022 Annual Meeting Luncheon to recognizing Ada's achievements. There will also be a table at the event honoring Ada and women's history.

The Bar also developed an Ada L. Sawyer Centennial Celebration Memorial Booklet, a compilation of pieces that recognize the first women lawyers of the Rhode Island Bar. The booklet features a series of articles, originally published in the *Bar Journal* and written by attorney Denise Aiken, relating to the life of Ada Sawyer and how she enhanced the status of women in Rhode Island. The booklet also includes all of the past Rhode Island Women Lawyers interviews that have been published in the *Journal* and articles detailing the history of women lawyers in our state that have recently been published in other publications.

To view the memorial booklet please [click here](#) or visit the Rhode Island Bar Association website under the For Attorneys drop down menu and click on Ada Sawyer Memorial Booklet. We hope you will enjoy learning more about Ada Sawyer's significant achievements and how she opened doors for future women in the law in Rhode Island.



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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.

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# Article Update: Revisiting the Rhode Island Acquired Real Estate Company Conveyance Tax



**E. Hans Lundsten, Esq.**  
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Providence, RI

This is an update to our article “Revisiting the Rhode Island Acquired Real Estate Company Conveyance Tax” published in the November/December 2021 issue of the *Rhode Island Bar Journal*.

## Increase in the real estate conveyance tax

In the article, we discussed the increase in the real estate conveyance tax, including the acquired real estate company conveyance tax, that went into effect on January 1, 2022. The legislation, House Bill 6122, Substitute A, as amended, imposes an additional \$2.30 per \$500, or fractional part thereof, on consideration paid above \$800,000. Specifically, the enacted legislation states:

[T]here is imposed, on each deed, instrument, or writing by which any *residential* real property sold is granted, assigned, transferred, or conveyed to, or vested in, the purchase or purchasers, or any other person or persons, by his or her or their direction, or on any grant, assignment, transfer, or conveyance or such vesting, by such persons which has the effect of making any real estate company an acquired real estate company, when the consideration paid exceeds eight hundred thousand dollars (\$800,000), a tax at the rate of two dollars and thirty cents (\$2.30) for each five hundred dollars (\$500), or fractional part of it, of the consideration in excess of eight hundred thousand dollars (\$800,000) that is paid for the purchase of property or the interest in an acquired real estate company... (emphasis added).<sup>1</sup>

In the article, we pointed out that the Division did not specify that the additional conveyance tax is limited to residential real property in the Division’s Notice 2021-04 dated July 7, 2021 or in its Summary of Legislative Changes dated July 26, 2021.<sup>2</sup> The application of the additional tax specifically to “residential real property” is a modification of the general rate of tax on “any lands, tenements, or other realty.”<sup>3</sup>

However, during a Continuing Legal Education Seminar on the conveyance tax sponsored by the Rhode Island Bar Association on December 7, 2021, the Division clarified that the increase to the tax only applies to residential real property. Since then, the Division has updated its guidance on

the real estate conveyance tax specifically stating that the increased tax is limited to residential real property. We applaud the Division for quickly and decisively providing guidance to practitioners on the change to the tax prior to January 1, 2022.

The Division has also issued an updated Form CVYT-2, Acquired Real Estate Company Conveyance Tax Return reflecting the increase in tax for residential real property conveyances over \$800,000. While the form does not specifically state the limitation on the increase, it provides guidance on calculating the tax for sales in excess of \$800,000. The Division also provides FAQs regarding the real estate conveyance tax on its new website.

“Residential real property” is not defined in the statute; however, during the Continuing Legal Education Seminar held on December 7, 2021, the Division indicated that the definition of residential real property is dependent on the municipality’s zoning ordinances where the property is located. The concern with using each municipality’s zoning ordinances to determine the definition of residential real property is that it leaves open the door to inconsistent applications of the increased tax for the same type of property in different jurisdictions. A statewide definition would resolve this potential issue and provide consistency in the application of the increased tax. Because “residential real property” is not defined in the statute, the Division is unable to apply a statewide definition. That is the job of the state legislature.

## Real Estate Company

As noted in the original article, the Rhode Island Statute defines “real estate company” in part as an entity that:

Is primarily engaged in the business of holding, selling or leasing real estate where 90% or more of the ownership of the real estate is held by 35 or fewer persons *and* which company either: (i) derives 60% of its annual gross receipts

**...the Division has updated its guidance on the real estate conveyance tax specifically stating that the increased tax is limited to residential real property.**

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from the ownership or disposition of real estate; or (ii) owns real estate the value of which comprises 90% or more of the value of the entity's entire tangible asset holdings exclusive of tangible assets that are fairly transferrable and actively traded on an established market. R.I. Gen Laws 44-25-1(f)(1), as amended.

Due to past matters with the Division, it is our understanding that the Division took the position that if a company meets either section (f)(1)(i) or section (f)(1)(ii), then the entity is primarily engaged in real estate and is considered a "real estate company."<sup>4</sup> We disagree with this interpretation because it fails to address the plain language of the statute. There is an "and" requirement of the statute. The first question should be whether the entity is primarily engaged in the business of holding, selling, or leasing real estate. If not, the entity does not meet the definition of a real estate company. A company should not be deemed a real estate company solely because it owns real estate and satisfies either the 60% or 90% test in the statute.

The Division recently indicated to us that the Division agrees that both the first part of the provision and (f)(1)(i) or (1)(ii) must be met (or R.I. Gen Laws § 44-25-1(f)(2)) to be a "real estate company" as defined in R.I. Gen Laws § 44-25-1(f). We are hopeful that the Division will issue specific guidance on what the Division considers "primarily engaged in the business of holding, selling, or leasing real estate" at some point in the future.

### **PTE Election and 71.3 Withholding**

In addition to the update on the real estate conveyance tax, it is our understanding that the Division is in process of updating the Nonresident Seller of Real Estate forms for the R.I. Gen Laws § 44-30-71.3 withholding on the sale of real estate by nonresidents to incorporate the Pass-through Entity (PTE) Election. Beginning in 2019, a passthrough entity, such as an "S" Corporation or Partnership, can make the election to be taxed by Rhode Island at the entity level rather than be taxed at the shareholder or partner level.<sup>5</sup> The election allows the passthrough entity to deduct the state income tax as an expense, thereby, reducing the net income passed through to the individual shareholders or members.

If an entity is making a PTE Election for the 71.3 withholding, then the nonresident members do not need to be listed on an attachment to the 71.3 withholding forms. The Division is asking preparers to include a cover letter that indicates that the withholding should be applied to a PTE account. The Division will then apply the withholding to the PTE account based upon the letter. This is a temporary procedure put in place to assist taxpayers and ease any burden while the form updates are being completed. It is our understanding that the Division also plans to issue FAQs on the 71.3 withholding on its website.

The Division has indicated that a taxpayer may make a pro-forma PTE election when it submits a Letter of Good Standing Request for the sale of a major portion of assets. In those cases, the Division indicated that it will issue a withholding certificate showing no balance due to the taxpayer, so the closing attorney or title company does not duplicate the withholding at the closing. The Division has also indicated that the Division will work with a taxpayer to obtain the Letter of Good Standing prior to closing but allow payment at the closing.

## Conclusion

While our arguments presented in our article “Revisiting the Rhode Island Acquired Real Estate Company Conveyance Tax” remain the same, we commend the Division on its updated website, outreach, and recently updated guidance concerning the real estate conveyance tax.

## ENDNOTES

1 R.I. Gen. Laws 44-25-1(b), as amended.

2 The State of Rhode Island General Assembly also did not refer to residential real estate in the press release regarding the approved 2022 state budget dated July 1, 2021. The press release does refer to “high end” real estate but does not distinguish between residential and commercial real estate. [http://www.rilin.state.ri.us/pressrelease/\\_layouts/RIL.PressRelease.ListStructure/Forms/DisplayForm.aspx?List=c8baae31-3c10-431c-8dcd-9dbbe21ce3e9&ID=371945](http://www.rilin.state.ri.us/pressrelease/_layouts/RIL.PressRelease.ListStructure/Forms/DisplayForm.aspx?List=c8baae31-3c10-431c-8dcd-9dbbe21ce3e9&ID=371945)

3 R.I. Gen. Laws § 44-25-1(a), as amended.

4 This position is also referenced in the Rhode Island Department of Revenue, Division of Taxation Notice 2015-13 (Sept. 2015).

5 R.I. Gen. Laws § 44-11-2.3. The PTE election is sometimes referred to a SALT workaround. The federal Tax Cuts and Jobs Act capped the state and local tax (SALT) deduction for individuals at \$10,000. The PTE election reduces the passthrough income to an individual member or shareholder, thereby offsetting income which would have been previously deductible except for the SALT cap. ◊

## Soliciting Bar Member Response to Proposed Diversity, Equity, and Inclusion Committee

After reviewing the recommendation from the Bar's Task Force on Diversity & Inclusion, the Bar's Executive Committee is interested in learning if any Bar members are interested in joining, and regularly attending meetings for, a proposed Diversity, Equity, and Inclusion Committee. This Committee would seek the participation of all interested members of the Bar to discuss DEI-related matters of interest to the membership and to make recommendations which will foster a sense of equity and inclusion among members. The Committee will also propose DEI-related CLE and Annual Meeting programming, networking events with affinity legal organizations, and resources for the membership. At least thirty members must volunteer to serve on the committee which would be formed on an ad hoc basis for at least two years to determine if interest is sustainable. A chairperson will then be appointed by the President. If the Committee is active for two years, the House of Delegates will consider establishing a standing committee consistent with the Bar's bylaws. Bar members interested in joining the proposed Diversity, Equity, and Inclusion Committee are asked to contact Rhode Island Bar Association Director of Communications Erin Cute by email at [ecute@ribar.com](mailto:ecute@ribar.com) no later than **April 1, 2022**.

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

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

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

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

### Lawyers in the Classroom

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

### Speakers Bureau

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

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



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## A Review of the Senate Discovery Task Force



Michael A. DiLauro, Esq.  
Assistant Public Defender



Joseph P. Baxter  
Legislative Coordinator  
Office of the President  
of the Senate

**The recommendation emphasizes the critical need for the complete and timely disclosure of such evidence, if it is disclosable, to the appropriate parties.**

In 2018, the Rhode Island Senate passed a resolution to establish the Senate’s “Special Task Force to Investigate and Make Recommendations for Any Changes to the Law, Court Rules or to Policies and Procedures Currently in Place to Enhance the Timely and Complete Disclosure of Discoverable Material in Criminal Cases.” This resolution, and the subsequent resolutions that were passed to extend the working period of the Task Force during the pandemic, was sponsored by Senator Stephen R. Archambault in collaboration with Majority Leader Michael J. McCaffrey and Senate President Dominick J. Ruggerio.

The diverse membership of this Task Force included representatives of many stakeholders that take part in, or are affected by, the discovery process. The membership was composed of representatives from: the Rhode Island Bar Association, the Rhode Island Association of Criminal Defense Lawyers, Roger Williams University School of Law, the Rhode Island Commission for Human Rights, the Rhode Island State Police, the Public Safety Department of the City of Providence, the Chief Justice of the Supreme Court, the Rhode Island Police Chiefs’ Association, two local law enforcement agencies, the Rhode Island Attorney General, and the Rhode Island Public Defender. Attorneys Michael A. DiLauro and J. Patrick Youngs, representing Public Defender Lara Montecalvo and Attorney General Peter Neronha respectively, served as Co-Chairs of the Task Force.

This group was charged with completing a thorough analysis of the current discovery practices and procedures followed in Rhode Island and asked to offer recommendations for the improvement of discovery procedures. These recommendations, along with the more detailed explanations from this working group, can be found in the Task Force’s final report, which is published on the website of the Rhode Island General Assembly. In addition to the publication of these recommendations, Co-Chairs DiLauro and Youngs, along with Chief Sid Wordell of the Rhode Island Police Chiefs’ Association and Christine Crocker, Esq. of the Rhode Island Police Accreditation Commission, have agreed to implement a series of trainings for both law enforcement and members of the public and private criminal defense bar.

The first recommendation adopted by the Task Force concerns sanctions associated with discovery procedures and practices. The Task Force recommended that no changes be made to the existing sanctions than can be imposed due to late or non-disclosure of discoverable materials. Much like the rest of the recommendations made, the Task Force emphasized a need for training and education regarding discovery, to best serve the stakeholders that are affected by this component of the legal process.

The second recommendation of the Task Force concerned the education of the stakeholders involved in the discovery process. As is aforementioned, the Co-Chairs will carry out this training with the help of law enforcement leaders. This recommendation was deliberated at length and was considered to be a key part of the Task Force’s work. Attorney DiLauro and Attorney Youngs, along with Chief Sid Wordell, will implement trainings for law enforcement officers and attorneys in their respective capacities of representing the different stakeholders in the discovery process.

The last major recommendation of the Senate Discovery Task Force is embodied in a document within the Task Force’s report entitled, “Principles to Enhance Disclosure.” This section of the report contains information that is relevant to defense counsel, prosecution, and law enforcement.

The particular recommendations that pertain to defense counsel highlight the investigation of each case, which may result in the finding of both exculpatory and inculpatory evidence. The recommendation emphasizes the critical need for the complete and timely disclosure of such evidence, if it is disclosable, to the appropriate parties.

The recommendations that the Task Force directed at the prosecution arose from conversations about **Brady** material and other discovery best practices. The Task Force highlighted the relationship between law enforcement and the prosecutor in each case, working in concert to

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

JUNE  
23 - 24



The Rhode Island Bar Association Annual Meeting is scheduled for Thursday, June 23 and Friday, June 24, 2022. At this time, we plan to move forward with an in-person program at the Rhode Island Convention Center. Our opening plenary speakers, the Honorable Melisa A. Long, Associate Justice of the Rhode Island Supreme Court, the Honorable Linda Rekas Sloan, Associate Justice of the Rhode Island Superior Court, the Honorable Lia N. Stuhlsatz, Associate Justice of the Rhode Island Family Court, and attorneys Hamza Chaudary and Josh Xavier, will discuss the value of multi-culturalism and representation in all aspects of the legal system, including the legal workforce and Rhode Island Judiciary, and will address how organizations can attract and retain employees from a broad range of backgrounds. In addition to the always popular Civil & Criminal Case Law, Family Case Law, Estate Planning Trusts & Commercial Law Update programs, we have a great lineup of 32 fantastic workshops including:

- > **2022 Estate Planning for Rhode Island Residents and Florida Snowbirds**
- > **Practical Guidance on the 2021 Rhode Island Pay Equity Law**
- > **The Britney Effect: Protect Decision-Making Rights with Supported Decision-Making, a New Alternative to Guardianship in RI**
- > **Rhode Island Mechanic's Lien Law: Procedure and Process**
- > **Medicaid Crisis Planning**
- > **Eliminating Bias from Your Writing**
- > **Foreclosure Post-Pandemic**
- > **RI Real Estate Title Standards and Real Estate Conveyances**
- > **And more!**

We are excited to once again gather in person at the Rhode Island Convention Center to catch up with old friends, colleagues, and members of the judiciary. This is one meeting you don't want to miss!

Please know, the health and safety of our members and attendees is our top priority. Attendees will be required to complete a health screening process prior to attending the Meeting. More information regarding this process will be circulated in the coming months. If pandemic conditions worsen, Bar leadership will consider switching to a virtual program.

ensure the fair, complete, and timely disclosure of discoverable materials.

Finally, the Task Force proposed recommendations for law enforcement agencies to follow. These recommendations centered on collaboration with the prosecution, to ensure that all discoverable material is disclosed fully and in a timely manner. The Task Force also discussed the best ways to address issues surrounding **Brady** and **Giglio** materials. These recommendations were created after a robust discussion with, and with particular help from, Chief Wordell and Christine Crocker, Esq.

The Task Force addressed and discussed virtually all aspects of the discovery process in order to contemplate how the stakeholders involved in the discovery process can best be served. This involved great collaboration among Task Force members representing the judiciary, the criminal defense bar, prosecutors, and beyond. The fourteen meetings of the Task Force fostered great conversations and well thought out recommendations and training proposals for the parties involved in the discovery process of criminal proceedings in Rhode Island. As evidenced by these meetings, and by the final report of the Task Force, the discovery process is vital in criminal proceedings to all involved parties, and it is essential that the complete and timely disclosure of discoverable materials in such matters occurs.

The full work of the Senate Discovery Task Force can be found in its final report, which is published on the General Assembly's website ([rilegislature.gov](http://rilegislature.gov)).

*The authors wish to thank all of the Task Force members and designees for their hard work and contributions to the process. Most importantly, they wish to acknowledge the indispensable contributions to this article and the Task Force, of the Co-Chair and RIAG designee Assistant Attorney General J. Patrick Youngs III, Esq. The Rhode Island criminal justice system is a direct beneficiary of his 30+ years of public service and devotion to the cause of justice. ◇*

## Establish Yourself As An Expert in An Area of Law

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

# Invitation to Exhibit

## Rhode Island Bar Association Virtual Annual Meeting June 23 & 24, 2022

At this time, the Rhode Island Bar Association is planning to move forward with an in-person 2022 Annual Meeting scheduled on **Thursday and Friday, June 23rd and 24th** at the Rhode Island Convention Center. As the Bar's largest event, the Meeting provides an opportunity for our members to learn about practice-related products and services, socialize with their colleagues, and fulfill their Continuing Legal Education (CLE) requirements. Since exhibit requests have traditionally exceeded the supply of available exhibit spaces, we encourage you to apply today for yours!

Exhibitor space is available in the comfortable and high-visibility pre-function area located immediately in front of, and surrounding, the entrances to all Annual Meeting seminar rooms. Serving as the site for all meeting food and beverage breaks, these are excellent locations for attracting attendee attention. **This year we are offering two levels of sponsorship!** The Sponsor level priced at \$1,500 and the Exhibitor level priced at \$1,000. Each level includes

an exhibit space consisting of a draped six-foot table and two chairs, and exciting benefits that you don't want to pass up!

Exhibit space is limited, and previous exhibitors receive location preference, but there are still some spaces available. Please note that sending in an application does not guarantee a space, as exhibit spaces are assigned based on availability and product and service mix. **Completed Exhibit Space Application Contracts are due no later than March 25, 2022.** Exhibit space assignment and confirmation occurs by April 8, 2022. Payment is due on or before confirmation.

To receive 2022 Annual Meeting Exhibitor Application Forms, and to see the exciting benefits, which promise ample visibility to our program attendees, fostering real connections with future clients, please contact the Bar's Director of Communications Erin Cute at [ecute@ribar.com](mailto:ecute@ribar.com).

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- March 3**  
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*LIVE WEBINAR ONLY!*
- March 15**  
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1:00 – 2:00 p.m., 1.0 ethics  
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- March 16**  
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**2022 Hardship Licenses and Ignition Interlock  
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*LIVE WEBINAR ONLY!*
- March 23**  
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Can Have Major Consequences**  
1:00 – 2:00 p.m., 1.0 ethics  
*LIVE WEBINAR ONLY!*
- March 30**  
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**Depositions: Learn & Limit**  
12:30 – 2:00 p.m., 1.0 credit + 0.5 ethics  
*LIVE WEBINAR ONLY!*
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**Reminder:** Bar members may complete six credits through participation in video replay or on demand CLE seminars. To register for an online seminar, go to the Bar's website: [ribar.com](http://ribar.com) and click on CONTINUING LEGAL EDUCATION on the left side menu.

## Rhode Island Probate Court Listing and Judicial Communications Survey on Bar's Website

The Rhode Island Bar Association regularly updates the Rhode Island Probate Court Listing to ensure posted information is correct. [The Probate Court Listing](#) is available on the Bar's website at [ribar.com](http://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**.

## An Interview With Jessie M. Reniere, Esq.

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

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

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

I am an associate in the Corporate and Business Group at Hinckley Allen.

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

This is hard to answer because my practice is varied, but the majority of the work I do is in mergers and acquisitions. I represent buyers and sellers of companies, conducting due diligence on the target company, drafting and reviewing disclosure schedules and other transaction documents, and tracking the status of deliverables to make sure we're on schedule for closing. I've also worked on public finance and venture capital transactions, and lately, I've been doing a lot of commercial contract review and negotiation. Everything I do is transactional – I don't work on any litigation matters.

> **How do you think COVID and remote work has impacted the start of your legal career?**

It's actually hard for me to say because I don't really know what it would have been like otherwise. I was only in the office for about six months before we started working from home. I'm really glad, though, that I was able to meet people in person from all of Hinckley Allen's different offices when I was a summer associate and then during those first six months as an associate. That made it easier to send an email or pick up the phone to ask for help when I couldn't stop by people's offices anymore. The senior associates in my group were also extremely supportive – I think they were all more aware than I was of the challenges I was facing.

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

One thing I've learned as a new attorney is to get comfortable being uncomfortable. When I first started, I was anxious about my lack of experience and felt like I didn't know how to do anything. Then, as soon as I felt comfortable doing something, I'd be asked to do something more advanced and I was back to square one! I've had to learn to trust my ability to pick things up on the fly. It's actually one of the reasons I love being a lawyer – I like the challenge of learning something new every day.

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

I really value having a reputation as someone who is easy to work with. I make it a point to establish that reputation not just with clients and my colleagues at the firm, but with the attorneys and advisors on the other side too. While there are definitely times that negotiations are tense and the situation calls for me to be assertive, my view is that we're all working toward the common goal of closing the deal. I've been able to get more done for my clients by working to establish myself as someone who is

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JESSIE M. RENIERE, ESQ.

reasonable, flexible, and respectful. I'm always really glad when both sides share closing congratulations, say how great it's been to work with each other, and mean it.

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

My biggest inspiration is my mom, May, who passed away just before I graduated from law school. She was, and still is, the smartest person I've ever known. When I told her the thesis of my law review comment, which had already been selected for publication, she picked apart my whole policy argument to the point where I was actually questioning it myself! She was also very independent. She grew up in Hilo, Hawaii, and then came to Rhode Island to go to Brown University. I don't think she had ever been to the mainland before, but she insisted that she wanted to go to a school on the East Coast. She was so far away from her family and there were significant cultural differences for her here, but she stayed in Rhode Island for another 30 years before moving back to Hawaii.

She was a great role model for me as a working mom – when I was a baby, my dad stayed home with me while my mom was establishing her career as a research and strategy consultant. Later, after they



DYSZLEWSKI



HOPKINS

*Continued on next page*



were divorced, she even started a small business with my dad while still working in consulting. My dad still owns and runs that business, Ray's Hockey, 24 years later.

My mom was also very passionate about her volunteer work at The UCAP School, which is a middle school for students from Providence, Cranston, and Central Falls who are at risk for dropping out of high school. She loved getting to know the students and helping them get back up to their grade level.

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

I take Japanese lessons once a week with a tutor, which I really enjoy. My grandmother speaks limited English and so I've always wanted to learn Japanese to better communicate with her. I also enjoy baking, yoga, and this past summer I started learning to play golf.

> **How do you feel about the Great British Baking Show?**

I absolutely love it! I wish I could bake like the contestants. I love their creativity and I am so impressed with their technical skills, especially when they don't have a recipe. I was so happy when Giuseppe won the last season.

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

Greenwich Bay Oyster Bar in East Greenwich is one of my favorites. It's really small and they have great food. I especially love their raw bar.

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

My dog, Cammy. She is from Mississippi and I adopted her through Friends of Homeless Animals Rhode Island when I first started at Hinckley Allen. I've always thought she sort of looks like Snoopy. She likes to make the occasional appearance on video calls and she provides excellent moral support when things are stressful!

> **According to your firm's website, you worked in Government Relations at IGT where you managed compliance matters including global anti-corruption, lobbying, campaign finance, and ethics. Can you tell us a little bit about your part in the fight against global anti-corruption?**

Global anti-corruption law is a huge interest of mine. At IGT, I worked with in-house counsel to ensure that the company's global government relations activities were in compliance with the Foreign Corrupt Practices Act and similar statutes, as well as company policy. During law school, I took a class on anti-corruption law and wrote my law review comment about it. I also had the chance to work on global anti-corruption matters as a Corporate Counsel Extern at Textron.

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

My uncle, David Reniere, is an artist so I have one of his paintings framed in my office. I also have a whiteboard, which I use to make to-do lists and organize my thoughts. I like using brightly colored whiteboard markers to color code things—there is something very satisfying about color-coding!

## Bar Association Mentor Programs

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

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

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

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

## Help Us Grow Our List Serve!

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

# 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](http://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
Nicole J. Benjamin, Esq.	(401) 274-7200
Susan Leach DeBlasio, Esq.	(401) 274-7200
Misty Delgado, Esq.	(401) 528-3563
Mary Cavanagh Dunn, Esq.	(401) 831-8900
Christy B. Durant, Esq.	(401) 272-5300
Cassandra L. Feeney, Esq.	(401) 455-3800

Brian D. Fogarty, Esq.	(401) 821-9945
Merrill J. Friedemann, Esq.	(401) 270-0070
Jenna Giguere, Esq.	(401) 276-5521
Alexandra L. Lister, Esq.	(401) 621-4140
Nicholas Trott Long, Esq. (Chairperson)	(401) 351-5070
Megan A. Mahoney, Esq.	(617) 755-4630
Patricia A. McLaughlin, Esq.	(401) 996-6618

Henry S. Monti, Esq.	(401) 467-2300
Sarah F. O'Toole, Esq.	(401) 647-1400
Dana N. Weiner, Esq.	(401) 265-2751
Professionals at Coastline EAP	(401) 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

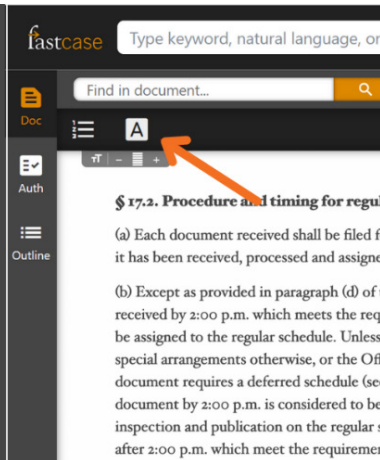
network where members may then respond. On a related note, members using SOLACE may request, and be assured of, anonymity for any requests for, or offers of, help.

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 Kathleen Bridge at [kbridge@ribar.com](mailto:kbridge@ribar.com) or 401.421.5740.

# Fastcase Tip

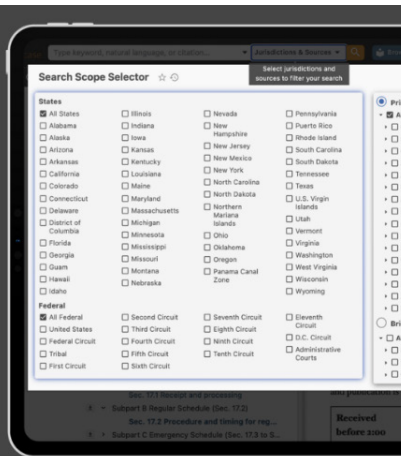
## Helpful Hints

Quickly find document annotations in Fastcase

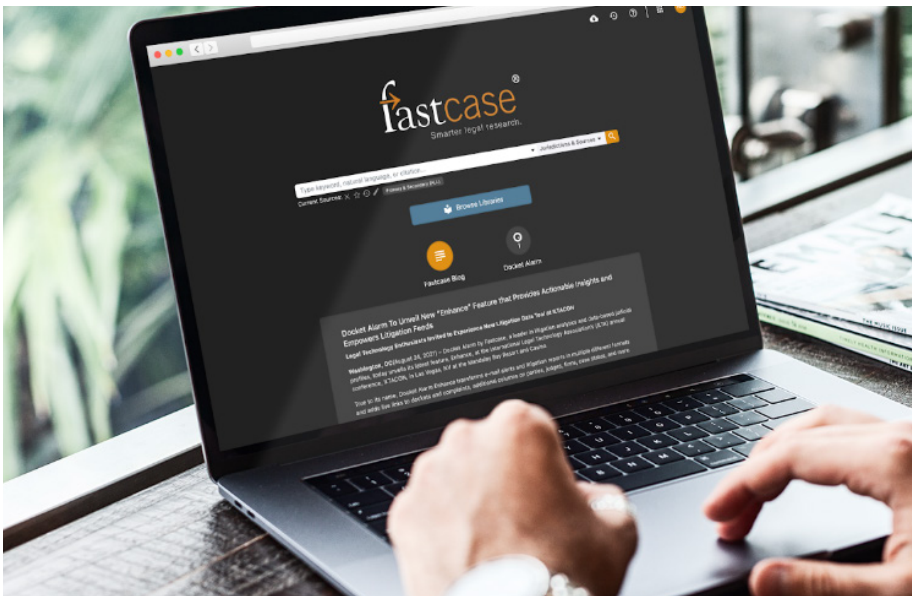


Trying to view annotations in a document in Fastcase? Simply click the A button at the top of the document.

Easily change jurisdictions when searching in Fastcase



Need to change jurisdiction settings when searching in Fastcase? Click the “Jurisdictions & Sources” button on the right side of the search bar and choose from any State and/or Federal Court to run your search.



The @fastcase support team is here to help with your legal research reference and technical questions. Contact Fastcase by email, using the LiveChat feature located on the Fastcase homepage or by phone to speak with a reference attorney. <https://www.fastcase.com/support/>.





## RHODE ISLAND BAR ASSOCIATION'S **Online Attorney Resources (OAR)**

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

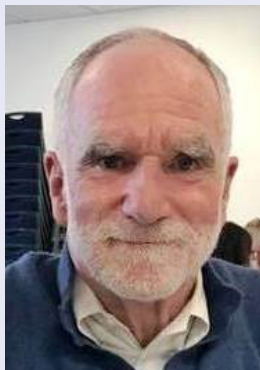
**OAR** provides new and more seasoned Bar members with the names, contact information and Bar admission date of volunteer attorneys who answer questions concerning particular practice areas based on their professional knowledge and experience. Questions handled by **OAR** volunteers may range from specific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

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

### TO CHOOSE YOUR OAR OPTION:

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

Go to the Bar's website at [ribar.com](http://ribar.com), login to the **MEMBERS ONLY**, and click on the **OAR** link.



Arbitrator  
■  
Investigator  
■  
Mediator

Nicholas Trott Long, Esq.  
401-351-5070  
[nicholas@ntlong.com](mailto:nicholas@ntlong.com)  
[www.ntlong.com](http://www.ntlong.com)

## Rhode Island Bar Foundation Seeks Law School Scholarship Applicants

The Bar Foundation intends to award two scholarships of \$25,000 each to Rhode Island residents who enroll as first-year students in an American Bar Association accredited law school for the academic year beginning September 2022. The scholarship is for the first year of law school only and is non-renewable. Each scholarship award is made on the basis of demonstrated financial need, superior academic performance, community and public service, and demonstrated contacts with and commitment to the State of Rhode Island. The Scholarship Committee seeks applications from candidates without regard to race, color, religion, country of ancestral origin, handicap, age, sex, or sexual orientation.

The Scholarship Committee will also award two additional \$25,000 scholarships to applicants who meet the same criteria and who self-identify as black, indigenous, or people of color (BIPOC).

The Rhode Island Bar Foundation Scholarship application deadline is March 31, 2022. More information and application forms are available on the Rhode Island Bar Association website, [ribar.com](http://ribar.com), in the Rhode Island Bar Foundation section.

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## IMMIGRATION LAW

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**401-723-1122**

## In Memoriam

### **Arthur I. Fixler, Esq.**

Arthur I. Fixler, 91, died Sunday, January 17, 2021. He was the husband of the late Ruth (Cohen) Fixler. Born in the Bronx, NY, he was the son of the late Sol and Fannie (Rosenhaus) Fixler. After practicing law in New York City, Arthur moved to Rhode Island in 1972, working as a tax and estate planning attorney for several Providence firms. Arthur was a past vice president of the Jewish Federation of Rhode Island, a past chairman of the Jewish Federation's Endowment Committee, a past president of the Holocaust Education and Resource Center of Rhode Island, and received the 2007 Never Again Award. Arthur was also a board member of the Bureau of Jewish Education and Jewish Seniors Agency and Heritage Harbor. Arthur was a member of Temple Emanu-El, serving on its board and performing in its Purim Spiel. He is survived by his daughter Nancy Abrams and her husband Paul; his son David Fixler and his wife Renee; daughter Masha Traber and husband Bernhard; and longtime partner Maxine Goldin. He also leaves several grandchildren and great-grandchildren. He was the brother of the late Thelma (Fixler) Feldman and Stanley Feldman.

### **Stanley Joel Kanter, Esq.**

Stanley Kanter died on December 29, 2021 at the age of 77. He was born on March 1, 1944 in Providence to Herbert and Mae (Kasdan) Kanter. He went to Boston University where he graduated cum laude with a degree in business administration in 1965. He then received his JD from Cornell University in 1968. It was there that he met Madeline, to whom he was married for 54 years. He worked in real estate law for over 50 years. He's received numerous honors including being named Best Lawyer's Lawyer of the Year in Real Estate in Providence and was a member of multiple professional organizations. He was actively involved in the Jewish community as well as matters of conservation serving as Director then Director Emeritus at Grow Smart Rhode Island. He is survived by his wife, Madeline Daub Kanter, his sons and their spouses David Kanter and Peggy Wu, and Joshua and Sarah Kanter, and two grandchildren. He was preceded in death by his brother, Dr. Stephen Kanter and parents Herbert and Mae (Kasdan) Kanter.

### **Joseph Thomas Little Sr., Esq.**

Joseph T. Little Sr., of Lincoln, died on December 16, 2021. Born in Providence, the son of the late Francis E. Little and Mary A. (Murphy) Little, Joe was a graduate of Central High School in Providence before he served his country in the United States Navy during WWII. After the war, he graduated from Providence College and then received his Juris Doctor Degree from Boston University Law School. He was the Assistant City Solicitor in the City of East Providence and then served as the Probate Judge in the town of Lincoln for fourteen years. Mr. Little was the judicial adjutant for the American Legion Post in Smithfield. He was the husband of the late Ann L. (Doe) Little. Mr. Little is survived by his three children; Joseph T. Little Jr., and his wife Patty of Kingston, Lisa Cerchia and her husband Steve, of West Simsbury, Connecticut, and Kenneth E. Little and his wife Lynn of East Providence. He is also survived by his brother Edward Little, his sister, Elisabeth Procaccini, and several grandchildren and great-grandchildren. Joe was the brother of the late Francis Little and Mary (Little) Olsen.

### **Arnold N. Montaquila, Esq.**

Arnold N. Montaquila, 78, of North Providence, died on Sunday, December 19, 2021. Born in Providence, he was the son of the late Peter and Anna (Ciancio) Montaquila, Sr. and was the husband of the late Edith G. (Gagnon) Montaquila. Arnold was a trial and general practice lawyer for more than 50 years, since 1968. He formerly served as solicitor for the Town of Coventry, general counsel to Ocean State Service Station Retailer's Association, corporate counsel to a quasi-municipal organization, and in many other capacities. Until the end, Arnold worked with his law and business partner of over 30 years, Scott Summer, as a founding member of Lawyers Collaborative. Arnold

is survived by his wife Charlotte Patten, his daughter Patricia Montaquila-Mowry and her husband Eric Mowry of Coventry; siblings Peter P. Montaquila Sr., and Elaine Balasco; and his granddaughter as well as many nieces and nephews.

### **Vincent J. Naccarato, Esq.**

Vincent Naccarato died on December 30, 2021 at the age of 80. Born in Westerly, he was the beloved son of the late James and Flora Naccarato. He attended Westerly High School before continuing his education at Boston College and Boston University Law School. After being admitted to the bar in Massachusetts, Connecticut, and Rhode Island, he settled in Westerly where he was an attorney in private practice for over 50 years. He served as the town solicitor for Westerly in 1977 and was the legal counsel for the Dunn's Corners Fire District for over 40 years. He was appointed to the Board of Directors at Dime Bank in Norwich CT and served in this capacity for almost 10 years, retiring in 2013. He volunteered his time holding various board positions over his career, coaching Little League Baseball, was a Big Brother with the Big Brothers of Rhode Island, and was one of the founding members of the Paul E. Trombino Foundation in Westerly. He was the husband of the late Elizabeth "Betsey" (Mayock) Naccarato. He is survived by his son James V. Naccarato and wife Darellee of Jacksonville, Fla.; his daughter Courtney E. Serra and her husband Sylvester (Trace) C. of Westerly; five grandchildren, Conor, Quinn and Kelsi Naccarato, Jake and Addison Serra; his sister Virginia (Ginny) Miller and her husband Melvin of Bel Air, MD, and several cousins, nieces, and nephews.

### **Nancy A. Palmisciano, Esq.**

Nancy A. Palmisciano, 72, died October 2, 2021. Born in Providence, she was the daughter of the late Anthony and Jennie (Ricci) Palmisciano. Nancy graduated from Boston College with a Bachelor's Degree in history in 1971 and then graduated from Temple University in 1974 with her Juris Doctorate degree. She was a member of the RI Bar Association, the US Supreme Court Bar Association, the Federal Court, and the R.I. Bench Bar Committee. Nancy was also a pro bono attorney for the Elizabeth Buffum Chace Center. She was the mother of Cristina M. and Ana Palmisciano.

### **Paul V. Reynolds, Esq.**

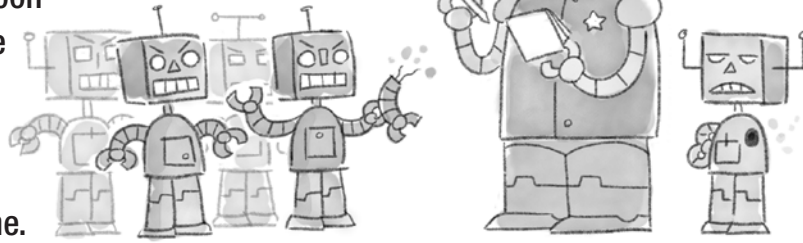
Paul V. Reynolds, 81, of East Greenwich, died on December 28, 2021. He was the husband of Linda J. (Sisson) Reynolds. Born in Providence, he was a son of the late Francis V. and Lucy (McGill) Reynolds. Paul was a graduate of the University of Rhode Island and Boston College School of Law. Paul was a trial attorney who practiced for 47 years. He began practicing with his father, and then he was a founding partner of Boyer, Reynolds & DeMarco, Ltd, now known as Reynolds, DeMarco, & Boland, Ltd. in Providence. Paul was an elected Fellow of The American College of Trial Lawyers. Besides his wife, he leaves a son, Mark T. Reynolds and his wife Karen Reynolds; and daughter Susan L. (Reynolds) Stephenson and her husband Mark Stephenson; as well as several grandsons. He was the brother of Judith Wragg, Gregory Reynolds, and Susan Reynolds.

### **Ruth Silman, Esq.**

Ruth Silman, 52, of Harvard, MA, died on Wednesday, June 30, 2021. Ruth grew up in Ardsley, NY and Great Barrington, MA. A graduate of Cornell University and Boston University Law School, Ruth was a partner at Nixon Peabody, and recently served as the Office Managing Partner of the Boston office. Ruth also served on the boards of the Virginia Thurston Healing Garden, the Cornell Outdoor Education Advisory Board, the North Country Camps Chief's Fund, and the Environmental Business Council of New England, and was a Fellow of the American College of Environmental Lawyers. She leaves her husband, Timothy Clark, and her children Phoebe and Jacob Clark.

# Caption This! Contest

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



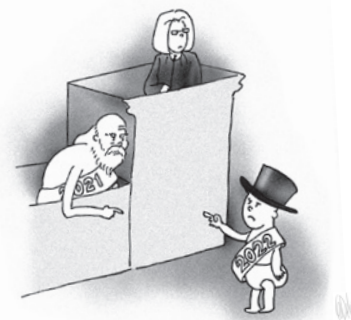
**How It Works:** Readers are asked to consider what's happening in the cartoon above and submit clever, original captions. Editorial Board staff will review entries, and will post their top choices in the following issue of the *Journal*, along with a new cartoon to be captioned.

**How to Enter:** Submit the caption you think best fits the scene depicted in the cartoon above by sending an email to [ecute@ribar.com](mailto:ecute@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



"I object! Unlike you,  
I have plenty of time left!"  
ANONYMOUS

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## Lawyers on the Move

**Christian F. Capizzo, Esq.** is now a partner at **Partridge Snow & Hahn LLP**, 40 Westminster Street, Suite 1100, Providence, RI 02903.  
401-861-8200 [ccapizzo@psh.com](mailto:ccapizzo@psh.com) [www.psh.com](http://www.psh.com)

**Christine E. Dieter, Esq.** is now a partner at **Hinckley Allen**, 100 Westminster Street, Suite 1500, Providence, RI 02903.  
401-457-5388 [cdieter@hinckleyallen.com](mailto:cdieter@hinckleyallen.com) [hinckleyallen.com](http://hinckleyallen.com)

**Suzanne M. Elovecky, Esq.** is now a partner at **Partridge Snow & Hahn LLP**, 30 Federal Street, Boston, MA 02110.  
857-214-3097 [selovecky@psh.com](mailto:selovecky@psh.com) [www.psh.com](http://www.psh.com)

**Thomas W. Madonna, Jr., Esq.** is now a partner at **Hinckley Allen**, 100 Westminster Street, Suite 1500, Providence, RI 02903.  
401-274-2000 [tmadonna@hinckleyallen.com](mailto:tmadonna@hinckleyallen.com) [hinckleyallen.com](http://hinckleyallen.com)

**Elizabeth O. Manchester, Esq.** is now a partner at **Partridge Snow & Hahn LLP**, 40 Westminster Street, Suite 1100, Providence, RI 02903.  
401-861-8271 [emanchester@psh.com](mailto:emanchester@psh.com) [www.psh.com](http://www.psh.com)

**Russell J. Stein, Esq.** is now a partner at **Partridge Snow & Hahn LLP**, 30 Federal Street, Boston, MA 02110.  
857-214-3128 [rstein@psh.com](mailto:rstein@psh.com) [www.psh.com](http://www.psh.com)



# Spring Into New Habits

6 Habits to Make This Year Your Best Year Yet

## Be Kind

Everyone is allowed to have a bad day, but your bad day doesn't have to ruin someone else's. Try to simply be nicer, whether to the grocery cashier, your colleagues, or just a stranger you encounter during your day.

## Make Time for You

Taking time for yourself is not selfish; it's the key to optimal health and wellbeing. Self-care doesn't have to be time consuming. It can simply mean taking a bath every week, attending your favorite weekly yoga class, preparing a healthy meal for yourself, or getting an extra hour of sleep.

## Practice Gratitude

Practicing gratitude can improve your mental health and boost your relationships with others. It can remind us that even in the darkest moment, there are things to be thankful for which can lead to the mindset of more generosity and positivity when things are tough.

## Get Outside

For most of us, we spend the bulk of our days inside. Sometimes a simple walk in the park or around the neighborhood can change your perspective. This year, make it a point to enjoy nature more.

## Be in the Moment

Time flies, and often, we realize we've completed a task without really paying attention. Decide to be more present this year. Spend quality time with your family, stop to smell dinner cooking, and watch TV without scrolling through your smartphone.

## Revisit Goals

As the new year proceeds, keep checking in on the goals you've set for the year. There's nothing wrong with revisiting something you've let slide. As long as you don't give up completely, no matter what habit you're cultivating, it just may stick after all.

## 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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