



Rhode Island Bar Journal

Rhode Island Bar Association Volume 61, Number 6. May/June 2013

**Bar's Annual Meeting:
June 13th & 14th**

**Present and Future of
Energy Tax Credits**

**Navigating the Rhode Island
Fire Safety Code**

**Book Review:
*Barack Obama: The Story***



Articles

- 7 The Present and Future of Energy Tax Credits**
Elliot Taubman, Esq.
- 13 Lunch with Legends: Trailblazers, Trendsetters and Treasures of the Rhode Island Bar**
Matthew R. Plain, Esq. and Elizabeth R. Merritt, Esq.
- 15 BOOK REVIEW – Barack Obama: The Story**
Jay S. Goodman, Esq.
- 23 Navigating the Turbulent Waters of the Rhode Island Fire Safety Code**
W. Keith Burlingame, Esq.
- 33 Deep in the Heart of Texas**
American Bar Association Delegate Report: ABA Midyear Meeting
Robert D. Oster, Esq.

Features

- | | |
|---|---|
| 3 Help for Bar Members and Families Suffering from Alcoholism | 14 Casemaker's Application for Android, iPhone and iPad Now Available and Simple to Use |
| 4 Sign Up for Your 2013-2014 Bar Committee Membership Today! | 19 New Bar List Serve Gaining New Members Daily! Join Today! |
| 5 2013 Annual Meeting Features Renowned Lawyer, Professor and National Legal Commentator Arthur R. Miller's Keynote on Client Access to Federal Courts, Sessions on How to Improve Your Memory and Win Cases, and More! | 20 Continuing Legal Education |
| 6 2 New Technology-Based Bar Membership Benefits! | 30 Use OAR Today and Pull Together as a Team! |
| 6 Bar and Roger Williams University School of Law Mediation Clinic Partnership Continues! | 31 Lawyers on the Move |
| 11 Publish and Prosper in the Rhode Island Bar Journal | 32 New Name, Same Excellent, and Free, Confidential Assistance for Bar Association Members and Their Families |
| 11 Access Bold as Love – Rhode Island Bar Journal Article Archive and More Available Online | 34 SOLACE – Helping Bar Members in Times of Need |
| | 36 In Memoriam |
| | 36 Live! From the Bar! It's CLE Seminar Simulcasting! |
| | 38 Advertiser Index |



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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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Front Cover Photograph
Ocean House, Westerly
 by Brian McDonald



Help for Bar Members and Families Suffering from Alcoholism



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

*First you take a
drink, then the
drink takes a
drink, then the
drink takes you.*

F. SCOTT FITZGERALD

My father was an alcoholic. He drank to great excess virtually every day of his adult life. What followed was all too predictable – car accidents, arrests and jail time due to driving while drunk, a broken marriage, fired from jobs, alienated from his children, and too many physical ailments to list. He woke up every morning, calmly vomited, and then sat down to breakfast – his first six pack of the day.

He lost his mother when he was only 12 years old. He was a World War II veteran. He lost two brothers in that war, and I am sure he was devastated and scarred. But drinking was not the answer. It ruined his life and made the lives of his family very difficult.

On irregular and infrequent occasions, he would go to the VA hospital for a short stay to dry out. We would sometimes get postcards from him. He would return home a self-proclaimed “new man” and, for a very short while, he really was a nice guy. But then, in short order, he would start drinking again and the downward spiral repeated itself. At his request, we buried him with a six pack in his coffin.

As president of your Bar Association, I cringe with a combination of anger, sadness, empathy, and embarrassment every time I see a news report about a lawyer arrested for drunk driving. Or a lawyer disbarred for stealing money from clients and gambling with it, or using it to feed a drug addiction.

I understand the enormous challenges addiction presents, but I am sick of these stories. As lawyers, we need to be better than that. Is it any wonder we are so often the butt of jokes? The public has to put their trust in us to intelligently assist them with important and confidential legal matters. But that trust is being eroded by the actions of a few lawyers who are unable to control their destructive behaviors, just as my father could not control his.

If you or a colleague is in a similar situation, I am very proud to say that your Bar Association is working hard to provide help to fight these and other related problems. Association members, and their dependents, can receive free and confidential help through our Lawyers Helping Lawyers Program. Help is also available through

the Association’s contract with the Coastline Employee Assistance Program (Coastline EAP). To discuss your concerns or those you may have about a colleague, you may contact Coastline EAP and/or a Lawyers Helping Lawyers Committee member, whose names and telephone numbers are included in every issue of the *Rhode Island Bar Journal* and in the Lawyers Helping Lawyers link on the Bar’s website, both of which also include information and contacts for Coastline EAP.

Coastline EAP is a private, non-profit consulting service contracted by our Bar Association to help members and their dependents at no charge. Coastline EAP provides health counselors for a wide range of personal concerns including (but not limited to) alcohol and substance abuse, gambling, depression, anxiety, domestic violence, and grief. Telephone 401-732-9444 to arrange an appointment. At your initial appointment, Coastline EAP counselors will work with you to review your concerns and develop a reasonable, and mutually agreed upon, course of action. They ensure confidentiality and protect privacy.

If you require the further services of private clinicians or treatment programs, Coastline EAP will help you choose services in accordance with your existing medical benefits. In most cases, your medical benefits will cover all or a significant portion of the counseling or treatment costs. If your family member does not have medical coverage, Coastline EAP and our Bar Association will work to secure free services or negotiate sliding scale fees or extended payment plans to help eliminate or reduce financial barriers.

Because of the sensitive nature of these personal problems, attorneys in need are often reluctant to seek help. Before or during your contact with EAP, you may choose to seek peer assistance from a member of the Lawyers Helping Lawyers Committee. Peer attorneys will lend an ear, share their own personal experiences, and, if necessary, advise you on re-entering legal practice or accompany you to self-help meetings. Our program has a proven, 25-year record of helping Rhode Island lawyers, confidentially and free of charge. Please see our web site at

www.ribar.com for the names and numbers of the members of the Committee.

When seeking assistance from a Committee member, your privacy and professional standing are protected. In 1991, the Supreme Court issued changes to the Rules of Professional Conduct, giving members of the Committee immunity from suit, exception from the duty to disclose unprofessional conduct, and an obligation to confer in confidence with lawyers seeking help. In 1995, the Supreme Court also authorized a disciplinary diversion program. This allows some

attorneys to seek treatment and avoid discipline if the attorney successfully completes the prescribed program. This program is run in conjunction with the Supreme Court's Disciplinary Board.

Whatever your problem, please don't try to handle it alone. Don't put off the call trying to decide whether things have gotten bad enough. There is no need to risk your health, license, livelihood, reputation or family. Once you have made the call, you have taken the first courageous step to a better personal and professional life. ❖

Sign Up For Your 2013-2014 Bar Committee Membership Today!

If you have not yet signed up as a member of a 2013-2014 Rhode Island Bar Association Committee, please do so today. **Even Bar members who served on Bar Committees this year must reaffirm their interest for the coming year, as Committee membership does not automatically carry over from one Bar year to the next.** Bar members may complete a Committee registration form online or download and return a form to the Bar. Given the demands of active Bar committee participation, please join no more than three committees.

To sign up for a 2013-2014 Bar Committee, please go to the Bar's website at www.ribar.com and go to the MEMBERS LOGIN. After entering your Bar identification number and password, click on the BAR COMMITTEE SIGN-UP link and follow the prompts.

As an alternative, you may download the Bar Committee Application form appearing above the button and mail or fax it to the Bar Association. Please only use one method to register to avoid duplication. If you have any questions concerning Bar Committee membership or the sign-up process, please contact Communications Program Coordinator Kathleen Bridge by telephone at (401) 421-5740.

RHODE ISLAND BAR JOURNAL

Editorial Statement

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

Article Selection Criteria

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

Direct inquiries and send articles and author's photographs for publication consideration to:
Rhode Island Bar Journal Editor Frederick D. Massie
email: fmassie@ribar.com
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2013 Annual Meeting Features

Renowned Lawyer, Professor and National Legal Commentator Arthur R. Miller's Keynote on Client Access to Federal Courts, Sessions on How to Improve Your Memory and Win Cases, and More!

The Bar Association's 2013 Annual Meeting is on Thursday and Friday, June 13th and 14th, at the Rhode Island Convention Center, providing attendees with outstanding opportunities to learn, to improve your practice, socialize with your colleagues, and fulfill annual CLE requirements. A wide range of 47 seminars offer guidance in family, probate, criminal, trial and commercial law, a variety of ethics-related topics, the popular State and Federal Court updates and more.



Arthur R. Miller CBE, LL.B.

This year's Keynote Speaker is the nationally-known speaker, author, legal editor, commentator, broadcast host, esteemed law professor and scholar, Arthur R. Miller who is addressing the implications of the United States Supreme Court decisions, *Bell Atlantic v. Twombly* and *Ashcroft v. Iqbal*, and their relation to clients' access to the courts. Thursday night begins with a lively reception followed by dinner, Annual Bar Awards for outstanding achievements, recognition of exceptional *pro bono* work, and an address by incoming Bar Association President, J. Robert Weisberger. The Annual Awards Luncheon on Friday honors 50-year members and *Bar Journal* contributors. Rhode Island Supreme Court Chief Justice Paul A. Suttell will deliver his update on the Rhode Island Judiciary and Bar President Michael R. McElroy will deliver a special tribute to Chief Justice Joseph R. Weisberger.



Paul Mellor
President of Success Links

Would you like to have more time, less stress, better concentration, and no trouble remembering names and faces? If so, join nationally recognized memory training consultant, and Rhode Island native, Paul Mellor for a fun session to jumpstart your memory and learn how applying these skills can improve your everyday practice. This session is offered twice during the Annual Meeting, so remember to look for it.

NEW Seminar Materials Flash Drive Format & Printed Alternative

New this year, all seminar materials are provided to attendees on a USB flash drive included in the registration cost. While printed seminar materials are available, they must be pre-ordered, and there is an added charge of \$30. Those who want the printed version must check the appropriate box on the registration form and pay the fee. Switches from the flash drive to the printed materials are not allowed at the Meeting. At-the-door registrants only receive a USB flash.

Bar members may use the registration form on the inside back cover of the 2013 Annual Meeting brochure or access the brochure and/or the interactive registration form available, online, at the Bar's website: www.ribar.com.

2 **NEW** Technology-Based Bar Membership Benefits!

The Bar's Executive Committee announces two, new, technology-based membership benefits offered through an affinity partnership with Clio and Amicus Creative Media LLC.

Clio is a practice management, time & billing and client collaboration platform for small- to mid-sized law firms. Totally web-based, and in compliance with a related American Bar Association (ABA) ethics opinion concerning the security of these services, Clio allows you to securely manage your practice from anywhere on your PC, your Mac and even your iPhone. Rhode Island Bar Association members receive a special 10% lifetime discount on their Clio subscriptions and a free 30-day evaluation period for their practice management platform. To give Clio a try, please visit their company description and connect with their web link on the **MEMBERSHIP BENEFITS** section of the Bar's website at www.ribar.com.

Amicus Creative Media LLC offers website design and marketing services for law firms. Specializing exclusively in legal marketing, Amicus Creative offers attorneys a completely customized website solution which includes striking graphics, unlimited revisions and site pages, an extensive content library, and search engine optimization. Their comprehensive website platform boasts integrated site tools such as click-to-call technology, blogging, a comprehensive e-newsletter system, online event management, and secure document storage. Rhode Island Bar Association members receive a 25% discount on website development services. To learn more, contact an Amicus online marketing consultant at (877) 269-0076 and connect with their web link on **MEMBERSHIP BENEFITS** section of the Bar's website at www.ribar.com.

Find out more about these and other Bar Membership Benefits today!

Here's how to connect with these and other great products and services offered to Bar members, online, at the Bar's website. You may access the **MEMBERSHIP BENEFITS** section on the website under the following buttons on the upper left of the **HOME** page: **ABOUT THE BAR ASSOCIATION**; **FOR ATTORNEYS**; and/or in the **MEMBERS ONLY AREA**.

Bar and Roger Williams University School of Law Mediation Clinic Partnership Continues!

Once again, members of the Bar's Volunteer Lawyer Program (VLP) and Roger Williams University School of Law (RWULS) Mediation Clinic students partnered to provide family law mediation to low income citizens. This cooperative project is held twice a year at the Bar Headquarters, providing legal assistance to those who do not have access to representation. Their efforts are greatly appreciated!

Front row: Margie Caranci, RWULS Mediation Clinic Administrator; Genevieve Simard, RWULS Student; Nicole Solas, RWULS Student; Sharlene Rossi, RWULS Student; Caitlin Evans, RWULS Student; Evan Magnone, RWULS Student; Bruce Kogan RWULS Professor of Law and Mediation Clinic Director. *Back row:* Aaron Greenlee, Esq., VLP Attorney; Matthew Reilly, RWULS Student; Neville Bedford, Esq., VLP Attorney; Jessica Hayward, RWULS Student; Morgan McKay, RWULS Student; Devyn Caroline Noyce, RWULS Student; Rachael Levine, RWULS Student.



The Present and Future of Energy Tax Credits



Elliot Taubman, Esq.
Practices law on Block Island

In the Northeast, there is a regional pollution control compact that also subsidizes energy efficiency and there is also a Renewable Energy Credit program in Rhode Island.

On January 1, 2013 Congress passed a new fiscal cliff tax law.¹ For the energy sector, there was not much change, except extensions of time for promotional tax incentives and changes in tax rates. There are also non-tax changes in the law affecting energy decisions. The major points are:

- Most tax credits for renewable energy are continued, at least until the end of 2013.
- The deadline for beginning construction was liberalized, but ends on December 31, 2013, at least for wind power projects.
- Residential energy efficiency credits are continued but at a lower level.
- Bio-fuel credit still exists, but is cut back.
- The credits for conventional fuel are continued.
- The domestic production (9%) deduction for construction is continued.
- The relationship between state and federal law is not directly affected, but is indirectly affected, by the increase in tax rates and limitation of deductions for the wealthiest. Credits may be more valuable since they are not limited by income, but other tax provisions may affect them.

Renewables

While low cost² natural gas from fracking³ has recently changed the overall economics of energy, most state and federal energy plans provide for increased renewables, both for energy independence and for reduced global warming. The basic law has changed some in the last few years since the Federal Energy Regulatory Commission (FERC) has included “externalities”⁴ in “avoided cost”⁵ calculations. While not a tax, the monetary flows act like a tax, since the price for “distributed site”⁶ electricity is increased for less line loss. Conversely, the reduction in pollution from non-fossil fuel is credited by the higher overall price of a renewable.

In the Northeast, there is a regional pollution control compact that also subsidizes energy efficiency and there is also a Renewable Energy Credit program in Rhode Island. In the original stimulus law in 2009, a user could stack benefits. Now there is some inability to do this. Instead, if there is a tax credit, there may be a require-

ment to make a basis adjustment so there are not two bites at the apple.

Rhode Island has eliminated most benefits for renewable energy except the special legislation for the Deepwater Wind project off of Block Island.⁷ Connecticut and Massachusetts still provide benefits. As a result of the continuation of the federal thirty-percent tax credit for wind projects, which begin substantial construction by the end of 2013, the probability that Deepwater is happening is improved. The Town of New Shoreham has approved the cable and substation zoning, so that part may begin before the end of 2013.

In addition to direct tax benefits from the federals, RI also has amended its net metering rules, allowing aggregation of municipal uses so a large wind turbine, such as in Portsmouth, RI,⁸ may benefit a whole town.

Energy Efficiency

The more efficient use of energy is a matter of both state and federal policy. In the stimulus laws, there were greater tax benefits for things such as energy efficient windows, doors, insulation, and appliances. The level of benefits has been reduced, but for many homeowners the ten-percent tax credit is still useful.

The tax credit for alternative motor vehicle propulsion has been continued for a limited time. However, with credits as high as \$7,500, for purely electric vehicles, the credit can make it worthwhile, for instance to buy an electric motor-powered Nissan Leaf rather than a regular Nissan sedan. Part of the efficacy may depend on how much the tax benefit is offset by a higher price. There are clear efficiencies in the Volkswagen TDI or Mercedes Benz BlueTec diesel engines, and these engines have total air pollution reductions from regular internal combustion engines.

Biomass

Originally, starting in the Bush Administration, the use of ethanol was promoted in three ways: 1) a major subsidy for corn; and 2) a requirement that at least ten-percent of gasoline be ethanol; and 3) a tax credit for ethanol. This

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has changed, at least as to the tax credit, by a reduction in the tax credit for corn-based ethanol. Other forms of biomass still receive a larger subsidy. The reason for the difference is that it may take more energy to produce ethyl alcohol from corn than from other sources, such as sugar.⁹

There are other sources of biomass. Although Rhode Island does not support direct production of electricity from garbage, the Rhode Island Resource Recovery facility at Johnston, RI does have recovery of methane gas. This raises an interesting problem. The law allows tax credits that government and non-profits cannot use as direct government grants. It is probable the push to reduce federal spending may eliminate the direct subsidies. The irony is that the actual economic effect may be stronger from a credit, if it causes extra jobs, but current government philosophy does not treat subsidies the same as credits even if they have the same economic effect. The honest term would be tax expenditures.

Conventional Fuel Credits

Tax credits for oil and natural gas, and other tax expenditures, such as accelerated depletion, started over a hundred years ago. The policy decision was to promote new energy that was less dirty than coal or whale oil. Even though oil prices have been at record levels recently, the credits and depletion continues. Of the so-called tax loopholes the Obama Administration has proposed to cut, a major item is the tax credits. The argument is the credits are unnecessary for production and it would be fairer to other industries to have a lower overall tax without these subsidies.

An interesting sidelight of the controversy of regular fossil fuels and alternatives is the Brazilian proposal. The proposal was to trade highly energy efficient Brazilian sugar-derived ethanol for United States corn. U.S. agribusiness and petroleum companies, with large lobbying and campaign contribution machines in Washington, DC, opposed this, retaining both the subsidy for corn and a special tariff directed at Brazilian ethanol. There is no environmental or energy efficiency justification for this policy. Senator and one-time Presidential candidate, John McCain pointed out the Brazilian anomaly but, after he lost the election, he has been quiet on this issue.

Production Deduction

Federal law has a nine-percent adjustment to Adjusted Gross Income. Since other states may use AGI to figure taxes, this can help if there is construction or manufacturing of energy equipment or installations. The adjustment is figured on Form 890, and is another tax benefit for construction. It is limited both by the total gross, qualifying income and half of paid out Form W-2 income.

Increase in Tax Rates

There were increases in tax rates under the Affordable Care Act of 2010. In particular, there is an additional 3.8 percent Medicare tax on investment income and a 0.9 percent Medicare tax on earned income. These kick in on joint income as low as \$250,000. Recent IRS regulations have included quite a bit of income as investment income, and this can include energy investments. The January 1, 2013 tax changes increased tax rates to 36.6 percent for joint returns over \$450,000, reinstated the phase-out of deductions based on income, and stabilized and indexed for inflation the Alternative Minimum Tax (AMT).

One may ask what tax rates have to do with energy and particularly for investments? The value of energy tax credits may go up. In particular, the stimulus change that allowed write-off of energy credits against AMT was continued. It becomes important to check the expiration dates on existing credits to determine what investments to make.

For further reference, please consult the website: www.irs.gov. The professionals sub-site on the IRS site references specific tax regulations and statutes. Consumer Reports, www.ConsumerReports.org and www.NewYorkTimes.com have on-going coverage of the competing policy issues, regulations and scientific studies, as they are published.

Editor's Note: This article is a partial text for the seminar, "Energy Update 2013," to be presented at the 2013 Rhode Island Bar Association Annual Meeting, on Thursday, June 13th, from 1:30 to 2:45 pm.

ENDNOTES

1 *The American Taxpayer Relief Act of 2012.*

2 *The current cost of natural gas can be less than half its historic cost.*

3 *"Fracking" is also referred to as "hydraulic fracturing." It requires very deep wells where a mixture of water, sand and other materials are pushed under great pressure and at the bottom goes side-*

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ways. The environmental concerns are fear of water pollution, competition for water, and the release of free methane. So far much fracking has been done in North Dakota, Ohio and Pennsylvania. New York is moving gingerly to allow heavily regulated fracking, in one location near Pennsylvania, at great depth.

4 "Externalities" are marginal costs and benefits. A marginal benefit is reduced line loss (friction). Marginal costs are the climate, health and security losses from fossil fuels.

5 Section 210 of the Public Utilities Regulatory Policy Act of 1976 ("PURPA") requires public utilities to pay the avoided cost of fossil fuel power production from "alternative" generators of less than 80 Megawatts. The alternatives include solar, wind, hydro, biomass and co-generation.

6 "Distributed" generation is local generation, usually limited to "qualified" facilities under PURPA. This may be a matter of local law. In Rhode Island, by 2012 legislation, there are fixed price contracts determined under a bidding process as well as Renewable Energy Credits (RECs).

7 In the first round on Deepwater, a contract with National Grid (NGrid) was disapproved by the PUC, but after legislative changes, the PUC and Rhode Island Supreme Court approved the contract.

8 Portsmouth's contract with NGrid was challenged before the RI Division of Public Utilities and Carriers, but this became moot when the aggregation law was passed. Currently, the 1.5 MW turbine is not working, even though it had a warranty, but the manufacturer went out of business. For this reason, among others, Deepwater is using Siemens turbines, as Siemens is a large, diversified and solid company.

9 The Union of Concerned Scientists, www.UnionConcernedScientists.org has extensive coverage of the debates about the real costs of corn ethanol.

*Admitted in RI, CT, NY. Chair for Planning, Environmental and Energy Law Committee, Rhode Island Bar Association.

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Aspiring authors and previous contributors are encouraged to contact the *Rhode Island Bar Journal's* Editor Frederick Massie by telephone: (401) 421-5740 or email: fmassie@ribar.com.

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



Matthew R. Plain, Esq.



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Dennis J. Roberts, II was born in Providence in 1941. His father, Thomas H. Roberts, served as both a Rhode Island Supreme Court and a Federal District Court Judge. His uncle and namesake, Dennis J. Roberts, served as both Mayor of Providence and Governor of Rhode Island. Despite his heritage, he never felt pressured to pursue a similar path, but, in Mr. Roberts' words, "that's the milieu I was born into, and the milieu I accepted, and accept with great gratitude," adding that he, his father, and his uncle "had the huge privilege of spending our lifetimes at the leadership intersections of the law, government and politics."

Graduating from Fordham University in 1963 and Boston College Law School in 1966, he served as a law clerk to Federal District Court Judge, Edward Day, before joining Roberts & McMahon, his Uncle's firm, in 1967. Before taking over as Rhode Island Attorney General in 1978, he worked as a civil trial attorney, helped form the Rhode Island Group Health Association, served as consumer's counsel, and the vice chairman of the Rhode Island Public Transit Authority.

As Attorney General from 1978 to 1984, his office prosecuted thousands of cases, including *State v. von Bulow* and *State v. Cianci*. Upon leaving the Attorney General's office, Mr. Roberts joined Roberts, Carroll, Feldstein & Peirce, and immediately jumped back into his civil trial practice. He stayed at Roberts, Carroll until 1994, and then opened a solo practice, where he practices today. Excerpts from our lunch with this 47-year bar veteran follow.

Did you always want to be a lawyer? Oh, I did. I just bought into the whole thing from birth, pretty much. And I'm not exaggerating. My father and uncle were both lawyers and public figures. I was born in '41, and the first evidence I have of being in a campaign was the 1944 campaign where I'm standing there with my blue suit and white shirt and tie with a sandwich board over me saying, "Re-Elect Mayor Roberts" outside the campaign headquarters. I'm not even sure I'd even call it a decision. It was just who I am. And still am to this day. I never regretted any of it.

Over the course of your career, who was your most formidable opponent? I've tried cases against a lot of really good lawyers and good adversaries. A good adversary doesn't necessarily mean nasty, quite the contrary. Joe Kelly is a great adversary, the nicest guy in

the world, and we're very good friends. Guys like Lenny Decof. I used to have fun with the Kirshenbaums. I've tried against so many wonderful lawyers.



Dennis J. Roberts, II

What has been one of your most creative or inventive legal arguments? The time we got the murder conviction on Joe Onions where there was no body. I think John Tramonti represented one and maybe Jack Cicilline the other defendant and they said, "Well, you can't prosecute." I said, "Well, I've got a witness." "Who's your witness?" "Joe Onions' girlfriend." "Who's that?" "Sandra Surprise" and they said, "She's a hooker," "I said, "Yeah. A first class hooker."

So over the course of your career what has been the biggest challenge, hurdle or obstacle? Showing up every day at the office of Attorney General. The best job and the most challenging job, in my opinion, any lawyer could ever have in his or her life.

So, which of your personal attributes or skills do you think have helped you have such a long-standing career as an attorney in Rhode Island? Among the many things my father taught me was that, in life, the two most important secular characteristics you can have are intellectual integrity and intellectual confidence. I forget just how this came up, but somehow or other somebody said, "well your family is very important" and my father said, "No, no. The offices we hold are important. The responsibilities we have are important. The things we have to do to discharge those responsibilities are important. We are not important."

Can you tell us a bit about how you helped promote women in the law? When I came to the office of the Attorney General, we were starting to see the first influx of women coming out of law school. I had all these very talented people coming in, and I hired many women. I promoted, gave them leadership roles in the department organizationally, and I gave them responsibilities for cases.

What advice would you give to new lawyers? Remember the oath you just took. Don't try to run around it.

He wears a suit everyday, not just for appointments, because to him, "that's how gentlemen dress." Mr. Roberts is certainly a gentleman and also a treasure of our bar.



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BOOK REVIEW

Barack Obama: The Story



Jay S. Goodman, Esq.
Professor of Political
Science, Wheaton College

Barack Obama won the presidency in 2008, in part, because of this story, his narrative, which captured the imagination of key constituencies.

The Author Seeks to Unravel the Mystery

David Maraniss, author of nine prior books, including the brilliant Bill Clinton biography *First in His Class*, searches in his latest effort for the originating secrets of Barack Obama's remarkable success. Maraniss seeks insights into the President by tracing his origins back two generations on three continents, by traveling the long ancestral road. Thus, in *Barack Obama: The Story*, Maraniss takes us from 1920's Kansas to Washington State to Hawaii to Indonesia to California to New York City to Chicago, along the way, we also visit 1950's and 1960's Kenya. The author travels to these places personally to trace the arc of Barack Obama's life, beginning with his Kansas grandparents, through his enrollment in Harvard Law School in 1988 at age twenty-seven. Twenty years later, Obama was elected the forty-fourth president of the United States, the first black president.

Maraniss begins in the Kansas plains with the grandparents and parents of Stanley Ann Dunham, the future president's mother. He lingers on the small town life of the Midwestern plains and on the suicide of a great aunt, Ruth Armour Dunham in 1926, in El Dorado, Kansas. He follows Stanley Ann Dunham's parents', Madelyn Payne and Stanley Dunham, itinerant life across Oklahoma to Texas, to Seattle and then to Hawaii, where her father is a salesman and her mother rises from bank secretary to bank vice-president. Stanley Ann herself is in college in Hawaii when she meets and connects to the charismatic, brilliant Kenyan, Barack Hussein Obama Sr. She becomes pregnant, followed by marriage on February 2, 1961. Barack Junior is born on August 4, 1961. Within two months, Stanley Ann, only eighteen when her son is born, is back in Washington State. Sometime after that, Barack Senior moves on to Harvard graduate school. Soon back in Hawaii to finish college, legally divorced in 1964, Stanley Ann winds up as a professional anthropologist in Jakarta, Indonesia, working for non-profits including the Ford Foundation. She remarries, this time to an Indonesian man, Lolo Soetoro, by whom she has a daughter, Maya Soetoro in August 1970. (Maya was noticeable

in the Inauguration party in Washington in January.) Barack Jr., who takes his stepfather's name, is known as Barry Soetoro. He speaks Bahasha Indonesian, is in a good public school, but, when he is ten, his mother moves to a more rural area. Now separated and a single mother again, Stanley Ann sends Barack Junior to live with his grandparents in Honolulu.

Maraniss went to Kenya, met many members of the Obama family, and visited the family's historic home in the north. He also interviewed the President himself. Maraniss paints a detailed picture of Barack Senior's father, Hussein Anyango, who worked with the British during the colonial era and knew the rising Luo tribal and labor leader, Tom Mboya. The Luo are a minority tribe with a reputation for being very bright people. With independence from Britain approaching, leaders wanted to educate a smart, international Kenyan elite, and thus Mboya sent Barack Senior to America, where odd circumstances landed him at the University of Hawaii and meeting Stanley Ann Dunham in a beginning Russian class. When he married Stanley Ann, Barack Senior neglected to tell her he already had a Kenyan wife and child. Quickly separated from Stanley Ann, he relocated to Harvard graduate school and met a Jewish woman from Brookline, Ruth Baker. Harvard, concerned with stories about his womanizing, and perhaps his drinking, sends him back to Kenya. Back in Nairobi, and married to Ruth Baker, he has various medium level government jobs and cements his reputation for heavy drinking and dangerous driving.

Jakarta to Honolulu to California to New York to Chicago

Meanwhile, deposited by Stanley Ann with his doting grandparents in Honolulu, through the efforts of his grandfather, Barack Junior, now known as Barry Obama, is admitted to the famous Punahou School, one of the richest and best preparatory schools in America. There he makes friends, mostly with other mixed race students, of whom there are many in Hawaii. At Christmas 1971, he is with his father for the only time in his life, as Barack Senior visits for

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a month, to try, unsuccessfully, luckily, to persuade Stanley Ann to go back to Kenya with him and bring Barack Jr. Ten years later, on November 23, 1982, Barack Sr. dies in a one person car crash in Nairobi after yet another long night of drinking. In Honolulu, Barack Jr.'s race is no big deal. He is remembered for being an avid basketball player, on the varsity, for being part of a group that smoked a lot of dope, and for being a good student with writing skills. Maraniss talked with seemingly all of his classmates in both Indonesia and Hawaii. No one remembers him as exceptional, rather as a good student, a good guy. Some high school teachers thought he could write. There seems to be no record of him volunteering for anything, being elected to anything, or standing out in any particular way. No one said they could see he would become president some day, although at least one classmate remembers him musing about it.

From Punahou, Barack Junior, still Barry, goes to Occidental College in Pomona, California, a quality liberal arts college and a common destination on the mainland for the school's graduates. He does two years of drinking and partying and achieving academically well enough to transfer to Columbia University in New York City as a junior in the class of 1983. Living in a series of shabby, small apartments, the future president seems to have done well academically, but was not noticeable. Neither Zbigniew Brzezinski nor Roger Hilsman, famous Columbia political science professors whose courses he took, remembered him later. A relationship with fellow student Alex McNear ended as he slowly drifted away from her. He finished with a strong 3.7 G.P.A. Half of the total cost of his four years of undergraduate education came from student loans, a bit from summer jobs he had, and the rest from his loyal grandparents.

At a Christmas party in December 1983, Obama met an Australian woman, Swarthmore College graduate Genevieve Cook, who was in teacher training. Within days they were connected in what Maraniss calls "the deepest relationship of his young life." Three years his senior, she kept a diary of their relationship, which lasted until May of 1985. She turned the diary over to Maraniss during his research for this book. Perhaps she resented being unidentified in Obama's autobiography and called just "the woman." Whatever her motivation,

Maraniss prints daily excerpt after daily excerpt. Other than that we know these romantic musings are about a future president, they are repetitious and a little embarrassing. He is distant. He muses about his identity. He mused about his role in history. She tells him she loves him and he says "thank you." She tells him he will meet and marry a strong black woman. Maraniss had to print this stuff, but it does not take us beyond what we know about the future president, except perhaps that the ambitious, rootless adult was also an ambitious rootless young college graduate. Seemingly unable to resist a narrative digression, Maraniss gives us Genevieve's family history on both sides, which might seem more germane if she had wound up with Obama permanently.

Out of Columbia but still without clear direction, Obama goes to work for a company called Business International (BI), which produces newsletters for international businesses. It seems to have been just a job that paid his bills. Maraniss quotes a colleague saying that Obama never demonstrated any desire to be outstanding or to get himself promoted. He was always on time and nicely dressed. He is remembered as a heavy smoker. He stayed at that for a year, visited in Hawaii, and returned to New York with thoughts of moving to Chicago. Obama apparently became interested in Chicago because of the mayoral victory of the African American congressman, Harold Washington. He studies an ad at the New York Public Library which listed jobs in the social justice and social services field. He identified a position as a community organizer for the Developing Communities Project in the Roseland neighborhood of South Side Chicago. He met with its seasoned organizer, Jerry Kellman, who interviewed him, and Obama won the position, arriving in July 1985. Maraniss notes that Oprah Winfrey and Michael Jordan were launching their Chicago careers at about the same time.

Putting Down Roots in Chicago and Starting Upward

Obama met many people, especially ministers, in his community role. He specialized in motivating residents by talking with them one-on-one. He had detractors, as well as supporters. Perhaps his most successful effort was organizing a successful protest by the residents of a pub-

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lic housing project called Altgeld Gardens against the Chicago Housing Authority to get asbestos removed from the buildings. His agitating won the enmity of the Daley Administration. He had another white girlfriend, whom Maraniss does not identify and who, like Genevieve, was not named in Obama's *Dreams from My Father*. People comment, as always, that he seems both in the world and outside it, a detached cool observer. As Maraniss repeatedly points out, that is the perspective of the cultural anthropologist, his mother, Stanley Ann. Near the end of his first Chicago sojourn, Obama is visited by his Kenyan half-sister, Auma, a German-trained professor at the University of Nairobi. She gives him a realistic portrait of his father, quite different from the idealized tales told to him by Stanley Ann.

He decided that he wanted a route to more effective power than community organizing and applied to law schools. Harvard accepts him in February 1988. In late spring, he visited Kenya and connected with his family, recording it all in a journal. He had a sour visit with his father's second wife, Ruth Baker, now remarried as Ruth Ndesandjo, and traveled by various means of transportation to the Luo north and the two locales of his family branches. This journey is a big part of *Dreams*.

Maraniss catches the main characteristic of Barack Obama's life up to this point – its randomness. There are none of the usual elements of a future political career: no powerful family; no structure; no leadership experiences; no money; and no memorable brilliance. Maraniss writes: "No life could have been more the product of randomness than his. From the heritage of Hussein Anyango...and Ruth Armour Dunham, the young suicide victim; from the chance meeting of students in Russian class in Honolulu; from the chaos of peripatetic ancestors; from a childhood in distant Hawaii and more distant Indonesia; from the rootless feelings of a double outsider as a biracial and cross-cultural kid; and after nine years, starting from the moment he reached Occidental and the mainland, of intense introspection, trying to figure things out, to make sense of his life – from all that he had found not only a home but a path, and was driving hard now, toward Harvard Law, a

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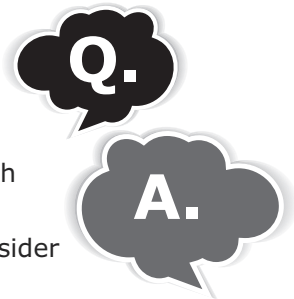
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stop on the way to his family's unimaginable destination, his own *el dorado*." (p. 571.)

Obama won the presidency in 2008, in part, because of this story, his narrative, which captured the imagination of key constituencies. (The narrative later made him rich as *Dreams from My Father* rebounded, as Maraniss says, from the remainder pile to the best seller lists.) Bill Clinton, "the man from Hope," laid the down the narrative template. But even the story of the man from Hope could not match the Man from Jakarta/Honolulu/Kenya. Now, all candidates feel they have to have a narrative, but it rarely works. It certainly did not for Mitt Romney (the man from Bain Capital). Obama became an unlikely, but successful, candidate because John Kerry gave him the keynote speech opportunity in 2004, and he told his story, already honed in his autobiography. Maraniss' subsequent volumes will have to tell us how, back from Harvard Law, Obama made the contacts and harnessed the ambitions and the skills that got him to that podium in Boston in August 2004. Looking for clues in Jakarta and Honolulu and Kenya does not really tell how or why Barack Obama would become President. But, as it turns out, it is not the details of the story or the lessons of the story or the principals of the story. It was the story itself that did it and that, under the particular circumstances of 2008, turned out to be more than enough. Maraniss is a great researcher and writer and I, for one, await his next episode. ❖

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Navigating the Turbulent Waters of the Rhode Island Fire Safety Code



W. Keith Burlingame, Esq.
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What resources are necessary to navigate these waters and avoid any unnecessary expenses and delays? The most typical applications involving the fire code are planning and designing new buildings, conversion or change of occupancy of an existing building, or dealing with a notice of violation following an inspection by the authority having jurisdiction.

As Rhode Island approached the 10-year anniversary of the tragic Station nightclub fire,¹ on June 20, 2012 Governor Lincoln Chafee signed into law 2012 – H 7959 *Substitute A*² and 2012 – S 2564 *Substitute B*,³ putting in motion the first significant changes to the state’s fire safety codes since the *Comprehensive Fire Safety Act of 2003*.⁴ These two bills mandated the State Fire Safety Code Board of Appeal & Review (Board) review, revise and update the current code to include the following National Fire Protection Association⁵ (NFPA) codes:

- NFPA 1, *Fire Code*, 2012 edition.
- NFPA 72, *National Fire Alarm and Signaling Code*, 2010 edition.
- NFPA 101, *Life Safety Code*, 2012 edition.

While this may appear to be straightforward, it is far from it, and a brief historical review of the codes might help to put it all into perspective. The first fire safety code in the state was enacted in 1966 and codified into the General Laws at Chapters 28.1 through 28.28 of Title 23.⁶ As a practical matter, this newly adopted code was, in fact, a joint building and fire code until 1976, at which time the Rhode Island State Building Code was established,⁷ adopting the 1975 edition of the *Building Officials Code Administrators International* (BOCA) standards. While hot off the presses, requirements were minimal and applied only to new structures or those existing structures where there was a change of use or type of occupancy. While in today’s codes the requirements for fire alarm systems are a primary component of any life safety plan, at the time the only requirement for a fire alarm system was that, “...it shall consist of a fire alarm box within the building or within fifty feet (50’) of the main exit of said building and provided, however, that such fire alarm box shall be connected directly from said box to the local fire department alarm system.”⁸

At the same time, the building fire safety code commission was created, authorized to issue variations from particular provisions of the fire safety code.⁹ This commission has evolved into today’s State Fire Safety Code Board of Appeal & Review.

Existing structures not in conformity with the

provisions of the code were given five years after the code’s February 1, 1996 effective date to comply.¹⁰ Two years later, following the Re-enactment of 1968,¹¹ compliance was extended to February 1, 1973 and later again to February 1, 1974.¹² During this period, the code remained relatively stable with both building owners and code enforcement officials having the luxury of one-stop shopping, having the entire code available in a single document, affectionately coming to be known as the “red book.” Although over the course of travel many different colors emerged. Then, in 1976,¹³ the mounting reluctance by many to fully comply made its way back to the state house resulting in the birth of the so-called grandfather clause providing that “[a]ll existing building which are deemed to be in compliance with specific provisions of the code prior to any 1976 amendment shall be exempt from such amendment unless there is a change of occupancy or more than 50% of the total valuation of the building is to be changed within a one-year period. Those requirements not met prior to 1976 shall be subject to the latest amendment.”¹⁴

Then tragedy struck the State. In the early morning hours of December 13, 1977, fire broke out on the fourth floor of Providence College’s Aquinas Hall dormitory resulting in the death of ten young women, seven from the effects of the fire itself and another three who jumped to their peril to escape the deadly blaze. Several months later, the Board adopted another edition of NFPA 1 and 101, again *for new construction only*, while reserving any requirements for fire alarms and maintaining the current statutory provisions for existing buildings. This provision was reaffirmed in 1978,¹⁵ remaining the law of the land¹⁶ for many years to come, and a thorn in the side of all those promoting safety from fire. It wasn’t until 1996 that any further changes were made to the code, at which time the Board, through its rulemaking procedures, adopted the 1992 editions of NFPA 1 (Fire Protection Code) and 101 (Life Safety Code) *for new construction only* while reserving any requirements for fire alarms and maintaining the current statutory provisions for existing buildings.

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This was the status quo for the next several years until mid-2002 when chapter 8 of NFPA 1 was amended to incorporate all local fire alarm amendments and, at the same time, the Rehabilitation Building and Fire Code for Existing Buildings and Structures¹⁷ was adopted. Many at the time thought, between these two modifications to the code, an acceptable degree of life safety could be attained at a reasonable expense to the property owner.

But, alas, tragedy struck the State once again. In the late night hours of Thursday, February 20, 2003, fire broke out in the Station nightclub in West Warwick following a pyrotechnics display during a rock concert, resulting in the death of one hundred people and causing injuries to more than half of the 462 people present, attaining notoriety as the fourth deadliest nightclub fire in US history and the tenth deadliest nightclub fire in world history.¹⁸

The public reaction was swift and compelling, and the General Assembly established a 17-member legislative commission¹⁹ to review and recommend changes to the State's fire safety laws. After numerous public hearings and countless hours of testimony, the commission presented its finding to the General Assembly, resulting in the passage of the *Comprehensive Fire Safety Act of 2003*.²⁰ Among the most significant changes were the elimination of the so-called grandfather clause and the application of the 2003 editions of NFPA 1 (Uniform Fire Code) and 101 (Life Safety Code) *for all buildings, new and existing*.²¹ During the months the Board was considering the new regulations, statutory provisions relating to fire alarm and sprinkler protection remained in full force and effect. Accordingly, these provisions were initially incorporated into the regulations and not further adjusted or modified until 2004, when many of the statutory sections were repealed.²² This has been the state's fire safety code for the past nine years, and although working seemingly well, again came the demand for changes.

In 2012, the mounting reluctance by many to fully comply again made its way back to the State House resulting in the resurrection of the grandfather clause, providing that "[a]ny building and/or structure that is in compliance on December 31, 2012 with the 2003 edition of the NFPA 1 and 101 as adopted and/or amended under the 2003 Comprehensive Fire Safety Act shall be deemed compliant.

Such compliant building and/or structure shall not be required to comply with the 2012 edition of the NFPA 1 and 101 as adopted and/or amended pursuant to Rhode Island general laws section 23-28.01-4 that would require additional expenditures until December 31, 2015. The aforementioned compliant buildings and/or structures shall not be further required to comply with the 2010 edition of the NFPA 72 until December 31, 2015.”²³

Fast forward to today. What resources are necessary to navigate these waters and avoid any unnecessary expenses and delays? The most typical applications involving the fire code are planning and designing new buildings, conversion or change of occupancy of an existing building, or dealing with a notice of violation following an inspection by the authority having jurisdiction (AHJ). This can be a member of the State Fire Marshal’s Office or a local fire marshal from one of the several cities, towns or fire districts where the property in question is situated. One of the very first things to determine in all scenarios is the building’s type of occupancy classification. In the case of a violation notice, the AHJ issuing the notice will provide that classification as part of the report. In all other cases, Chapter 6 of the *Life Safety Code* should be the starting point, as every building or structure will be classified as one of the following:

- › **General / Special Structures (6.1.1):** occupancies in special structures must conform to the requirements of the specific occupancy chapter, Chapters 12 through 43, except where modified by Chapter 11.
- › **Assembly (6.1.2):** new assembly occupancies must comply with Chapter 12 and existing assembly occupancies with Chapter 13.
- › **Educational (6.1.3):** new educational occupancies must comply with Chapter 14 and existing educational occupancies with Chapter 15.
- › **Day Care (6.1.4):** new day care occupancies must comply with Chapter 16 and existing day care occupancies with Chapter 17.
- › **Health Care (6.1.5):** new health care occupancies must comply with Chapter 18 and existing health care occupancies with Chapter 19.
- › **Ambulatory Health Care (6.1.6):** new ambulatory health care occupancies must comply with Chapter 20 and existing ambulatory health care occu-

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pancies with Chapter 21.

- › **Detention and Correctional** (6.1.7): new detention and correctional occupancies must comply with Chapter 22 and existing detention and correctional occupancies with Chapter 23.
- › **Residential** (6.1.8): new and existing *one- and two-family dwellings* must comply with Chapter 24; new and existing *three-family dwellings* must comply with Chapter 25; new and existing *lodging or rooming houses* must comply with Chapter 26; *new hotels and dormitories* must comply with Chapter 28 and existing hotels and dormitories with Chapter 29; and *new apartment buildings* must comply with Chapter 30 and existing apartment buildings with Chapter 31.
- › **Residential Board and Care** (6.1.9): new residential board and care occupancies must comply with Chapter 32 and existing residential board and care occupancies with Chapter 33.
- › **Mercantile** (6.1.10): new mercantile occupancies must comply with Chapter 36 and existing mercantile occupancies with Chapter 37.
- › **Business** (6.1.11): new business occupancies must comply with Chapter 38 and existing business occupancies with Chapter 39.
- › **Industrial** (6.1.12): new and existing industrial occupancies must comply with Chapter 40.
- › **Storage** (6.1.13): new and existing storage occupancies must comply with Chapter 42.
- › **Multiple Occupancies** (6.1.14): these are buildings that contain two or more classes of occupancy type and can be further distinguished as *mixed* occupancies (intermingled) or *separated* occupancies (fire resistance-rated assemblies).

While the *Life Safety Code* is the core document referenced for all building classifications, many sections have been amended, modified or reserved by the Board, and these changes are set forth in the rules and regulations promulgated by the Board, sections 1 through 15. These sections are known as the *State Fire Safety Code* and can be found on the Board's website at www.fsc.gov.

- Section 8 consists of NFPA 101, 2012 as amended and reserved and is titled the *Rhode Island Life Safety Code*. This is where the meat and potatoes of the code can be found with many of the fire alarm requirements and all of the various occupancy chapters'

requirements. The date of adoption is December 4, 2012 with an effective date of January 1, 2013.

- The Rhode Island General Laws, sections 23-28.01 through 23-28.01-6 and 23-28.1 through 23-28.39 should also be reviewed. These are the statutory provisions, providing the basis for many of the administrative provisions of the code and addressing some unique occupancy classifications, including places of assembly, night-clubs, places of worship and child day care centers.
- Section 7 consists of NFPA 1, 2012 as amended and reserved and is titled the *Rhode Island Fire Code* where many of the specialized process regulations are found. The date of adoption is December 4, 2012 with an effective date of January 1, 2013.
- Section 9 adopts by reference the Rhode Island Rehabilitation Building and Fire Code for Existing Buildings and Structures²⁴ (Rehab Code). This code may prove useful when an existing building is being renovated or converted into a new occupancy class, as it provides for a simultaneous joint review by both the building official and the fire official. However, the Rehab Code is limited in scope and the following classes of occupancy are *not* covered: health care facilities, nursing homes, child day care centers, community residences, educational occupancies, detention and correctional occupancies, high hazard occupancies and one-, two- and three-family homes [see § 101.1.1]. The date of adoption was originally January 22, 2002 with an effective date of May 1, 2002 and re-adopted in full effective January 1, 2013. While the noted limitations remain in effect, these sections are currently under review by the Rehab Code Board and a large expansion of applicable occupancies covered under this code is a distinct possibility.
- Section 10 consists of NFPA 72, 2010 as amended and reserved and titled the *Rhode Island Fire Alarm Code*. This code augments and provides guidance in implementing the fire alarm requirements set forth in Section 8. The date of adoption is December 4, 2012 with an effective date of January 1, 2013. Historically, fire alarm issues have been one of the primary areas of concerns in all building evaluations, and



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where Section 8 provides the where-to information necessary, this section is more in line with the how-to provisions.

Despite this seemingly endless reference to various codes and regulations (there are over three hundred NFPA referenced codes & standards alone), compliance is not as daunting a challenge as it may appear. While most AHJs would prefer strict compliance with all applicable provisions, it is understood throughout the fire prevention community that strict compliance is not always attainable or practical. When this occurs, as it often does, the remedy most readily available is to petition the Board for relief [see Fire Safety Code Section 6]. This relief can be in the form of alternate compliance to certain provisions; variance(s) allowing relief from provisions, either outright or modified; or, as in most cases, an extension of time to attain compliance. Even though the AHJ may be the primary focus for necessitating compliance with fire code issues, he or she is often most helpful in attaining compliance, providing the necessary code citations, technical assistance and offering suggested methods or strategies for compliance.

While the Board is cognizant of and sympathetic to the financial hardships many of these requirements bring upon building owners, request for relief is rarely, if ever, granted. In addition, the State has a wealth of very talented and capable architects, professional engineers and code consultants available, many extremely well versed in dealing with fire and life safety code issues. Should an appeal be necessary, the Board staff members are always available and are valuable resources as well, providing the administrative guidance for navigating the system.

In summary, the sounding of general quarters and all hands on deck is the exception rather than the norm. More often it is dead reckoning and steady as she goes.

Author's Note: Special thanks to Thomas B. Coffey, Jr., Esq., Executive Director of the Rhode Island State Fire Safety Code Board of Appeal & Review whose suggestions, editing comments and friendship were instrumental in compiling this information.



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ENDNOTES

- 1 February 20, 2003.
- 2 P.L. 2012, ch. 294, § 1.
- 3 P.L. 2012, ch. 337, § 1.
- 4 P.L. 2003, ch. 106, § 2; P.L. 2003, ch. 107, § 2.
- 5 National Fire Protection Association, 1 Battery-

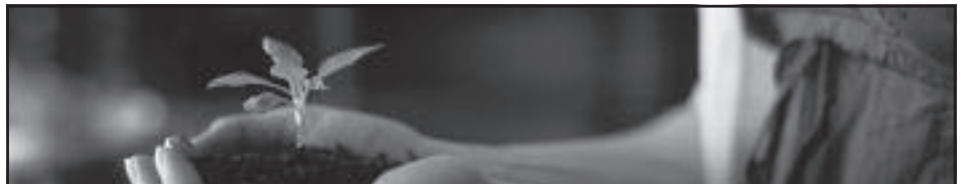
- march Park, Quincy, MA 02169-7471.
- 6 P.L. 1966, ch. 216, § 1.
- 7 R.I. GEN. LAWS § 23-27.3-100.1, as enacted by P.L. 1976, ch. 256, 1.
- 8 R.I. GEN. LAWS § 23-28.1-8, as enacted by P.L. 1966, ch. 216, § 1.
- 9 R.I. GEN. LAWS § 23-28.3-6, as enacted by P.L. 1966, ch. 216, § 1.
- 10 R.I. GEN. LAWS § 23-28.1-7(a) , as enacted by P.L. 1966, ch. 216, § 1.
- 11 P.L. 1968, ch. 142 effective December 31, 1968.
- 12 P.L. 1973, ch. 176, § 1.
- 13 P.L. 1976, ch. 271, § 1B.
- 14 R.I. GEN. LAWS § 23-28.1-7(b)(3).
- 15 P.L. 1978, ch. 43, § 1.
- 16 *The Reenactment of 1985 (P.L. 1985, ch. 150, § 1) added and revised the subsection designations wherein the “grandfather clause” was subsequently cited as R.I. GEN. LAWS § 1 23-28.1-7(b)(3), still with a 1978 compliance threshold.*
- 17 *See R.I. GEN. LAWS § 23-29.1 and Fire Safety Code Section 9.*
- 18 *NFPA, PUBLIC ASSEMBLY AND NIGHTCLUB FIRES, 2013: see: <http://www.nfpa.org/itemDetail.asp?categoryID=851&itemID=21090&URL=Research%20&%20Reports/Fact%20sheets/Nightclubs/assembly%20occupancies/Public%20assembly%20and%20nightclub%20fires>.*
- 19 *THE SPECIAL LEGISLATIVE COMMISSION TO STUDY ALL ASPECTS OF LAW AND REGULATION CONCERNING PYROTECHNIC DISPLAYS AND FIRE SAFETY, as provided in 2003 – S0690 as amended and 2003 – H6128 as amended.*
- 20 *2003 – S1132 Substitute A, as amended and 2003 – H6141 Substitute A, as amended / Signed into law by Governor Donald Carcieri on July 7, 2003.*
- 21 *P.L. 2003, ch. 106, § 3 / P.L. 2003, ch. 107, § 3.*
- 22 *P.L. 2004, ch. 220, § 28 and P.L. 2004, ch. 225, § 28, effective June 30, 2004.*
- 23 *P.L. 2012, ch. 294, § 2 / P.L. 2012, ch. 337, § 2.*
- 24 *R.I. GEN. LAWS § 23-29.1-1, et seq. ❖*

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Rhode Island Probate Court Listing on Bar's Website

The Rhode Island Bar Association regularly updates the Rhode Island Probate Court Listing to ensure posted information is correct. The Probate Court Listing is available on the Bar's website at www.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.



Deep in the Heart of Texas

American Bar Association Delegate Report: ABA Midyear Meeting

Robert D. Oster, Esq.

ABA Delegate and Past Rhode Island Bar Association President

The February 2013 ABA Midyear meeting in Dallas included a good deal of significant activity. After a welcome by the keynote speaker, former U.S. Senator Kay Bailey Hutchinson, Chief Justice Myron T. Steele of the State of Delaware and the Chair of the Conference of Chief Justices was forced to deliver his remarks earlier and impromptu due to breaking news of a murderous rampage by a disturbed individual at the Wilmington, Delaware courthouse over which he had responsibility. He was understandably shaken and emotional. At the same time, the former Los Angeles police officer who killed police and civilians was still at large. Following the Newtown, Connecticut, Aurora, Colorado, the Milwaukee, Wisconsin Sikh Temple killings, and many other recent acts of violence, it is no wonder the ABA has an important role in the gun control debate. Three other large issues were debated and decided by the ABA House of Delegates: unbundling of legal services; multijurisdictional practice; and human trafficking.

The delegates passed a resolution supporting unbundling or limited scope representation. This procedure is allowed in Massachusetts and Connecticut, and it has the potential to transform the delivery of legal services. In Rhode Island, attorneys are currently prohibited from giving advice and counsel for discrete portions of litigation and then withdrawing. Some see unbundling as a means of increasing access to legal services while lowering client costs. Others argue it is unworkable and not in the clients', lawyers', or justice system's best interest.

Our Bar Association currently has a Task Force, appointed by President Mike McElroy and chaired by President-Elect Bob Weisberger, studying this issue. The Rhode Island Supreme Court has at least two cases that address unbundling in the context of ghostwriting pleadings. We

look forward to an opinion in these cases, most likely this term. At issue is taking measures to ensure practitioners who limit the scope of their representation do so with a full understanding and recognition of their professional obligations to clients and the Court and providing increased public awareness of the availability of limited scope representation as an option to help meet the needs of the public. It also has the potential to impact the increasing number of *pro se* litigants.

"Ethics 20/20," the moniker given to the ABA committee providing a decennial review of our rules of professional conduct, is considering rule changes based on the changing face of American and international law practice. Changes wrought by technology and the internationalization of the practices has included the need for special protection of client confidentiality whether stored in a file cabinet or in a web-based cloud, and the ABA House did liberalize our rule regarding *pro hac vice* representation by foreign lawyers as a means of dealing with the globalization of the practice of law.

The issue of human trafficking or sexual slavery was brought to the House by an initiative of the ABA President Laurel Bellows. The ABA House passed a number of resolutions defining and protecting the rights of victims of human trafficking, domestic violence and gang-rape.

The ABA itself has a number of financial, organizational and membership challenges. Despite managing programs, sections and division, its membership is level instead of rising. My experience is that the ABA needs to tap into the general and solo practitioners more as, by some estimates, they represent 70% of practicing lawyers, yet this group is underrepresented in the ABA.

However, the ABA is a leader for the profession. The face of the bar is changing. Many GLBTQ lawyers are active in

their practice issues. I attended the first annual Stonewall awards reception in which Mary Bonauto of the Boston GLAD was recognized for her legal advocacy with civil unions and same sex marriage in New England.

Another issue is the large number of law school graduates unable to find work and the massive debt incurred for law school tuition. My own daughter, Sarah, who graduates this year from Roger Williams University School of Law, exits with \$150,000 in law student debt and grim job prospects. This is a national issue. We cannot continue to treat our young professionals as second class lawyers.

Our Bar's Past President Tom Lyons addressed the ABA as a member of a committee studying the future of the legal profession. It is ironic that given the desperate need for legal services for many disadvantaged citizens we cannot match our new lawyers to that need to provide low cost legal services. If the public continues to perceive, as they do, that the Courts are inefficient, sometimes racially biased and set up as a system to benefit favored lawyers, then we as a profession and society are in trouble. In fact, our profession protects the rights of its' citizens, leads the fight for racial and economic justice, provides *pro bono* death penalty representation, and helps teach civic education.

At the meeting, the ABA also considered resolutions on immigration law reform, cyber security, access to legal services through the Legal Services Corporation, and legal services for military lawyers and their families.

In addition to being your elected representative to the House of Delegates, I am a member of the following ABA sections, divisions and committees: General

continued on page 35

SOLACE

Helping Bar Members in Times of Need

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

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

The program is quite simple, but the effects are significant. Bar members notify the Bar Association when they need help, or learn of another Bar member with a need, or if they have something to share or donate. Requests for, or offers of, help are screened and then directed through the SOLACE volunteer

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

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

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. Please contact Coastline EAP by telephone: 401-732-9444 or toll-free: 1-800-445-1195.

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

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

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Carol A. Zangari Esq.	732-1999
Ms. Judith G. Hoffman, LICSW, CEAP, Coastline EAP	732-9444 or 800-445-1195

Lawyers Helping Lawyers Committee Members Protect Your Privacy

ABA Delegate Report

continued from page 33

Practice/Solo Division, National Caucus of State Bar Associations, the Select Committee of the House of Delegates (dealing with the orientation of new delegates and preparing a journal of the House proceedings), the New England Bar Association, the Minority Caucus, the Women's Caucus and the Section of Family Law. In conjunction with the Midyear meeting I judged briefs for the National Law School Appellate Competition. It is a duty and an honor to give back to these aspiring lawyers and the profession in this way.

I invite questions and comments about the ABA House of Delegates from our members and I would be remiss if I did not end my report with a statement of appreciation to the Rhode Island Bar Association for the honor of representing our Bar at the ABA. ❖



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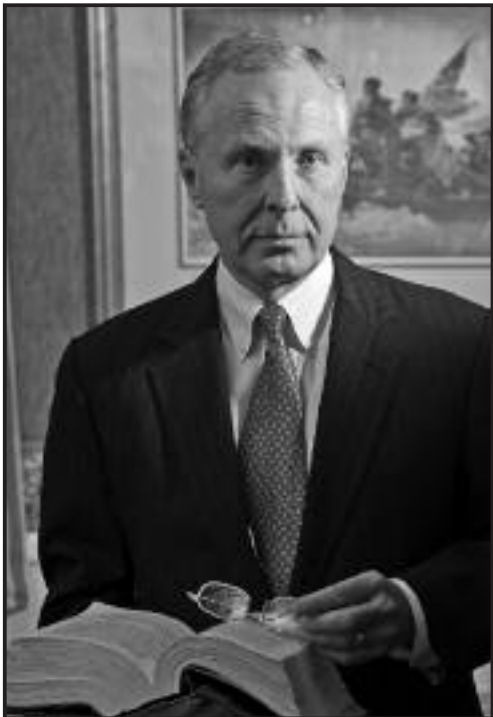
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In Memoriam

Earl F. Pasbach, Esq.

Earl F. Pasbach, 83, of Cranston, passed away on March 28, 2013. He was the son of the late Earl F. and Mary M. White Pasbach.

James P. Quirk, Esq.

James P. Quirk, 91, passed away on February 20, 2013. He was the beloved husband for 58 years of Mae Faella Quirk. Born in Providence, he was a son of the late James and Bridget Conlon Quirk. Mr. Quirk was a graduate of LaSalle Academy, Boston College and Boston College Law School. He practiced law for 60 years and had served as counsel for many cities and unions throughout the state as well as serving as city solicitor for the city of Warwick. He was also a RI Court appointed arbitrator. A World War II veteran, he served under General Patton and fought in four major battles including the Battle of the Bulge. He was active in politics and belonged to many fraternal organizations. He was the father of Alice Hourihan (James), Jane Squittierra (Michael), and Paul Quirk (Pamela).

Live! From the Bar! It's CLE Seminar Simulcasting!

The Rhode Island Bar Association is now presenting live, streaming-video simulcasts, on the web, of designated Continuing Legal Education (CLE). Throughout the year, selected CLE seminars are offered as both in-person classroom programs *and* as real-time, live, streaming-video simulcasts on the web. For those choosing simulcasts, CLE seminar course materials are included in a PDF format.

Except where the RI Supreme Court's carryover credit limitation applies, there is no limit to the number of credits Bar members may accrue by participating in real-time, live, streaming-video simulcasts of CLE seminars. However, the 3.0 credit limit, established by the RI Supreme Court for

watching pre-recorded CLE seminars via the web – as opposed to real-time, live, streaming video simulcast CLE seminars – remains in effect. Self study seminars, including those in podcasts, dvds, cds, and stand-alone, printed transcripts of seminars, *do not* receive CLE credit.

To find out which Bar CLE seminars are available as simulcasts, please check the CLE Calendar available on the Bar's website at www.ribar.com. If you have any questions about the Bar's CLE seminars, please contact the Bar's CLE office by telephone: 401-421-5740 or email: tnieves@ribar.com.



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

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Advertiser Index

ABA Retirement	17
Ajootian, Charles – 1031 Exchange Services	26
Aon Liability Insurance	22
Balsofiore & Company, Ltd. – Forensic Accounting, Litigation Support	17
Boezi, Henry – Trademark/Copyright	31
Briden, James – Immigration Law	19
Catuogno Court Reporting & Stentel Transcription	35
Coia & Lepore, Ltd. – Workers' Comp.	27
Coia & Lepore, Ltd. – Mediation	28
CT Attorneys – Messier Massad & Burdick LLC	10
Delisi & Ghee, Inc. – Business Appraisal	32
Dennis, Stephen – Workers' Compensation	9
Dumas, David – Heirs/Genealogy	31
Economic & Policy Resources – Economists	18
Gregory, Richard – Attorney & Counselor at Law	35
Humphrey, Richard – Law Offices	29
Marasco & Nesselbush – Social Security Disability/Medical Malpractice	38
Mathieu, Joan – Immigration Lawyer	24
Mediation & Arbitration – Joseph Keough	38
Mignanelli & Associates, LTD. – Estate Litigation	36
Morowitz, David – Law Firm	12
Ocean State Weather – Consulting & Witness	31
Office Space – Providence – 127 Dorrance	38
Office Space – Providence	37
PellCorp Investigative Group, LLC	8
Pfiever, Mark – Alternate Dispute Resolution	16
Piccerelli, Gilstein & Co. – Business Valuation	24
Revens, Revens & St. Pierre – Bankruptcy	18
Revens, Revens & St. Pierre – Workers' Compensation	25
Rhode Island Private Detectives LLC	25
R. J. Gallagher – Disability Insurance	16
Ross, Roger – Title Clearing	37
Sciarretta, Edmund – Florida Legal Assistance	8
Soss, Marc – Florida Estates/Probate/ Documents	26
Souza, Maureen – Legal Writing & Research	27
StrategicPoint – Investment Advisory Services	14
Stewart Title Guarantee Company	29
Wickford Appliance	39
Workers' Compensation – Lawrence Signore	32
WP Outsource – word processing services	9
YKSM – CPAs/Business Consultants	28
Zoning Handbook – Roland F. Chase	10

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