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RWU Law

ISSUE 9 | 2016

The Magazine of Roger Williams University School of Law

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ISLAMOPHOBIA

HOLOCAUST LEGACY

SEEKING A BALANCE

Rhode Island's Quest for Judicial Diversity





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legal legacy of the Holocaust

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The Tip of the Iceberg

Nellie M. Gorbea was sworn in as Rhode Island's Secretary of State in 2015, becoming the first Hispanic to hold statewide office in New England. Previously, she was executive director of Housing Works Rhode Island, and Deputy Secretary of State. She has been program officer for economic and community development for the Rhode Island Foundation, and is founder of the Rhode Island Latino Civic Fund.

She recently sat down for a chat with Dean Michael Yelnosky.

Dean Yelnosky: Secretary Gorbea, I love the energy you bring to this office. I think it was a banner day when you became the first Latina elected to statewide office in New England.

Secretary Gorbea: Thank you, it's a fun job! It has its challenges like any job, but it's an amazing opportunity to do things that help government work better. And I echo your sentiments: it was great to be elected to this office, and it's wonderful that it happened here in Rhode Island first

exist until the law school graduated a cohort of Hispanic lawyers.

NG: The law school is an amazing resource and a fabulous community partner. It brings to the table an ability to look at the law from a variety of angles, and with a depth of analysis that the political process often doesn't allow. It's good to know that when I have a question about something we're proposing, I can reach out to RWU Law, and get not a rubber stamp but an honest assessment.

"I think you've only hit the tip of the iceberg in terms of people's recognition and understanding of the value that RWU Law provides to this state as a whole."

– Rhode Island Secretary of State
Nellie M. Gorbea

and not, for example, in Massachusetts or Connecticut. I think it demonstrates the fundamental values Rhode Island stands for – bringing everybody together into a community that's respectful of gender, of racial and ethnic diversity, of religious freedom. Sometimes we get so focused on the negative that we fail to see the tremendous strides we've made – including RWU Law itself, which has done so much to diversify its community.

MY: It has. The law school's overall student body diversity now stands at a solid 23 percent. Our hope for the future is that there will be more lawyers, judges and leaders at both the state and federal levels who reflect the population of Rhode Island and the society in which we live today.

NG: Yes, and I predict that in another 20 years the law school will have played a fundamentally positive role in the development not only of the legal profession here in Rhode Island but of our community as a whole. The law is such an important part of our community structure, and having leaders from a legal background who can speak from a variety of perspectives and personal experiences is hugely important.

MY: In many ways, it's a role we're already playing. Just as one example, the Rhode Island Hispanic Bar Association did not

MY: It's also a terrific experience for our students and faculty to be involved in the public policy debate – not in the abstract, but in fact. To be working on projects of relevance really helps remind us all of why we got into law in the first place, of the issues we wanted to be involved in. So the relationship is completely reciprocal, and I'm gratified that you've been willing to reach out to us and support the work that we do.

NG: Your upcoming move to Providence will be hugely important in pushing that dynamic forward, because the community will get to see much more of you. I think you've only hit the tip of the iceberg in terms of people's recognition and understanding of the value that RWU Law provides to this state as a whole. Having you here in the capital city, being seen in the various governmental agencies, having the community able to access you more easily – I'm very excited about it.

MY: In Rhode Island, the perception tends to be, with a few exceptions, "if it's not in Providence, it doesn't exist." All of the state's great institutions have a footprint here and we need to be here – because this is the beating heart of the state.

NG: Yes, there's something about that physical presence. And your new facilities really do speak to RWU Law's renewed commitment, both to the city and to the State of Rhode Island.

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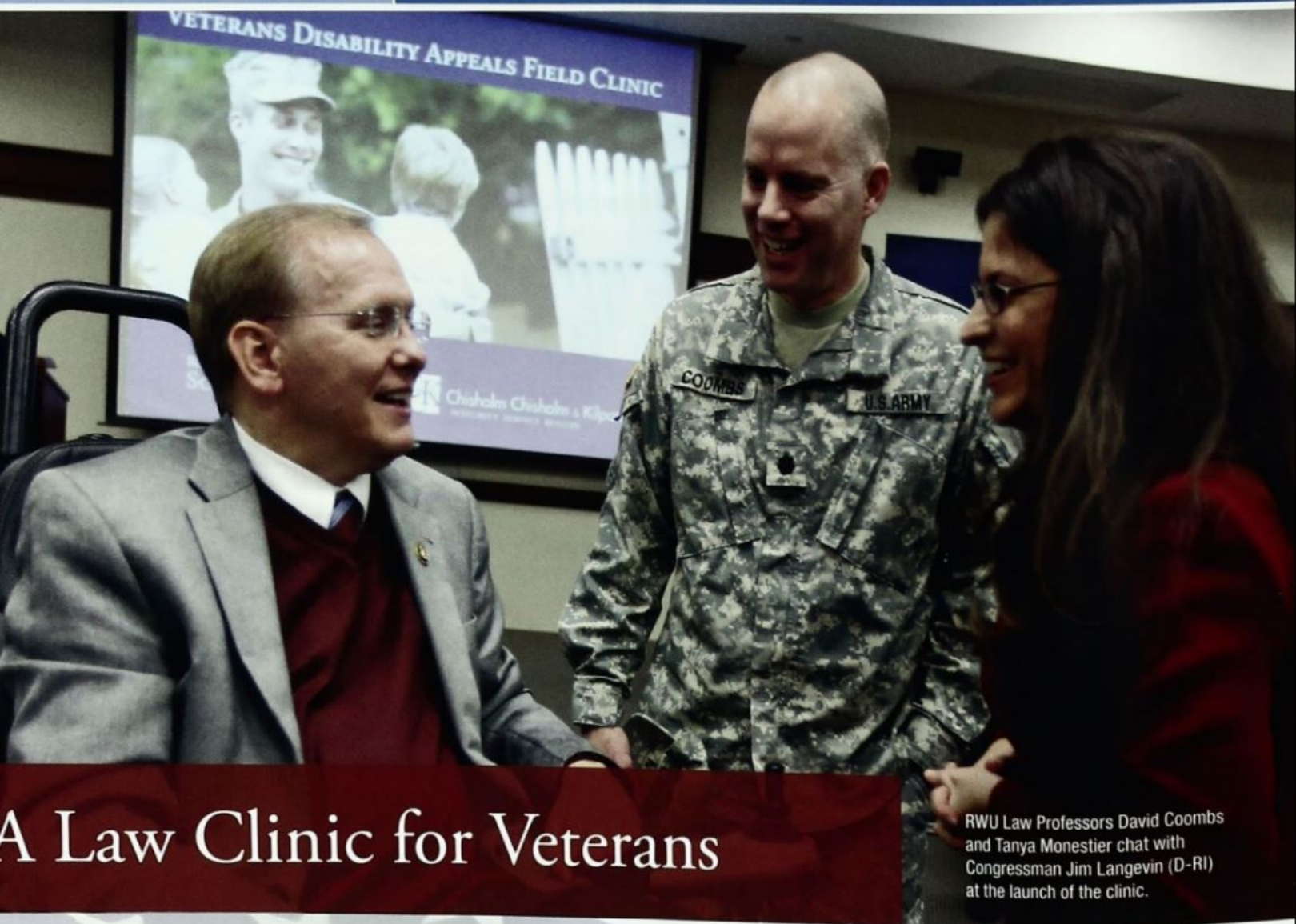
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A Law Clinic for Veterans

RWU Law Professors David Coombs and Tanya Monestier chat with Congressman Jim Langevin (D-RI) at the launch of the clinic.

An important new clinical initiative offers renewed hope to military veterans whose applications for disability benefits have been denied and who can't afford to appeal the decision.

In this unique collaboration, students in RWU Law's Veterans Disability Appeals Field Clinic will work in the offices of Chisholm, Chisholm & Kilpatrick, one of the nation's leading veterans disability law firms, located in downtown Providence.

"The launch of this clinic is another exciting development for the law school and for Roger Williams University as a whole," said Dean Michael J. Yelnosky. "We aim to serve society while we are educating our students – and no group is more deserving of assistance than those who have been disabled as a result of military service."

Under court rules permitting law students to engage in limited, supervised

legal practice, RWU Law students will be assigned to represent military veterans whose applications for disability benefits have been denied and will pursue their administrative appeals in the U.S. Court of Appeals for Veterans Claims (CAVC).

"This program will pair the students with veterans who need assistance securing the benefits that they have earned," said Zachary M. Stolz, a partner at Chisholm, Chisholm & Kilpatrick, and national expert in Veterans Court appeals. "The clinic will provide students with hands-on experience in our federal court system, while also providing necessary legal services to our local veterans' community."

In this unique setting, law students will perform record reviews, identify relevant evidence, draft legal memoranda in preparation for pre-briefing conferences with the Office of General Counsel for the U.S. Department of Veterans Affairs and with the Central Legal Staff of the CAVC.

They will also participate in pre-briefing conferences to discuss the appeal and potentially negotiate a resolution of the appeal, participate in a mock argument addressing legal issues before the CAVC and, when appropriate, argue an appeal before the CAVC. All casework will be supervised by seasoned veterans' disability attorneys at the firm.

Professor Andrew Horwitz, RWU Law dean of experiential learning and director of clinical programs, notes that the "field clinic" model opens important new educational possibilities.

"It's a blend of our in-house clinic approach and our traditional externship approach," Horwitz noted. "This allows us to draw upon the expertise of seasoned attorneys in the field while at the same time incorporating the teacher/mentor relationship that is the key to clinical education. The placement of the program inside a law firm gives our students the

added bonus of exposure to the inner workings of law firm practice. We have created an exceptional educational environment, while at the same time providing a much-needed public service."

Yelnosky noted that the Veterans Clinic is also "our first clinic that focuses on appellate work. And without our unique collaboration with Chisholm, Chisholm and Kilpatrick, this clinic would not have made the transition from concept to reality."

Rhode Island's Congressional delegation lauded the joint effort as essential to protecting those who have sacrificed much for their country.

"We need to ensure our veterans can access the benefits they have earned," said U.S. Sen. Jack Reed (D-R.I.), a former Army Ranger. "The VA needs to end the backlog for veteran disability claims, and this field clinic can help ensure more Rhode Island veterans get their claims resolved. Having high-quality, pro bono legal assistance can help our veterans effectively navigate the legal process and ensure their claims are swiftly and effectively adjudicated."

U.S. Sen. Sheldon Whitehouse (D-R.I.) called the clinic "a very helpful resource for our disabled veterans, who have served their country faithfully and should be able to make the best possible case during their VA appeal. The clinic will also help Roger Williams law students hone their skills advocating for important clients."

U.S. Rep. Jim Langevin (D-R.I., Second District), a senior member of the House Armed Services Committee, stressed the acute need for such legal services.

"The brave men and women who serve our country sacrifice so much, and they deserve our unconditional support when they return home," he said. "I applaud this legal clinic for advocating on behalf of disabled veterans to ensure they receive the benefits to which they are entitled. My office works with veterans every day to help them navigate the VA and benefits process, and this clinic will provide another layer of protection to ensure our veterans are taken care of."

★ ★ ★

"We need to ensure our veterans can access the benefits they have earned."

- U.S. Sen. Jack Reed (D-R.I.)

★ ★ ★

Back Row: Congressman David Cicilline (D-RI), Senator Jack Reed (D-RI), J. Scott Kilpatrick, Esq., Robert Chisholm, Esq., Zachary Stolz, Esq.
Front Row: Congressman Jim Langevin (D-RI), Dean Michael Yelnosky, Judge William E. Smith, Professor Andrew Horwitz.



A Master's in Law for NON-LAWYERS?

A new program for delivering legal education is coming to Rhode Island in the form of a one-year master's program at RWU Law, open to learners who seek deep exposure to law and legal methods in order to broaden their professional skill set or add value to their résumé – but do not want to become practicing attorneys.

Part of the Master of Studies in Law (MSL) program will replicate the experience of a first-year J.D. student.

MSL students will study such law school staples as torts, contracts, criminal law, and civil procedure alongside J.D. students, writing the same papers and taking the same exams; but will also have access to higher-level elective law courses applicable to their particular career fields. And they will graduate after accumulating two semesters of credit instead of the six needed to earn a J.D.

"Law now influences human activity as never before," explained Dean Michael J. Yelnosky. "One consequence is that a growing number of non-lawyers come into contact with lawyers and the law as a regular part of their work. As a result, many people would benefit from some rigorous legal training, but don't need a J.D. Our MSL program is designed to serve people who are seeking that edge."

Human resource and health care professionals, for-profit and non-profit business managers, journalists, government employees, realtors, accountants, IT professionals, educators, compliance officers, and those who work in the criminal justice system and in various positions related to environmental law are among those who would benefit from this course of study.

Yelnosky added that the program is not intended to train lawyers or undermine traditional legal practice, but is simply a practical response to changing realities.

"Master's graduates will be a complement to and not a substitute for lawyers," he said. "They will be better consumers of legal services, better at working with legal materials, such as statutes and regulations; better at communicating with lawyers, better at determining whether they need legal services; and better educated about the legal system."

Over the past few years, a dozen or so law schools around the country have established MSL programs; however, RWU Law and Northeastern University are the only law schools in New England with broad MSL programs. The first class of Roger Williams MSL candidates will matriculate in Fall 2016.

**"Master's
graduates will be a
complement
to and not a
substitute
for lawyers."**

Affordable Excellence Extended to 2016-17

With the number of first-year students up 32 percent since the fall of 2013, despite an admissions climate characterized by sharply shrinking enrollments at law schools across the country, the School of Law has pledged to continue its Affordable Excellence initiative to confront increasing costs, rising debt and the job-readiness of graduates, among the most pressing challenges facing legal education today.

For RWU Law students, the continuation of Affordable Excellence – first implemented for the 2014-15 academic year – means the 18-percent tuition reduction (to \$33,792) now extends through 2016-17, along with the school's three-year tuition guarantee. Together, the reduction and guarantee translate to some \$30,426 in savings over the course of three years, compared to the previous model. The ultimate outcome is lower debt loads for students – an important step forward in an environment where law school tuition at both public and private schools has been steadily increasing for years.

"We have disrupted the market on cost," says Dean Michael J. Yelnosky, noting that among more than 200 law schools in

America, Roger Williams is one of only a half dozen to have decreased tuition. "We are the best-priced ABA-accredited private law school in the Northeast, and applicants have been responding. This increase in enrollment is a clear indication that we're giving students what they want – a high-quality, hands-on legal education at a price that makes sense."



DEFAMATION

Diversity and “Defamation”

By Deborah Johnson, Director of Diversity and Outreach

This law school's student body is more racially and ethnically diverse today than it has ever been. With this development, new challenges have emerged to promote greater inclusion for diverse students.

This past fall, in an effort to facilitate healthy dialogue around issues of race, class, gender, religion and beyond, we brought a production called “Defamation: The Play” to the law school. On one level it's a riveting, old-fashioned courtroom drama (premised on a civil suit in which a South Side African-American woman sues a Jewish North Shore real estate developer for defamation after she is accused of stealing his watch). But it also illuminates our common perceptions of race, class, gender, religion and the law and prompts us to think critically about these issues. The audience participates as jurors, hearing the evidence, deliberating and rendering a verdict at the end of the trial.

Understanding the differences that exist among us and how they are impacted by the law, and being able to talk about them in a meaningful way, are key skills every lawyer should have.

When I submitted my proposal for the University Inclusive Excellence Mini-Grant that brought the play to campus, I wrote, “we are confident that ‘Defamation’ will assist the School of Law (and extended) community in having deeper and more meaningful conversations about issues related to diversity and our differences in a way that will make our students more culturally competent in general and better prepared to represent clients from diverse backgrounds.”

I am satisfied that this has happened. There is without question still much work to do to get to the place of equality and equity in our legal system and our society. But “Defamation” directly and indirectly helped us to take a significant step forward here at RWU Law. I don't know if we'll ever get this “diversity and inclusion thing” entirely “right” – but I am encouraged by and proud of the work that we have been doing and am grateful for the commitment of those who are willing to be uncomfortable as we press forward and endeavor to do so.

For Ms. Johnson's full text, visit <http://law.rwu.edu/blog/diversity-and-defamation>



ARE YOU SURE YOU'RE NOT PREJUDICED?

Delivering RWU Law's seventh Thurgood Marshall Memorial Lecture, Harvard psychologist Mahzarin R. Banaji challenged listeners' self-perceptions, exploring the hidden biases we all absorb from a lifetime of exposure to cultural attitudes about age, gender, race, ethnicity, religion, social class, sexuality, disability status and nationality.

Drawing on her 2013 book, “Blindspot: Hidden Biases of Good People,” Dr. Banaji revealed hidden biases based on their Implicit Association Test, a method that has revolutionized the way scientists learn about the human mind (take the test yourself at implicit.harvard.edu/implicit).

Dr. Banaji demonstrated the extent to which our perceptions of social groups, without our conscious awareness or control, shape our likes and dislikes and our judgments about people's character, abilities, and potential – thereby potentially compromising our decisions in legal, medical, financial and political contexts. She pointed out, however, that these biases are learned – and can also be unlearned.

The Thurgood Marshall Lecture Series is sponsored by the law firm of Hinckley Allen, with additional support provided by Diversity and Inclusion Professionals (DAIP).

Holding Court



CAVC



U.S. District Court



First Circuit

Court was in session at RWU Law (for real) when three courts heard arguments in actual cases in the school's Appellate Courtroom.

In September, the Honorable John "Jack" McConnell, Jr., of the U.S. District Court for the District of Rhode Island heard motions in three cases, afterward holding a Q & A session with students about the procedure. In October, the First Circuit Court

of Appeals appeared at the law school; and in March, the U.S. Court of Appeals for Veterans Claims (CAVC) considering a case on the extent to which RWU Law students can directly access VA records while working in the school's new Veterans Clinic (see p. 6) – a question Professor David Coombs (himself a seasoned military lawyer) said would "undoubtedly impact veterans' claims for years to come."



Comfort Food for Law Students!

The law can be a jealous mistress – and also a hungry one.

So when finals time rolls around at RWU Law, 3L Thomas Johnson – a baker by profession before arriving at law school – often deals with the stress by whipping up an extra-large batch of cookies and bringing them to campus to share with his equally stressed-out classmates. Melvyn Mahon, a 2L, has been known to do the same – but as a seasoned professional chef in his pre-law school days, he's more likely to deliver a hearty main course.

In the spirit of spreading the wealth, *RWU Law Magazine* asked them both to share their favorite "comfort food" recipes.



RECIPE

From the kitchen of:
Melvyn Mahon's
Student-Budget Tomato Sauce (3-4 Servings)

The Chef

Ingredients:

- Olive oil (or any neutral cooking oil)
- 2 - 4 medium-sized yellow onions, diced
- 1 bulb of minced garlic
- 2 2-oz. cans of anchovies packed in olive oil
- 1 12-oz. can tomato paste
- 1 12-oz. can diced tomatoes
- 3-4 pinches of dried oregano
- sugar (to taste)
- salt (to taste)
- black pepper (to taste)
- red pepper flakes (optional)
- 32 oz. water

Directions:

Grab a stock pot or 2-quart sauce pan, coat with just enough oil to cover the bottom. Place on medium to low heat (don't burn your oil). (If you like a little spice, throw in some red pepper flakes to your preference.) When the oil visibly heats up and separates, add diced onions and stir until translucent. Add salt, pepper and garlic; stir until aromatic (not burnt). Add one can of anchovies, stir until mixture. Add entire can of tomato paste, stir until it softens from a solid to loose consistency. Add sugar, salt and pepper to taste. Add entire can of diced tomatoes, cover and bring to full simmer. Adjust sugar, salt and pepper, then add oregano. Add water. Add more red pepper to taste. Let sauce reduce for 20-40 minutes until it appears uniform and is thickened to your liking. Add the second can of anchovies and simmer another 5-10 minutes. Enjoy!

From the kitchen of:
The Baker

RECIPE

Thomas Johnson's
Finals Week Chocolate Chip Cookies



Ingredients:

- | | |
|-------------------------|--|
| "Dry" | "Wet" |
| • 2-1/2 cups flour | • 1/2 cup of brown sugar |
| • 1 tbsp cocoa powder | • (preferably 1/2 cup light-brown sugar) |
| • 1-1/2 tsp cornstarch | • 1/2 cup dark-brown sugar |
| • 1/2 tsp baking soda | • 1/2 cup granulated sugar |
| • 1/2 tsp baking powder | • 1-1/2 sticks of melted unsalted butter |
| • 1/2 tsp salt | • 1 large egg and 1 egg yolk |
| | • 1-1/2 tbsp milk (I use a milk mixture which would be wasting a lot of milk if you are only making one batch or not heavily baking) |
| | • 2 teaspoons of vanilla extract |
| | • 1 cup chocolate chips (I tend to do a mix of semi sweet, milk, and white chocolate chips) |

Directions:

Sift together dry ingredients in a bowl and set aside. In a second bowl, add sugars (brown and granulated), pour in melted butter and mix with a hand mixer on a low setting. Add eggs and beat until well blended. Add milk and vanilla and mix well. Pour dry ingredients into wet ingredients and, with a stiff spatula or wooden spoon, blend them together. Stir in chocolate chips. Cover bowl with plastic wrap and refrigerate overnight (or for at least 1 hour) before using. Preheat oven to 350°F. Remove dough from refrigerator and let sit for 10 minutes. Line a baking pan with parchment paper. Scoop out bits of dough with a spoon, roll by hand and place on cookie sheet. Slightly flatten them and bake for about 13-15 minutes. Let cookies sit for 7-10 minutes before serving. Makes about 18 cookies. Enjoy!

GETTING TO know

Cindy Salazar Burke '10

*Of Counsel, Burke Law Group, LLC
Mrs. Rhode Island America 2015*



Cindy Salazar Burke '06, M'08, L'10 graduated from Roger Williams three times, becoming the University's first "Triple Hawk": after completing her bachelor's in Criminal Justice, she went on to earn her master's – then graduated from RWU Law a semester early. In her younger years, Burke's intellectual pursuits were matched by a passion for beauty pageants, but nearly a decade had passed since her last competition when she became a contestant in the 2015 Mrs. Rhode Island Pageant. **An epiphany:** In 2014, Burke and her husband, Robert J. Burke II '12 (with whom she founded Burke Law Group, LLC), attended the Mrs. Rhode Island America Pageant. After seeing the winner crowned, Burke had an epiphany: "I turned to my husband and said, 'I want to do this next year.'" That she did – and sure enough, the following April, she took home the title of Mrs. Rhode Island America. Burke went on to represent the Ocean State at the Mrs. America Pageant in Las Vegas, placing in the top 15 – a feat only one other Rhode Islander had achieved before her. **Protecting the disempowered:** While the Mrs. Rhode Island America victory was a thrill, Burke's deepest dedication has always been reserved for helping those without a voice – particularly immigrants. "I decided to become a lawyer primarily because of my family background," she says, noting that her parents immigrated from Ecuador in 1968. **Breaking down stigmas:** Even after she earned legal permanent residency, her mother would often rally with co-workers on behalf of immigrant rights. "I understood my mother's beliefs," says Burke, who was active in the Immigration Law Clinic while at RWU Law. "There is a big stigma around immigrants, immigration law and immigration rights, and I think one of the biggest reasons I practice law is to break those stigmas down." **Anything to help:** Before departing for nationals, it's customary for each Mrs. America finalist representative to hold a fundraiser to help pay for her trip. But instead of using the proceeds from her event for that purpose, Burke contributed everything she raised to the Roger William's Immigration Law Clinic, "with the hope of funding one translator, one expert witness, one immigrant's court filing fee, or anything else to help."

– Cliff Sutter

The southern part of Narragansett Bay is pretty healthy; the upper Bay is getting better. In Providence, industrial contaminants in the sediment are a problem; in other communities, it's septic tank and cesspool runoff. Either way, these days it's often an issue of too much nitrogen getting into the Bay – which causes algae, which causes low oxygen, which causes fish kills and so on. But the biggest upcoming threat to the Bay is climate change – more storms, rising sea levels; a lot of communities will be dealing with these issues a lot more frequently.

Current 2L Nicole Rohr should teach a master class in time management. In addition to her busy life as a law student, she holds a full-time position as assistant director of the Coastal Institute in Narragansett, R.I., while also serving as chair of the Rhode Island Environmental Monitoring Collaborative, and as science advisor to the Napatree Conservation Area in Watch Hill, R.I. With a Ph.D. in biological science, this former Knauss Fellow and Capitol Hill legislative assistant is also an assistant research professor at the University of Rhode Island.



Battling 'Environmental Racism'

Whether in Flint or New Orleans, "environmental racism" refers to the placement of low-income or minority communities in proximity to environmentally hazardous or degraded environments, such as toxic waste, pollution and urban decay.

The term first came to national prominence in 2005, when Hurricane Katrina devastated New Orleans – in particular, the city's lower 9th Ward, a community of low-income, mostly African-American homeowners. Despite the city's impressive comeback, much of the 9th Ward "still looks like the hurricane happened just yesterday," says 2L Monique DiTullio, who arrived at RWU Law having worked for the Rainforest Action Network and as a senior team leader with Greenpeace.

The same dynamic, DiTullio says, is playing out today in the lead-contaminated water crisis of Flint, Mich. "Once again, you see people's race and economic standing dictate how they experience their environment," she says.

DiTullio should know. A 2011 graduate of Roger Williams University, her senior thesis was, "Wind, Water and Environmental Racism: The Elements that Destroyed New Orleans During Hurricane Katrina." As a law student, she's worked with the Committee for Public Counsel Services in Fall River, Mass., and Southeast Louisiana Legal Aid Services in New Orleans; this summer she'll be with the Public Counsel's Mental Health Commitment Unit.

With a future eye on both legal advocacy and politics, DiTullio says her dream is to "help these communities to empower themselves with the resources to rebuild and fight back."





Confronting the Crisis of Marine Debris

Marine debris will be the focus of the Tenth Marine Law Symposium, to be held at RWU Law this November 3 and 4. Encompassing human-created waste accidentally or deliberately released into oceans, bays and other waterways, marine debris poses a serious threat to fish, seabirds and other marine life, as well as jeopardizing boat safety, and the overall health and aesthetics of coastal areas.

While more sensational marine debris issues – such as the legendary “Pacific trash vortex” – tend to grab more media attention, the Roger Williams conference will focus on local manifestations of the problem.

“We’ll be exploring marine debris issues in New England – such as plastics and derelict fishing gear left on the ocean floor or fallen off ships and never properly recycled – and the ways in which coastal managers, lawyers, and policy makers can most effectively address the problem to ensure the health and beauty of our oceans and coasts,” said Julia Wyman, director of RWU Law’s Marine Affairs Institute and of the Rhode Island Sea Grant Legal Program.

Wyman added that the Marine Affairs Institute/Rhode Island Sea Grant Program will be working this summer with the National Sea Grant Law Center on a National Fish and Wildlife Foundation grant examining derelict fishing gear in New England, engaging students as Sea Grant Law Fellows on research that will be discussed at the Symposium. For updates, visit law.rwu.edu/marine-affairs-institute

ABA Chair

Beginning this summer, Wyman will be wearing another hat – as chair of the American Bar Association’s Section of Environment, Energy, and Resources Marine Resources Committee. “It’s a great opportunity to elevate ocean and coastal issues on a national level,” she said. “I look forward to working with the committee on issues such as climate change, fisheries, and offshore energy.”

Welcome, Read Porter!

The MAI recently welcomed a new staff attorney – Read Porter, formerly with the Oceans Program at the Environmental Law

Institute (ELI) in Washington, D.C., where he directed the Invasive Species Program and co-led the Law Clerk Program.

Porter has published widely on topics including the regulation of offshore energy production, ocean and coastal zoning, aquaculture production, fisheries management, and invasive species and biodiversity. Prior to joining ELI in 2006, he served as a judicial law clerk for the Honorable Julia Smith Gibbons of the Sixth Circuit. Porter holds a J.D. from Harvard Law School, where he served as editor-in-chief of the *Harvard Environmental Law Review*, and a B.A. from Amherst College.

“Read is a wonderful addition to our staff, and will get to work directly with our students directing our Rhode Island Sea Grant Law Fellow Program,” Wyman said.

“I’m excited to join the MAI, and look forward to helping our students become well-trained attorneys while also contributing valuable research to our partners on issues that are important both in Rhode Island and beyond,” Porter added.



Navigating a Maze of Best Practices

How much compliance is enough compliance? David Holley '99 is paid to ensure that his corporate clients stay on the safe side of government regulation.

By Dick Dahl



If you're the chief compliance officer of a New York State financial institution, and you're perceived as falling short on your duties, you could soon end up in jail.

At least that's one of the threats contained in a proposed anti-terrorism regulation released in December 2015 by Gov. Andrew Cuomo and the New York State Department of Financial Services.

To David M. Holley '99, managing director of Boston-based Berkeley Research Group, a global consulting firm, the bold move adds to a mounting body of evidence that compliance officers now have bull's-eyes on their backs.

"There's this talk now of corporate culture and whether a company has a culture of compliance," says Holley. "It

used to be enough to say yes, the company has a culture of compliance. But now there's an effort to try to measure it."

The New York regulation would require financial institutions to maintain watch-list filtering and transaction-monitoring programs and would also impose criminal penalties on chief compliance officers who file required annual statements that are incorrect or false.

It comes in the wake of a flurry of federal Securities and Exchange Commission crackdowns last year—in one, BlackRock Advisers and its chief compliance officer paid penalties of \$12 million and \$60,000, respectively, for failing to disclose a portfolio manager's outside business interests to its board of

directors and clients and for failing to have policies in place addressing outside activities of employees.

Holley takes a particular interest in this increasingly demanding regulatory climate because helping clients develop stronger compliance programs is the aspect of his job that he likes the most.

"I really enjoy the governance space—when something goes wrong in a company, how to improve the governance around what led to the problem," he says. "We provide assistance for organizations looking to comply with new regulatory regimes as they become the focus of regulatory scrutiny. For instance, we work with organizations to establish anti-corruption and anti-bribery programs. We work with

the organization to develop policies and procedures, and establish practices to undertake due diligence on their third parties, their vendors, their agents. We can do the book and records reviews to ensure that they are complying and offer advice along the way for improving."

Holley came to BRG last December after 15 years at Kroll Inc., a corporate consulting and investigations firm where he was senior managing partner. He decided to come to BRG, he says, because it provided a broader array of client services.

"It was appealing to me because a lot of the work I wasn't able to land at Kroll was largely due to the fact they were looking for some industry expertise. A client would want us to investigate something and then, on the way out the door, to help them establish best practices for that kind of industry. I'm very comfortable investigating; but if someone says 'this is a back office that does support for a big retail outlet and can you help us be best in show?' we really didn't have that kind of expertise. So it was really attractive to be able to sell what I do into (BRG's) distribution channel and at the same time take advantage of their vertical expertise to solve client problems. It was sort of the perfect alignment for me."

Holley has dedicated his entire career to investigation. After getting a B.A. in political science from Boston University in 1989, he was a litigation support specialist in the U.S. Justice Department's environmental enforcement section. When he came to Roger Williams Law, he took classes at night while working full-time for Investigative Group International, where he became senior director. After he got his J.D. in 1999, he joined Kroll.

During his time there, he developed an expertise in financial institutions, conducting investigations of banks' involvement in tax-shelter sales and suspected money-laundering control failures in the wake of bad regulatory reviews.



"It used to be enough to say yes, the company has a culture of compliance. But now there's an effort to try to measure it."

- David Holley '99

He's also done black-market and gray-market counterfeit knockoff investigations for manufacturers of consumables. "I've had investigations in the U.S. where clients have called and said, 'We've seen our products in some of the big-box stores and we're not selling to them. Can you help us understand where the supply chain is breaking down or is this really not our product? Is this a counterfeit product?'"

In addition, Holley has handled whistleblower cases involving employee wrongdoing. In one current case, he said, an executive received a text message saying that one of the company's larger vendors in China was actually co-owned by an employee who is making money on the back side.

An emerging area in the world of corporate investigations, he says, is that of how companies deal with sanctions lists maintained by the U.S. Treasury Department's Office of Foreign Assets Control. These are lists of nations and

groups of individuals, such as terrorists or narcotics traffickers, including descriptions of transactions with them, that are prohibited.

"For manufacturers, it means making sure that the products they put on the marketplace don't wind up in sanctioned countries," Holley says. "It means having procedures or processes in place to know who your customers are. It's important because the government relies on public and private companies to enforce their agenda."

The commitment by the U.S. to fight global terrorism means that regulators' attention to corporate compliance in its various forms is probably not going to subside anytime soon. Holley recalls a two-year project he headed at Kroll where he effectively served as an "integrity monitor," to watch over the processes put into place by a company that had run afoul of proper compliance and he says he believes there will be an increasing role for integrity monitors.

He also sees a need for better tools that organizations and their compliance officers can use to measure themselves. And BRG is working on precisely that.

"We're going to see if we can come up with a metric that would be similar to Transparency International's Corruption Perception Index. They grade countries on corruption risk; we're going to take the other side and measure organizations' cultures of compliance."

The plan, he says, is that chief compliance officers would fill out a form and BRG would then give them a report card, taking the accumulated data and providing reports on the state of corporate compliance.

Meanwhile, Holley's day-to-day work provides ample professional and personal gratification.

"It's heartening to me that I can help clients," he says. "Sometimes it's resources, sometimes it's looking at a problem a different way. Whatever it is, I'm appreciative of being able to do that."



2016 Champion for Justice

Judge Judith Colenback Savage
Judge, Rhode Island Superior Court, 1993-2013
Distinguished Jurist in Residence, RWU Law



2016 Alumni Public Interest Champion

Dena Castricone, Esq., '98, L'02
Counsel, Murtha Cullina, New Haven
Leader in LGBT Community



2016 Community Partner Champion

**Dorcas International
Institute of Rhode Island**
Providence, R.I.

'Champions for Justice' Honored

For the second year in a row, RWU Law's Feinstein Center for Pro Bono & Experiential Education has honored two legal luminaries and a legal organization as its "Champions for Justice" in recognition of their impact and accomplishments in supporting the school's public interest programs. Held in conjunction with the annual Public Interest Auction, both events "shine a light on RWU Law students and alumni, celebrating their dedication to serving low-income and disenfranchised communities in New England and around the country," according to Feinstein Center executive director Laurie Barron.



A Voice for the Poor – and Society

Curtis Pouliot-Alvarez '15 is the latest RWU Law alum to join the Rhode Island Center for Justice as staff attorney under a post-graduate fellowship program open exclusively to recent Roger Williams Law alumni.

Among its many other initiatives, the RICJ recently brought a class-action lawsuit against National Grid for shutting off the utilities of customers with "medical issues that require them to have electricity and/or heat – for example, those on life-sustaining medical equipment," Pouliot-Alvarez explains. "Not only do such shutoffs have an immediate health effect on the individual; they affect society as a whole, because when that person ends up in an emergency room and can't afford treatment, the cost falls on the taxpayers."

And while there are laws against such shutoffs, they remain largely untested because "until now there haven't been any lawyers taking the cases of the low-income consumers challenging termination," he says.

Pouliot-Alvarez is a U.S. Army veteran and 17th-generation Rhode Islander, claiming direct descent from Roger Williams. While at RWU Law, he was president of the Association for Public Interest Law, and personally provided more than 1,500 legal service hours to indigent clients. He also served as a student attorney for both the Federal Public Defender of Rhode Island, and the Committee for Public Counsel Services (CPCS) Public Defender Unit in Fall River, Mass.

GETTING TO know

Noah Kilroy '13

Partner, Kilroy Delgado Law Group, Providence

Born to a drug-addicted mother, abandoned at birth and passed through multiple foster homes before being adopted by a Newport, R.I., family, Noah Kilroy '13 was selling crack cocaine by age 16. Jailed twice in Rhode Island, he was arrested in Florida for trafficking at age 20 and faced a 15-year sentence. When he called his adoptive mother for help, she hung up. He was all alone – and that was a turning point. Today Kilroy is an assistant city solicitor for Providence, maintains a private practice with Misty Delgado '11, and is a co-founder of Transcending Through Education Foundation (TTEF), which helps former convicts obtain higher education. **Alone Time:** He spent 18 months in a Florida prison, which “did what it was supposed to do. I was forced to think about my actions and take a moral inventory of myself.” He read books on black history, psychology, and sociology; after his release, he achieved a 3.7 GPA at the Community College of Rhode Island and transferred to Salve Regina University. **Right to Vote:** Working on a state initiative to give former felons the right to vote, Kilroy met Andres Idarraga, a former drug dealer headed to Yale Law School, who became a role model. The only law school that gave Kilroy a chance was the University of Detroit Mercy School of Law. After placing in the top 20 percent his 1L year, he transferred to RWU Law. **Wall of support:** Through Idarraga, Kilroy met A.T. Wall, Director of the Rhode Island Department of Corrections, who is now his mentor. Skeptical at first – “due to living that street life and knowing you can’t trust everyone” – Kilroy is deeply grateful for Wall’s support, which included asking Providence solicitor Jeffrey Padwa to hire Kilroy as an intern. Kilroy joined Padwa’s office full-time in 2013 and now handles city ordinance violations and other cases. **Giving Back:** In 2012, Kilroy, Idarraga, and a third drug dealer-turned-law-school-graduate, Bruce Reilly, launched TTEF, which gives scholarships to former offenders. “You have to be willing to make sacrifices,” Kilroy says. While working at a Taco Bell during college, he served guys he knew from the street. “It was humiliating. But some of those same guys are now clients of mine. If you put in blood, sweat, and tears, society will give you a chance again – if you’re serious about your rehabilitation and giving back to society.”

– Elaine McArdle



Reeves Urges: 'Be Citizen Soldiers'



At the culmination of a captivating, often emotional, frequently humorous address at RWU Law, the speaker paused, surveyed his audience, then slowly intoned:

"I am Carlton W. Reeves, District Judge of the Southern District of Mississippi, and I sit in the seat once held by William Harold Cox" – a reference to the virulently racist judge immortalized in the 1988 film "Mississippi Burning," about a 1965 trial for the murder of three Mississippi civil rights workers. "Voting," Reeves said, "has consequences."

The packed house – made up of students, alumni, professors, members of the state and federal judiciary, the U.S. Attorney and the head of the Providence NAACP, among many others – erupted into a standing ovation. It was the school's 11th annual Martin Luther King Week address.

Last year, in sentencing three white men convicted of the hate-motivated murder of a black man, Judge Reeves delivered a searing speech from the bench on the state of race relations in Mississippi and across the U.S. In two memorable Civil Rights decisions – one on racial equality and one on same-sex marriage rights – Reeves has made news (and history) by his acknowledgement of how diverse perspectives and prejudices can

impact an individual's actions towards and views of others.

But his RWU Law speech focused almost entirely on the work of Dr. King – and in particular King's use of the phrase "citizen soldiers" to describe those working to change America through nonviolent efforts to promote equal rights.

After reviewing the work of numerous "citizen soldiers" from his native Mississippi, and the dramatic improvements in racial equality there over the past few decades (particularly in the legal field), Reeves called upon his Rhode Island audience to carry on the work. When King accepted his 1964 Nobel Peace Prize, Reeves said:

"He refused to accept the idea that a man's present nature makes him morally incapable of reaching up for the eternal 'ought-ness' that forever confronts him. That deep respect for humanity, that core belief that good will triumph over evil every time. King knew something: Mississippi had changed. The United States had changed. The citizen soldiers had changed its nature. And now it is time for our next generation, this generation, to be citizen soldiers.

"So follow your passion. You know what the issues are, and there are many of them – from the schoolhouse to

the jailhouse: criminal justice reform. Sentencing guidelines reform. Making sure that collateral consequences do not further bind and chain and burden criminal defendants for all of their lives. Standing up for those children caught up in the foster care system. Police reform. Prosecutorial reform. Economic inequality. Education inequality. Standing up for immigrant children and adults.

"Whether we are black or white, Jew or Gentile, immigrant or native born, rich or poor, gay or straight, whatever our differences are – what we need is to have love and compassion toward one another, and a feeling of justice toward those who still suffer within this country. There are those out there who would peddle hate and division, fear and distrust. There are those who are masters of confusion and deception. Reject those notions. Believe in the capacity of the greatness of America. Drop yourself into that uncomfortable, unquenchable, indomitable American spirit. Have that audacious faith, like Dr. Martin Luther King. Look beyond what you're speaking to. Speak to the future. Be the cause of that revolution."

– Michael M. Bowden



Professor & Alumna Lead City Year Board

The challenges are staggering: roughly one third of Providence public school students are “chronically absent,” demonstrate disruptive behavior, and/or struggle with math and reading – all symptoms pointing to a higher risk of dropout before graduation.

But the tide has dramatically begun to turn thanks to a deepening collaboration between the City of Providence and City Year Providence, part of the national nonprofit AmeriCorps program, which hires young adults to spend a year running support programs in five Providence schools.

To assist in these efforts, City Year Providence has now enlisted two veteran public-service lawyers – Professor Andrew Horwitz, RWU Law Assistant Dean for Experiential Education; and Stephanie Federico '03, former chief of staff of the Providence Public School Department – to co-chair its all-volunteer Board of Advisors.

“We’re responsible for community relations, development and fundraising,” Horwitz explains. “We’re actively engaged in City Year’s relationships with the City of Providence and the Department of Education, things that the City Year staff really doesn’t have the bandwidth to do on its own. So we help out.”

“We’re essentially City Year’s eyes and ears on the ground,” Federico adds. “I think our ‘lawyerly brains’ add real value. We offer a good sounding board for both the local and national organizations. We’re also its champions out in the community, spreading the word.”

Founded in Boston in 1988 by Harvard Law School roommates (and Horwitz family acquaintances) Michael Brown and Alan Khazei, City Year began as more of a catch-all organization, involving youths in “all sorts of community service projects, including playground repair and painting,” Horwitz says.



Around 2009, however, the organization began shifting and narrowing its focus. “Now the impact is purely focused, in an incredibly data-driven fashion, on trying to address the dropout problem that we have in our failing urban schools across the country,” Horwitz says.

Federico got involved with City Year via her work in both law and education. After graduating from RWU Law, she clerked with the Superior Court, then joined the Law Department for the City of Providence. From there, she became then-Providence Mayor David Cicilline’s deputy chief of staff; and later chief of staff for the Providence Public School Department. Now an associate at Harrington & Vitale, Ltd., and Director of Government Affairs

for Capitol City Group, Ltd., Federico was tapped in 2011 to join City Year’s Advisory Board, of which Horwitz was also a new member. Renewing the association with her former mentor, she says, has been “a kind of blessing.”

“I [never] had the drive for public service until I attended RWU Law,” Federico explains. “It’s something I gained through my time at the Criminal Defense Clinic, where Andy really opened my eyes to the need that’s out there.”

For Horwitz, “seeing former students carry on in the public-service tradition makes me incredibly happy and proud. I look forward to collaborating with Stephanie on City Year’s Advisory Board. I think there’s a lot we can accomplish together.”

– Michael M. Bowden

Trending@ RWU Law

RWU Law & the Federal Courts: A Unique Partnership

By Judge William E. Smith



As a result of its status as Rhode Island's only law school, Roger Williams University School of Law has developed a close relationship with the bench and bar of the State. Similarly significant, however, is the law school's productive relationship with the federal courts.

This relationship affords RWU Law students numerous opportunities throughout the academic year to observe the work of and mingle with federal judges and attorneys who litigate frequently in the federal courts.

No other school in the United States has the kind of extraordinary relationship shared by RWU Law and the U.S. District Court for the District of Rhode Island.

Here are just a few examples of what a law student can expect to see or do during his or her time at RWU Law:

- Observe a U.S. District Court judge conduct a summary judgment hearing on site at the law school (most recently, this past September);
- Observe a sitting of the First Circuit Court of Appeals at the law school (which happened in October);
- Extern with a federal judge as part of RWU Law's Judicial Externship Program;
- Attend symposia with speakers from the federal court;
- Participate in the litigation capstone course, "Federal Practice Commercial Litigation," in which students work on a mock federal case from start to finish (culminating in a trial before a federal judge); and
- Litigate before federal magistrate judges as part of the school's criminal law clinic.

Why is this so relationship important? The reason is simple: both the law school and the court share an obligation to the future of the legal profession; to ensure that new attorneys entering the bar are not only able to pass the bar exam, but are ready and able to practice with skill and honor. This ongoing exposure to the attorneys, judges and overall workings of the federal court places our students in a strong position to better understand what it takes to succeed in these goals. And after they graduate, they will be much better prepared to practice in the courts with confidence.

The court benefits too, by having the talent of the law school faculty available for educational programming – and by having the energy and enthusiasm of RWU Law students in our chambers and courtrooms.

No other school in the United States has the kind of extraordinary relationship shared by RWU Law and the U.S. District Court for the District of Rhode Island – and both institutions are exceedingly proud of this unique and important partnership.

Chief Judge William E. Smith of the United States District Court for the District of Rhode Island is Chairman of the Roger Williams University School of Law Board of Directors. Judge Smith attended Georgetown University as a George F. Baker Scholar, graduating in 1982. He graduated cum laude in 1987 from Georgetown University Law Center, where he was a member of the American Criminal Law Review. From 1987 to 2002, he practiced labor and employment law with the leading Providence law firm of Edwards & Angell. While in private practice, Judge Smith served as a municipal court judge for the Town of West Warwick from 1993 to 1998. He also served as the city solicitor of Warwick, R.I. From 2000 to 2001, Judge Smith served as staff director for then U.S. Senator Lincoln Chafee's Providence office.



SEEKING A BALANCE

Rhode Island's Quest for Judicial Diversity

Throughout the profession, cultivating a more racially and ethnically diverse judiciary has long been acknowledged as 'the right thing to do' – begging the question: Why is the Rhode Island bench still so white?

By Michael M. Bowden, Esq.

Should Rhode Island's racial and ethnic diversity be reflected in the makeup of its judiciary?

Almost everyone agrees that it should.

Diversity on the state's bench, advocates say, is both a symbolic and a practical ideal – as essential to fairness and justice (and perhaps as importantly, the public *perception* of fairness and justice) as a police force that reflects the diversity of the neighborhoods it serves. After all, they argue, a judiciary that “looks like Rhode Island” would clearly signal that the courts are fully in tune with all who come before them; that everyone will be understood and get a fair hearing.

Yet Rhode Island's courts remain just as homogenously white as they were 20 years ago: out of 54 state judges (not counting magistrates), only three are individuals of color. Slowly but surely, more blacks, Latinos and other people of color are entering the “pipeline” of lawyers from whom future judges will be drawn. But what can be done in the interim? And what's at stake?

A lot, experts say.

National law organizations have identified judicial diversity as an access-to-justice issue vital enough to merit action at the highest levels of the profession. Thus the National Center for State Courts' Conference of Chief Justices last fall joined with the National Consortium on Racial and Ethnic Fairness in the Courts to create a body known as the National Advisory Board on Community Engagement in the State Courts, tasked with finding ways to more comprehensively address this issue.

The Ocean State's representative on the advisory board is Judge Edward C. Clifton, who retired from the Rhode Island Superior Court in 2015 after more than two decades on the bench. Now a Distinguished Jurist in Residence at Roger Williams University School of Law, Judge Clifton has been working with law students to further research this issue.

“Our mission is to get out and engage state court leaders with marginalized and disadvantaged communities, to ensure equal access to justice, and to improve the trust and confidence of those

communities in the state courts' ability to protect individual rights and liberties and resolve disputes fairly,” Judge Clifton explains.

He notes that judicial diversity directly affects a range of legal issues – from run-of-the-mill contract disputes to criminal matters with profound impact on many lives.

“Within the criminal justice ‘silo,’ for example, there are concerns about the fact that sentencing has been disproportionate as a result of the so-called war on drugs. Those disparities have long been felt by communities of color.”

SOMETHING IN COMMON

The need for greater understanding and respect between communities – exacerbated by an increasingly vocal public debate over issues such as mass incarceration and hostile relations between local police and the communities they serve – has also driven the call for more judicial diversity.

“Almost everybody in the country now recognizes this [need for diversity on] police forces,” says RWU Law Professor David Logan, who published an Op-Ed last year on judicial diversity in the *Providence Journal*. “To not have that same logic extend to judges strikes me as a mistake.”

Just as citizens generally have more trust in a police force that “look like them,” Logan says a court system in which the judiciary's make-up corresponds to the community also “increases the chance that people will view the justice that's meted out as – even if unpleasant – nevertheless not racially biased.”

With a diverse judiciary, “people can look up at the bench and feel that the individual who's handing out justice is someone whom they at least have something in common with,” explains Alberto Aponte Cardona '04, an attorney based in Central Falls, R.I., who himself served for a time as a judge on that city's Housing Court and is now president of the Rhode Island Hispanic Bar Association. “That's very important. It creates a foundation of trust. It makes

"A diverse bench improves the quality of justice and, just as importantly, instills confidence that judges understand the real-world implications of their decisions."

— Judge Carlton W. Reeves

people feel represented – and not just prosecuted or persecuted – within the legal system."

During a Martin Luther King Week address this January at Roger Williams, Judge Carlton W. Reeves of the U.S. District Court for the Southern District of Mississippi expressed a similar sentiment.

"Diversity on the court is a great thing, a powerful thing, and the right thing," he said. "A diverse bench improves the quality of justice and, just as importantly, it instills confidence that judges understand the real-world implications of their decisions. Studies have shown that diverse judges may greatly affect outcomes; that a trial judge's race and sex have very large effects on his or her decision-making.

"Back in 1961, James Lawson wrote in *The Southern Patriot*, 'There will be no revolution until we see Negro' – and to that I'm going to add Asian, Latino, Native American, gay and lesbian – 'faces in all positions that help to mold public opinion, help to shape policy for America. One federal judge in Mississippi will do more to bring revolution than sending 600 marchers to Alabama.'"

IMPACT ON LEGAL DECISIONS

Lack of judicial diversity has very real legal implications at many levels of the legal process, rooted in the fact that the vast majority of cases brought before states' courts are decided by bench trials rather than jury trials – making the judge the litigants' sole opportunity for justice.

"The number of jury trials – both here in Rhode Island, and across the country – is just so small in comparison to the number of bench trials," Clifton observes. "Think about all of the cases that are tried in the state District Court: they don't provide for any jury trials; they're all bench trials. So if you're talking about a landlord-tenant dispute, you're talking about a bench trial. If you're talking about a civil case – say, a breach of contract matter – you're talking about a bench trial. The large majority of cases tried in the Family Court are bench trials. And the personal experiences of the judges are weighed into all those decision-making processes."



“The number of jury trials in Rhode Island is so small in comparison to bench trials. And the personal experiences of the judges are weighed into that decision-making process.”

— Judge Edward C. Clifton



Many of their decisions are, moreover, essentially set in stone.

"Hundreds and hundreds of the decisions that trial judges make can't effectively be appealed," Logan said. "And it's not just judges doing fact-finding; it's judges running their courtrooms, managing their dockets, making all sorts of discretionary judgments – continuances, an extra 30 days for discovery; all the nitty-gritty of litigation that is almost never the basis of an appeal. So to say that it doesn't matter what the background and experience is of the judges in all these courts that exercise so much influence over the lives of Rhode Islanders is deeply unfair and mistaken."

Law professor Randolph Jonakait of New York Law School wrote about the prevalence of bench trials in his 2002 book, *The American Jury System*, arguing that a diverse jury helps counterbalance the "narrowness" of non-diverse judges.

Jonakait explained:

As Paul Carrington has observed, "Judges are becoming increasingly isolated on the hilltop of class pretense." Consequently, judges are unlikely to have as many life experiences to bring to bear on the interpretation of evidence, as would a group that comes from a broader cross-section of the community. ... If a judge can really understand such circumstances [as an encounter between a person of color and a law-enforcement officer in a traffic stop], it is not from the context of the courtroom but from outside it. The odds are better that someone in a group drawn from diverse segments of the community will have a valuable insight into such a situation than will a judge or even a collection of judges.

"When judges render their verdicts and decisions, it's not personal; they're not speaking for themselves – they are speaking for the state, for the broader community," Clifton notes. "So when a judge says, 'I find that the state has proven the charges against you,' it's important to ensure that that 'I' represents a better, more diverse [cross-section] of the state and community, to give a more resonant value to that statement."

HOW RHODE ISLAND STACKS UP

First, the good news: Rhode Island's record on diversity in the judiciary is not wildly out of sync with that of its neighbors. In 2010, the Ocean State came in third in New England with seven percent non-white judges. By comparison, Massachusetts was slightly ahead with eight percent; Connecticut came in first with 15 percent; Maine, New Hampshire and Vermont had no non-white judges.

(While beyond the scope of this article, it's worth noting that gender diversity in the Rhode Island judiciary presents a very different picture. Currently, excluding magistrates, the state's judiciary is 42 percent female. In 2009, that figure was 25 percent female; in 1994, it was 28 percent.)

In terms of its overall population, Rhode Island is 5.7 percent black and 12 percent Hispanic. However, blacks, Latinos and Asians make up 58 percent of Rhode Island's prison population and 41 percent of those on probation or parole. Meanwhile, the Rhode Island justice system remains overwhelmingly white, with just three judges of color out of 54: Superior Court Associate Justice Walter R. Stone, District Court Associate Judge William C. Clifton, and District Court Judge Rafael A. Ovalles. That figure doesn't include an additional 20 magistrates, among whom only one is non-white.

And this lack of diversity has remained consistent for decades.

"Rhode Island does have an acute need to address the problem," said Judge Edward Clifton. "I don't want to say that we are worse than other states, but – just from my travels, and my engagement with the National Consortium, meeting with judges from around the country on an annual basis – I would say Rhode Island is on the underrepresented side of diversity."

WORKING ON THE PIPELINE

Established just over twenty years ago, to create a fairer, better process for selecting state judges, Rhode Island's Judicial Nominating Commission today finds itself on the front lines of the movement toward judicial diversity. Rhode Island's local gateway to addressing the problem of judicial diversity is the Judicial Nominating Commission, or JNC – essentially the hub of the state's "merit selection" system for appointing judges.

Created by statutory and constitutional mandates in 1993 and 1994, the merit selection process and the JNC were largely a response to an embarrassing period during which two successive Chief Justices of the Rhode Island Supreme Court – Joseph A. Bevilacqua (1976-86), and Thomas F. Fay (1986-93) – were ousted in high-profile corruption scandals. While primarily aimed at Supreme Court justice selection, all state judgeships were affected by the reform, because it was considered vitally important to "get it right" – particularly since all Rhode Island judges have life tenure, which is not the case in most states.

Made up of nine rotating members, both lawyers and non-lawyers, serving four-year terms, the JNC (jnc.ri.gov) is charged with screening applicants for vacancies on all of Rhode Island's courts. Upon notification of a judicial vacancy, the Commission advertises for interested candidates, who then complete an extensive application. The Commission then selects candidates to be interviewed, solicits public comment, and conducts background checks. Based on the information developed throughout this process, the Commission votes and submits to the Governor a list of 3-5 highly qualified individuals for each vacancy.

While the commission has generally succeeded in meeting its broad statutory mandate, it hasn't followed all of its own rules to a tee. For example, the annual JNC reports required by the statute were rarely, if ever, filed. Members routinely overstayed their terms. Under the organization's latest chair, however, some of those practices may be changing.

"The statute requires that we exercise 'reasonable efforts' to encourage racial, ethnic and gender diversity

within the judiciary," says current JNC chair Sally Dowling of Adler Pollock & Sheehan P.C. "Now, it's hard to know exactly what 'reasonable efforts' are, but under my leadership we have reached out to the Thurgood Marshall Law Society, the Hispanic Bar Association and the Women's Bar Association to try to encourage applicants. Also, the JNC is required to file [an annual] report – and I recently filed the first report that, I think, has ever been filed, and agreed to do that at the end of June, each year during my term."

"You can have the best candidates – but if they don't make it to the next level, then nothing's going to change. The numbers are going to remain the same."

— Judge Edward C. Clifton

RWU Law Dean Michael Yelnosky, who studies the judicial selection process, says Dowling's efforts are promising. "I have every reason to believe that certain members of the current JNC take quite seriously the statutory mandate to diversify Rhode Island's judiciary," he says. "I think there is some cause for optimism about the next several years."

GOVERNOR CLIMBS ONBOARD

Nonetheless, the JNC is only the first step in a much more complicated process.

Once the commission arrives at its judicial recommendations, that list must be submitted to the governor, who then selects one of the candidates as the nominee for an open judgeship, and that nominee must be confirmed by the Rhode Island Senate (or both houses in the case of Supreme Court nominees).

"As you see," Yelnosky notes, "it takes a village."

All signs, however, indicate that Governor Gina Raimondo is fully onboard with judicial diversity. Last October, she told the *Providence Journal* that she would "work overtime to diversify the bench." She added that she wanted to get "the message out loudly and clearly that you don't need to know somebody in order to get one of these appointments – you can apply on your merit."

Raimondo also recognized the need "to increase the pipeline of talented people of color and women who apply," stating, "I'm constantly reaching out to community groups, saying 'help me recruit, give me the talent, give me the pipeline.'"

She admitted, however, that – while she had at the time received lists of 15 finalists from the JNC for three vacant state judgeships (on the District Court, Family Court and Workers' Compensation Court) – there was "not a single person of color" among the contenders. (Dowling notes that several diverse candidates are currently under consideration by the JNC for other vacancies.)

"I will commit to you that in the course of my four years as governor I will appoint people of color to the bench," Raimondo told the *Journal*. "And I will ... get the JNC to do the same thing to increase the diversity of the pipeline."

BUILDING A PIPELINE

That pipeline is the final – and in many ways the most vexing – piece of the judicial diversity puzzle.

"Part of the problem is demographics," says RWU Law Professor David Logan. "It depends on the size of your minority population. In Wyoming, the chances of there being a Hispanic or African-American judge on the court are vanishingly small, simply because there aren't many blacks and Hispanics in Wyoming. But if you're in Mississippi or Virginia, where there are substantial black and in some cases Hispanic populations, you would appropriately expect there to be – if not a one-to-one percentage correlation – at least a closer match between that state population and the composition of the judiciary."

Even more important than the demographics of the general population, however, are the demographics of a state's legal profession. And in that regard, Rhode Island's situation becomes even more problematic.

While the Rhode Island Bar Association does not keep formal statistics on its membership's ethnic makeup, it is generally acknowledged that "the Rhode Island bar is very, very white," Yelnosky says. "Everybody I've talked to about this says, conservatively, only about two percent of the lawyers in Rhode Island out of about 4,000 are racially or ethnically diverse. And what is that numerically? It's a very small number – about 80 lawyers. And of those, how many want to be judges? How many have the kind of practice that would make them viable candidates? How experienced are they?"

Yet, he adds, forcing judicial candidates into too limited a box can exacerbate the numerical challenge.

"If we're really committed to having a more diverse bench, then we can't be looking for candidates who fit into some very specific, sort of cookie-cutter model of practice background, age, trial experience, and so on," Yelnosky says. "There are plenty of examples of young white lawyers who became very good judges, and of



lawyers who didn't have a lot of trial experience who became very good judges. So I think it's important for everybody in the system to be just as open-minded about candidates of color as they obviously are of white candidates."

For that to happen, however, candidates first need to insert themselves into the process.

"While many people say it's a pipeline problem, I think there's more to it than that," says JNC chair Dowling. "This process requires someone to take the affirmative step of applying for the job. If they don't apply, then we can't do anything. You see, to be a judge in many cases requires people to make personal sacrifices. To some, the salary is a lot of money; to others, such as those who have been very successful in private practice, it's a sacrifice. And I have had conversations with lawyers who are members of the minority community – some of whom I know personally, and others whom I've reached out to on suggestion – who've told me, 'Thank you, but I just can't do it. You know, I've got kids in college and it's just not going to work for me at this point in time.'"

Yet another issue is that many promising young lawyers – both white and non-white – are enticed into leaving the state.

"That's another big factor; we're losing a lot of young talent to bigger states," says Alberto Aponte Cardona '04, an attorney based in Central Falls, R.I., who served for a time as a judge on that city's Housing Court and is now president of the Rhode Island Hispanic Bar Association.

Cardona disagrees, however, that there is a significant pipeline problem in the state.

"We still have plenty of qualified, competent candidates – and I don't mean just, 'Hey, here's a Latino who happens to be a lawyer,'" he says. "I'm talking about qualified attorneys who are ready to take on the role and the challenges that a judge has to struggle with every day – and who, by the way, happen to be Latino. There are lots of attorneys out there who would make tremendous judges, but who may never get the opportunity because they don't have the political connections or wherewithal to get someone advocating for them at the State House, at the JNC or at the governor's office."

Cardona adds, however, that the political winds may be changing.

"I think that, with the pressure coming to bear and the sheer number of Latino politicians coming after the Latino vote – not only in Rhode Island but across the country, as you've seen in this presidential election – we are now being catered to," he says. "So this is, to some degree, a bone they're throwing our way."

Judge Clifton agrees that the tide may be shifting.

"I suspect that the pipeline for both African-American and Latino lawyers is getting better, and beginning to more closely reflect the statewide population," he says. "But again: first people have to make the application, and then it's up to the JNC, the governor and the General Assembly. I mean, you can have the best candidates – but if they don't make it to the next level, then nothing's going to change."

The numbers are going to remain the same."



RWU LAW AND THE JUDICIAL PIPELINE

While Rhode Island's judicial selection authorities wrangle with the myriad difficulties of increasing diversity on the state bench, the Ocean State's only law school is quietly setting the stage for a future that looks significantly brighter – by feeding the judicial “pipeline” with its increasingly diverse student body.

Dean Michael Yelnosky, who studies the judicial selection process, says the school has seen a fairly steady rise in the percentage of black and Hispanic law students enrolling – over the past five years, the rates were 21 percent (the entering class of 2011), 18 percent (2012) 24 percent (2013), 27 percent (2014) and 25 percent (2015), up from largely single-digit percentages a decade earlier.

“Of course, we are not the only institution that creates lawyers for Rhode Island, but diversity has been a priority for us,” Yelnosky told the *Providence Journal* last fall. “We are making progress” – aided by such organizations as the Thurgood Marshall Law Society and the Rhode Island Hispanic Bar Association, which

provide mentoring for diverse students and lawyers.

Of course, the effect of these dramatic demographic shifts in the legal pipeline may not be felt for decades.

“Our earliest graduates are just now entering the period when they are most likely to be serious candidates for a judicial position,” says RWU Law Professor David Logan. “You don’t get judgeships when you’re two, four, six years out of law school. It generally comes in the second, third or even fourth decade of your career.” Ultimately, however, RWU Law’s efforts will almost certainly drive serious progress.

“Sure, not all of these lawyers will stay in Rhode Island,” says Yelnosky. “Not all of them are going to be judges; not all of them will even be practicing lawyers – but in the long term, I believe that the number of lawyers of color in Rhode Island will increase, perhaps substantially, and that should be reflected in a more diverse judiciary.”

Diversity Enrollment at RWU Law



LIBERATION OF DACHAU
CONCENTRATION CAMP,
APRIL 30, 1945



from hate FROM HATE to hope TO HOPE

How the horrific experiences of lawyers and judges under the Third Reich have informed the lives – and legal philosophies – of their descendants

by jill rodriguez RMW05 | photography by james jones photography RI

As he hunted through nearly a century's worth of ownership records and auction catalogues to establish a recovery claim for a 19th century painting of a German peasant girl, Glenn Friedemann's thoughts kept returning to his father and grandfather.

This wasn't just a case of returning a possession stolen by the Nazis (some 70 years earlier at the time) to its rightful owner, the Max Stern Estate. It was nothing less than vindication for a livelihood ripped away under the Third Reich.

Under the 1935 Nuremberg Laws abolishing the right for Jews in Germany to own a business or work in professional occupations, Max Stern had been forced to hand over his entire precious art collection – including the contested painting, *Girl from the Sabiner Mountains* – from his Dusseldorf gallery to the Reich Chamber of Visual Arts.

In a similar act of confiscation, the Nazi government had robbed Friedemann's grandfather of his law career – and his father of the family business – simply because they were Jews.

History buffs might be familiar with the Nuremberg Laws, but few others today remember that the Nazis – in a first essential step toward attacking the rule of law in Germany and the other countries they occupied – made an early priority of purging the legal system.

That purge was the subject of a special American Bar Association exhibit brought to Rhode Island last year by RWU Law and the U.S. District Court for the District of Rhode Island. Titled *Lawyers Without Rights: Jewish Lawyers Under the Third Reich*, the internationally acclaimed exhibit shared the intimate stories of Jewish lawyers and judges humiliated and persecuted under a 1933 decree that barred their access to the courthouses from that day forth. It was a sobering turning point in the Nazis' consolidation of power, according to the exhibit – one dramatically amplified by the fact that more than half of the 3,400 lawyers in Berlin at the time were of Jewish origin.

The exhibit at RWU Law, however, offered more than just a dark history lesson. It also revealed untold stories from the children of survivors who had been denied their right to practice law by the Nazis, and how those deep injustices from the past had driven them to become magistrates, law professors and attorneys who would help shape a fair and equal justice system.

From war, oppression and human tragedy rose an existential exploration of some of the most meaningful questions a society can address: What is the role of law in a humane world? What is justice without access for all?

"The replevin claim [for restoring *Girl from the Sabiner Mountains* to its rightful owners] was such an important case for the Jewish population, because it represented justice for this art dealer denied his profession – just as Jewish judges and attorneys, like my grandfather,

had been," Friedemann recalls from inside his office overlooking the Providence River at Lifespan headquarters, where he has served as associate general counsel in the decade since handling discovery for the Max Stern Estate via Tillinghast Licht.

"Silence is a very

dangerous weapon, and when you silence the arbiters of justice by taking away a lawyer's right to practice or denying a judge the right to take the bench, based on prejudice, that's when the most harm occurs to society," Friedemann says. "The courts are the final arbiters of disputes – not the police or military – and as long as the courts are impartial and continue to allow all parties access to the judicial system, it can help prevent the kind of fear and prejudice we saw in the Holocaust to be allowed to exclude and persecute people."

from parents to children
FROM PARENTS TO CHILDREN

After the war, many survivors withheld their stories to shield their children from the atrocities inflicted upon them. No matter how much was hidden from them, however, those children often gleaned pieces from conversations between adults or the way food held ultimate importance in many survivors' homes. In many cases, the injustices imposed on their forebears deeply shaped their worldview, their decision to enter the legal profession and, ultimately, the way they view the law.

Friedemann, for example, grew up relishing tales of his grandfather as a general practice attorney who often worked well past dinnertime, attending to the queue of clients who awaited legal services at his Krakow home that doubled as a law office. At the age of 16, Friedemann resolved to follow in the footsteps of his grandfather – a role model he never got to meet.

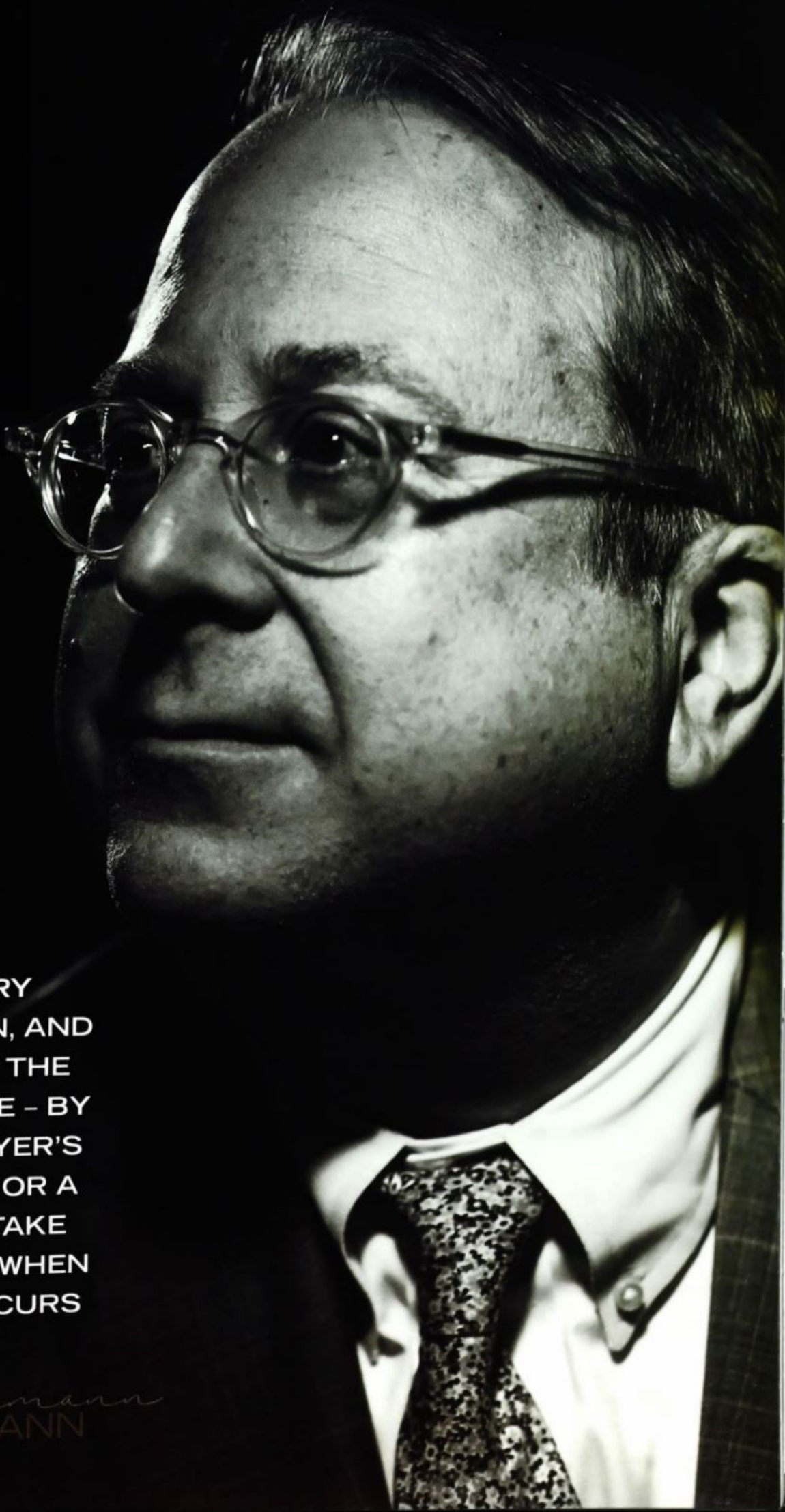
The Germans seized the family home during the occupation of Poland, splitting the large family apart. Friedemann's father Zygmunt joined the Polish underground and, among many heroic acts, infiltrated a German factory, attempting to swipe the Nazi formula for superior steel and turn it over to the Allies. Captured, tortured and sent to Auschwitz-Birkenau, Zygmunt endured until the war's end, and later established a new life and a new family in Rhode Island, launching a career as a longtime state legislator and a political science professor at Providence College. But no one knows what happened to Friedemann's grandparents, aunts and uncles. He assumes they perished in nearby Auschwitz.



(LEFT) ZYGMUNT AND RUTH FRIEDEMANN IN 1947, DURING THEIR FIRST YEAR IN RHODE ISLAND.



RUTH FRIEDEMANN
AT AGE 18 IN POST-
WAR GERMANY.



"SILENCE IS A VERY
DANGEROUS WEAPON, AND
WHEN YOU SILENCE THE
ARBITERS OF JUSTICE - BY
TAKING AWAY A LAWYER'S
RIGHT TO PRACTICE OR A
JUDGE'S RIGHT TO TAKE
THE BENCH - THAT'S WHEN
THE MOST HARM OCCURS
TO SOCIETY."

glenn friedemann
GLENN FRIEDEMANN

miriam weizenbaum
MIRIAM WEIZENBAUM

"THE EXPERIENCE OF THE
HOLOCAUST REVEALED
THAT BY PROTECTING
SOMETHING LARGER
THAN ALL OF US - CALL IT
HUMAN RIGHTS, MORALITY
OR THE LAW - WE'LL BE
PROTECTING OURSELVES
FROM OURSELVES."

JOSEPH AND RUTH WEIZENBAUM WITH THEIR
CHILDREN, SHARON, MIRIAM AND PAM (FROM LEFT
TO RIGHT), IN PALO ALTO, CALIFORNIA IN 1960.



**"YOU CAN DESTROY THE RULE OF LAW
JUST BY TAKING LAWYERS OFF THE
BATTLEFIELD."**

- PROFESSOR DAVID LOGAN

"My family learned how tenuous life can be and that there's no limit to the cruelty a human being can inflict on another; that the fears and prejudices people hold can be used to create horrible injustices," Friedemann says.

Edward Newman, a magistrate at Rhode Island Family Court, says he heard only stories about life after the Holocaust from his parents. To this day, he doesn't know how his father survived. And he wouldn't discover his mother's nightmarish story – never knowing what happened to the Jewish municipal court judge to whom she was engaged before the war, in which she would lose her entire family and watch countless innocents die agonizing deaths inside a concentration camp – until he could bring himself to read Judith Newman's memoir, *In the Hell of Auschwitz*, while in law school.

What struck him most about her tragic account was how she "never lost hope" despite grievous odds. Previously a pediatric nurse in a Breslau hospital, Judith was pressed into clinical service at Auschwitz, which offered woefully insufficient resources to meaningfully help patients – including her sister, who died in the clinic.

Today, Newman imparts that same faith and compassion to what might seem like hopeless cases before him in court, extending deadlines and offering firm encouragement to help dropouts re-enter and graduate high school or go on to college. "The greatest attribute my parents instilled in me was to never give up – on oneself or anyone else," he affirms.

Although it was never spoken of, RWU Law Professor David Logan sensed how destructive the loss of his law practice was to his father, Ladislav Lowenbein. Lowenbein managed to escape his native Czechoslovakia before the Nazis closed its borders, but even his Sorbonne law degree meant nothing when he reached occupied France. He would never again practice law.

The experience, Logan says, caused his father – who later acquired a new career as broadcaster and editor for Voice of America's Slovak broadcasting service – to examine the way in which governments treat their minority citizens and evoked a commitment to advocate for human rights, particularly in the American Civil Rights Movement. These were views that Logan grew to share with his father, and that influence his passion for teaching civil rights law in the classroom and working

to create student diversity within Roger Williams University School of Law and across the state's legal field and judiciary.

kill all the lawyers?
"KILL ALL THE LAWYERS?"

Without lawyers and judges, can there be justice? The example of Nazi Germany dramatically demonstrated that the removal of even one segment of society from access to justice will cause disintegration for all. The detriment is even greater, Logan asserts, when it's the adjudicators of the law who are eliminated from the administration of justice.

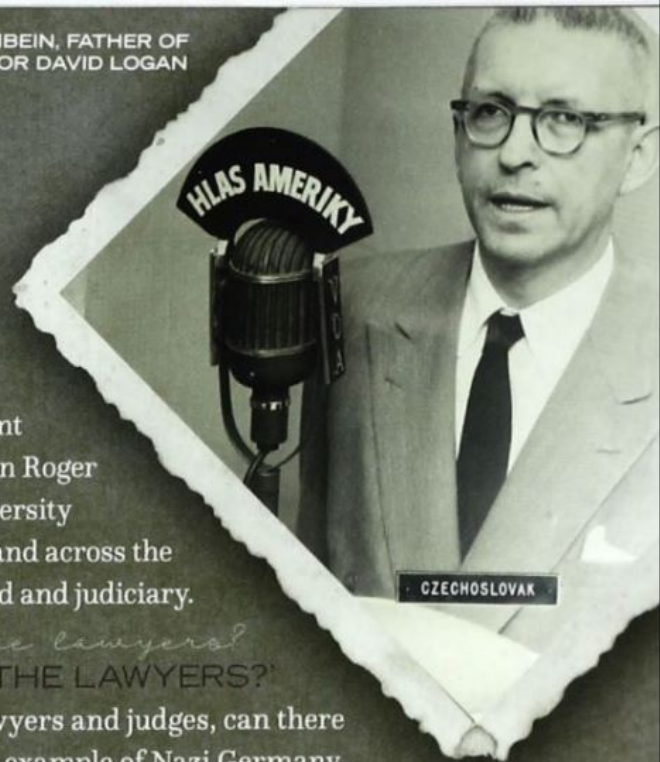
"There's a famous Shakespeare quote that reflects what the Nazis were attempting," Logan says. "The first thing we do, let's kill all the lawyers.' You can destroy the rule of law just by taking lawyers off the battlefield – that gives the government more authority."

For Miriam Weizenbaum – a leading medical malpractice attorney in Providence, and co-founder of the nonprofit Rhode Island Center for Justice at RWU Law – the Holocaust exposed the duality of human nature. Neighbors turned in neighbors to be deported and executed; yet once the war concluded, those same people provided shelter for displaced Jews, she said.

Her father Joseph Weizenbaum – creator of the artificial intelligence program Eliza, and an outspoken opponent of mechanized war – told stories of hiding under his bed as a child from the enthusiastic roar of his fellow countrymen during Nazi rallies held outside his Berlin home.

"The experience of the Holocaust revealed that the capacity for both cruelty and kindness is in all of us; that each of us is at risk of threatening human rights," says Weizenbaum. It also revealed "that by protecting something larger than all of us – whether you call it human rights, morality or the law – we'll be protecting ourselves from ourselves."

To help instill respect for all human beings, Magistrate Newman shares his family's story with schoolchildren and college students around Rhode Island via the Sandra Bornstein Holocaust Education Center.



"AS LAWYERS, WE MUST SHOW THE HUMANITY OF THE PEOPLE VIEWED AS OUTCASTS AND GIVE VOICE TO THE VOICELESS."

– PROFESSOR PETER MARGULIES

"Prejudices aren't inherited, they're learned," says Newman, who also combats anti-Semitism as part of the organization Rhode Island Judges and Lawyers for Israel. "If we don't prevent hate and prejudices from arising, who is to say the Holocaust will not happen again? Not just for Jews, but for any minority."

That argument rings vividly true even today, notes RWU Law Professor Peter Margulies, who has – in his work representing Haitian, Vietnamese and, most recently, Central American refugees – seen countless instances where displaced people are met with fear, distrust and nativism.

Jewish refugees from the Holocaust were refused asylum in many countries (including the U.S.), sometimes resulting in their being sent back to their deaths. Millions of Syrian refugees today are facing similar international attitudes, framed as "concerns over national security," as they attempt to escape their war-torn country, Margulies notes.

His work to strengthen immigration laws while also shaping national security protocols via congressional briefs on how to effectively and expeditiously screen refugees for potential threats is deeply informed by his parents' experience.

Margulies' father fled Vienna during the war, finally finding refuge on the other side of the world in Shanghai – China being one of the few countries that accepted Jewish refugees at the time. Unable to escape Poland, his mother lived out the war in a cramped, stifling hole dug under a chicken coop, where a farmer concealed her for nine months.

"We have to be on our guard against viewing people as so foreign to us, as the Nazis treated the Jews," Margulies says. "As lawyers, we must show the

humanity of the people viewed as outcasts and give voice to the voiceless."

*for my grandfather
and my father*
'FOR MY GRANDFATHER
AND MY FATHER'

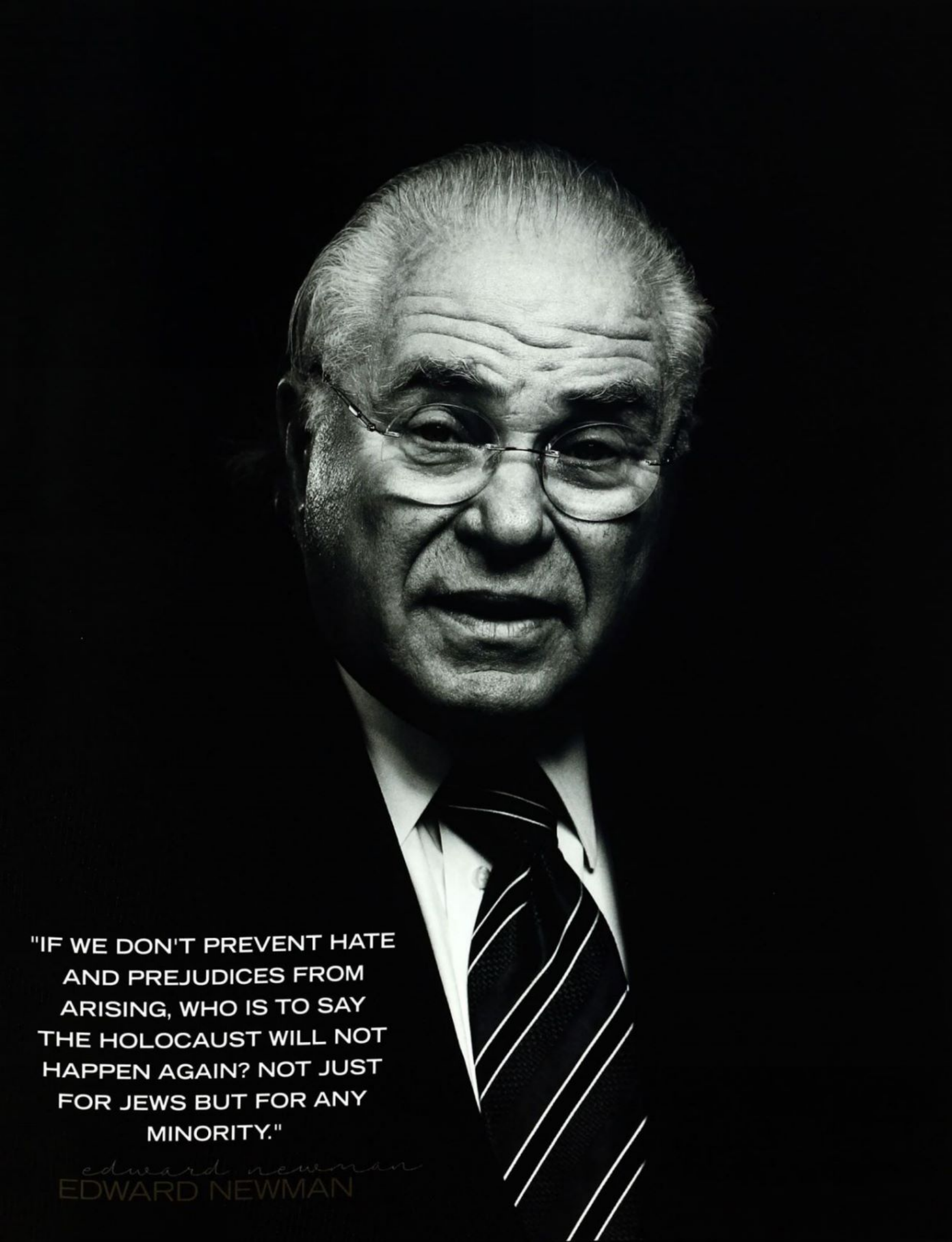
By decades later bringing the case of Max Stern's stolen artwork to the court system, Glenn Friedemann – and the legal team for which he worked – became that voice for a man who never saw justice in his lifetime. For months they worked diligently to build a case for conversion and replevin against a Providence-based German baroness who had inherited the artwork from her stepfather, a deceased German physician.

In 2006, their team secured a decision in the U.S. District Court of Rhode Island that the current owner was in wrongful possession because the Nazis had unlawfully taken and sold the Franz Xaver Winterhalter painting, along with the forced liquidation of Stern's entire art gallery. Following Max Stern's final wishes, *Girl from the Sabiner Mountains* was returned to his foundation and underwent conservation work for display at the Montreal Museum of Fine Arts.

"It was such a proud moment for me and gave me great satisfaction to right this injustice – for the client, the Max Stern Foundation, and for my grandfather and my father," Friedemann says.

At the conclusion of the case, Friedemann received an unexpected handwritten note from the trustees of the Max Stern Foundation, thanking him for his work. It was a touching reminder, he says, of the power that lawyers have to restore justice to the hands of people who have been wronged.



A black and white portrait of an older man with glasses, wearing a suit and a striped tie. He is looking directly at the camera with a serious expression. The background is dark.

"IF WE DON'T PREVENT HATE
AND PREJUDICES FROM
ARISING, WHO IS TO SAY
THE HOLOCAUST WILL NOT
HAPPEN AGAIN? NOT JUST
FOR JEWS BUT FOR ANY
MINORITY."

edward newman
EDWARD NEWMAN

WAGE THEFT

At the federal, state and local levels, Rhode Island is cracking down on employers who sidestep the law to shortchange their workers. And lawyers are on the front lines...

By Dick Dahl

As the movement to raise minimum wages expands across the country, the notion that America's workers deserve a fairer shake in general is gaining ever greater traction in the public consciousness – and perhaps nowhere is the shift more dramatically apparent than in Rhode Island.

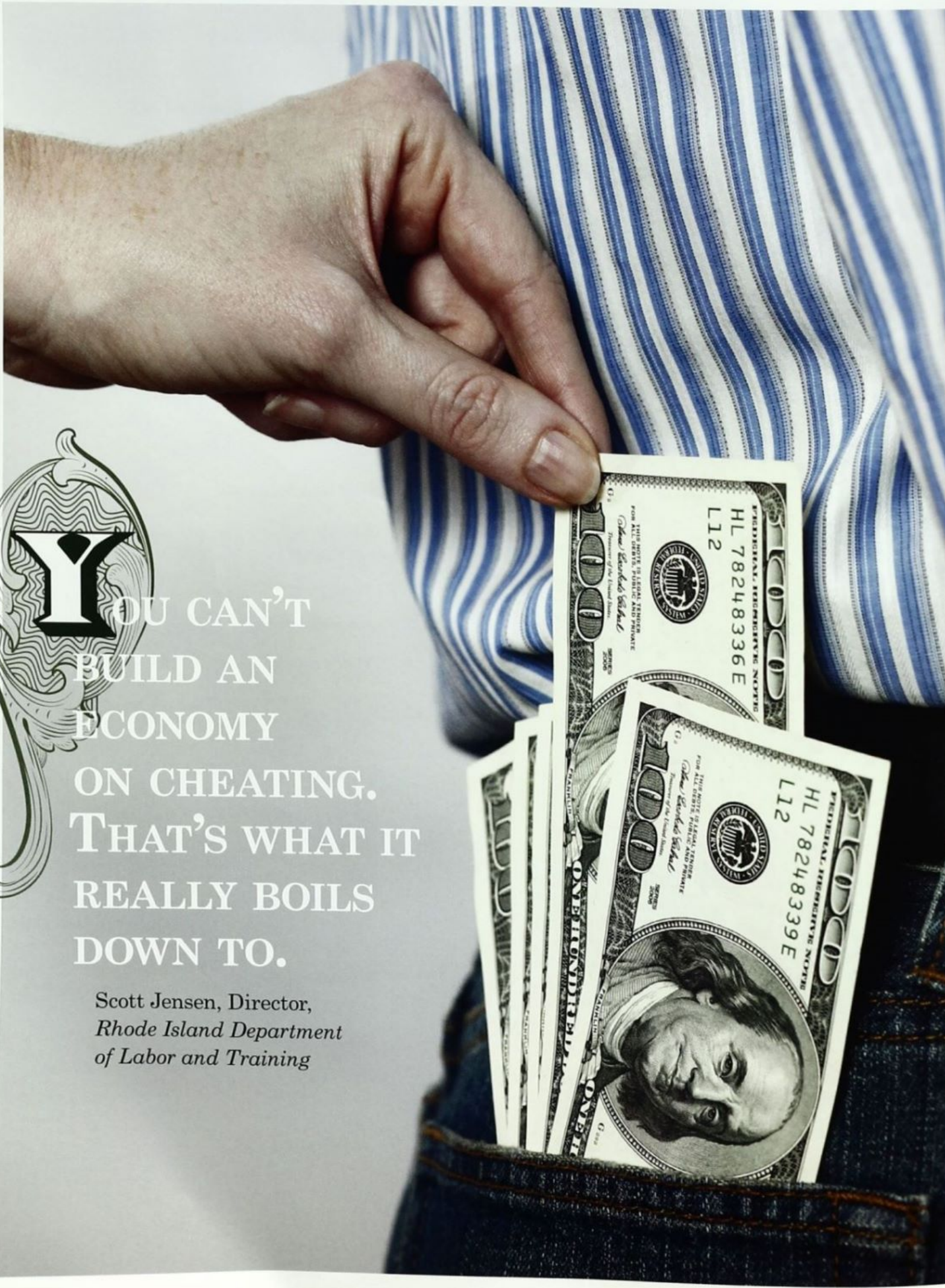
On January 1, the Ocean State's minimum wage rose from \$9.00 to \$9.60, making it one of the highest minimums in the country. At the same time, state agencies were poised to embark on the second year of a program aimed at cracking down on wage theft – a term covering any number of schemes by which unscrupulous employers try sidestepping the law to shortchange their workers.

But while wage theft is widely prevalent, there simply haven't been enough lawyers on the ground to represent – or even estimate the number of – employees victimized by such practices.

"There aren't a lot of lawyers or legal services organizations doing this work," says RWU Law Dean Michael Yelnosky, an expert in labor and employment law. "So it's been an interesting evolution over the last couple of years in Rhode Island to identify the scope of the problem and think about ways in which enforcement might be amplified."

Indeed, the state has ratcheted up enforcement under the leadership of Governor Gina Raimondo. RWU Law has been playing a role as well, by providing attorneys who can offer direct legal assistance to victimized workers. The law school partners with the Rhode





YOU CAN'T
BUILD AN
ECONOMY
ON CHEATING.
THAT'S WHAT IT
REALLY BOILS
DOWN TO.

Scott Jensen, Director,
*Rhode Island Department
of Labor and Training*

Island Center for Justice, a nonprofit public interest law center launched last spring.

In battling wage theft, the Center (which reserves two-year, post-graduate fellowships for early-career RWU Law graduates) has been partnering with Fuerza Laboral, a Central Falls workers' rights organization.

"Fuerza Laboral hadn't had access to legal assistance," explains Center director Rob McCreanor. "We wanted to do this work in a way that both built on the efforts of community advocates and community-based organizations and also supported their organizing efforts. Fuerza Laboral emerged pretty quickly as a good partner in that model."

MAKING DEMANDS

Marissa Janton '11, one of two RWU Law alums currently on post-graduate fellowships at the Center, heads its Wage Justice Project. Twice a month, she goes to Fuerza Laboral to conduct legal clinics in Spanish – she is a former high-school Spanish teacher – and hear stories of the myriad ways in which employers try to cheat their workers out of money.

"Sometimes they work more than 40 hours a week – up to 80 hours a week – and they're paid in cash and not by the hour," Janton says. "It's a flat rate with no regard to minimum wage, and no regard to overtime. It can also involve people who worked for several months and were not paid for one or two of those months."

There are repeat offenders, she says, including recognized names in the hotel and hospitality industries. The first step in making a claim against an employer is to issue a straightforward demand letter – and that is usually enough, according to Janton.

"The people at places with well-known reputations don't want that in the news," she says. "They try to get away with things, and when they realize they've been caught, they know the law and they'll say something like, 'Oh, it's a mistake,' or 'It's a language difficulty,' and 'We'll fix it now.'"

Often, Janton says, employers will pay the amount when they realize that if they go to court they could be liable for "liquidated damages" of twice the amount owed.

A more evasive employer gambit, however, is to classify workers as independent contractors.

"The impetus for employers to classify workers as independent contractors, as opposed to employees, is quite significant," says Yelnosky, and the appeal for this approach is "not just the minimum wage and overtime pay provisions of state and federal law."

In addition to avoiding those wage and hour laws, employers can maneuver around many other employment regulations by classifying workers as independent contractors. For example, Title VII, which prohibits discrimination against an employee

by an employer, is not applicable if a firm discriminates against an independent contractor. The same is true of other anti-discrimination laws. "So if they can avoid having their workers classified as employees, firms avoid an awful lot of regulation," Yelnosky says.

GOING TO THE GOVERNMENT

It's important for wage theft claimants to keep a log of their work hours, according to Janton. If they don't, Center lawyers might direct them to the Providence district office of the U.S. Department of Labor's Wage and Hour Division, where they can remain anonymous if DOL conducts an investigation.

A second option is the state Department of Labor and Training, which has taken a very active role in targeting wage theft violations, and where Rhode Island's \$9.60 minimum wage applies instead of the federal minimum of \$7.25. Workers who file a state claim, however, cannot remain anonymous.

Department of Labor and Training director Scott Jensen, who took on the position in February 2015, says his office is indeed focused on wage theft.

"It's a priority of the Raimondo administration to take this issue seriously," he says. "Because you can't build an economy on cheating. That's what it really boils down to."

And there never seems to be a shortage of cheaters.

"It's always been going on," Jensen says. "It's just that it's going on disproportionately in parts of the community where the people are most vulnerable."

In 2014, the General Assembly laid the groundwork for a multi-agency response by creating a Task Force on the Underground Economy and Employee Misclassification. The bill's chief Senate sponsor, Michael J. McCaffrey, noted that its purpose was to "stem unfair competitive advantages that dishonest individuals seek."

According to Jensen, Rhode Island's ability to address wage theft at the administrative level had been hamstrung by a state law that placed both investigation and adjudication of wage-theft cases within the Department of Labor and Training. In most other states, adjudication is handled separately by an administrative law judge. Because his agency was handling both functions, Jensen says, the result was often a "muddle."

Under the directive from the General Assembly and the Raimondo administration, however, the agency reconstituted itself by creating a separate investigative unit within the Wage and Hour division.

"So we still have our own folks who do the hearings, but we've tried to put a little distance between the two functions," he says. "I think the biggest change is that we're actually doing investigations,



SHORTCHANGED IN RHODE ISLAND

Nonpayment of wages takes place across a number of industries in Rhode Island, most commonly in the **RESTAURANT, CONSTRUCTION, HEALTHCARE, MANUFACTURING AND RETAIL** sectors.

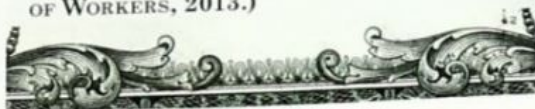
84 PERCENT of claims received by the Rhode Island Department of Labor & Training (RIDLT) since 2002 involve a complaint of unpaid wages or salary.

RIDLT data indicates that about **\$1.7 MILLION** in unpaid wages is owed to Rhode Island workers for the period from 2002 to 2013.

The U.S. Department of Labor has awarded approximately **\$3.2 MILLION** in back wages in Rhode Island during that same period.

When wages are not paid, there is a probable **ADDITIONAL LOSS OF RHODE ISLAND TAX REVENUES**, particularly when the employer is located in another state.

(FROM *SHORTCHANGED: A STUDY OF UNPAID WAGES IN RHODE ISLAND*, PUBLISHED BY FUERZA LABORAL/POWER OF WORKERS, 2013.)



just like we should. Because of our weird law, we weren't; but we have been doing more investigations for the last eight months and it's working much better. Now that we have a better procedure for looking at it, I'm hopeful that [employers] won't try [wage theft] as much."

In September, the agency made headlines when it announced it had reached a settlement with a company that had admitted violation of worker protection laws. Cardoso Construction, Inc., agreed to pay more than \$730,000 in back pay, interest and penalties for classifying 27 workers as independent contractors instead of employees.

A few weeks later, Jensen announced that the agency had ordered another employer, Mancieri Flooring Co., to pay penalties of \$331,000 for misclassifying workers as independent contractors, as well as failing to pay the prevailing wage on a public project and falsifying records.

THE FEDERAL LEVEL

At the federal level, enforcement efforts in Rhode Island are handled by the regional office of the Labor Department's Wage and Hour Division. The head of that office is RWU Law alumnus Donald Epifano '09, who says he was inspired to go into labor and employment law while taking two courses from Professor Yelnosky.

According to Epifano, the regional offices designate "priority industries" in their locales – and since he came to Providence in 2014, one of the biggest targets has been restaurants.

"In the restaurant industry, we see violations regularly," he says. "These violations take various forms, but most commonly the issue is cash salaries for cooks and nonpayment of overtime for them. They'll get paid like \$500 a week with no overtime, despite working upwards of 70 hours a week at times. Another problem is employers who take tips from the workers who are entitled to those tips."

In 2015, Epifano's office announced three six-figure resolutions of restaurant worker violations – recovering, in all, more than \$500,000 in back wages and damages.

Epifano points out that, in addition to investigating and prosecuting abuses, his office aspires to educate and inform the public about their rights under wage and hour law and about the problem of wage theft – so that vulnerable employees won't be afraid to step forward.

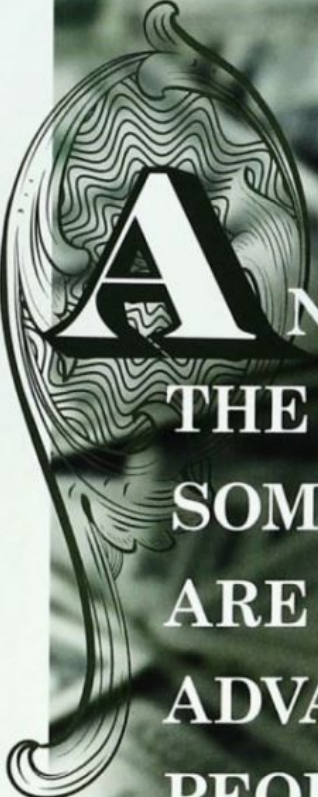
Part of that effort means going to community groups and beyond – for example, the Guatemalan Consulate in Providence – to let people know that the Wage and Hour Division and the Department of Homeland Security have a memorandum of understanding that DHS will not take action against any worker who is involved in a workplace investigation.

Meanwhile, the Rhode Island Center for Justice is expanding its efforts to fight against wage theft in 2016. Part of that effort took place in March and April, with a seven-week training program aimed at helping young lawyers hone their litigation skills in the context of the U.S. Fair Labor Standards Act and the Rhode Island Minimum Wage Act.

"We want to give new lawyers the tools they need to expand access to justice by taking on wage-theft cases," says McCreanor. To Janton, her experience at the Justice Center has been invaluable.

"Since my first clinic at Fuerza Laboral, I've just become so passionate about it," she says. "These workers are some of the hardest-working people I've ever met; their work ethic is just amazing. And just because of the almighty dollar, some employers are trying to take advantage of these people – and it makes me so angry."

RWU LAW



AND JUST BECAUSE OF
THE ALMIGHTY DOLLAR,
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Marissa Janton '11



Defending the Defenseless

Brook Ashley '08 spearheads a new program that expands access to legal services for domestic-violence victims who can't afford lawyers

PROFILE

Brook Ashley '08

By Dick Dahl

When lower-income victims of domestic violence escape their abusive relationships, they often face a secondary barrage of battles – legal proceedings involving divorce, visitation and custody – without adequate funds or professional resources.

What can be done?

Enter Brook Ashley '08, who has dedicated her professional life to ending violence against women. This February, she launched a new program designed to expand access to legal services for domestic violence victims who can't afford lawyers. It's called Partners Overcoming Domestic Violence.

"We wanted to create a program with a twofold purpose," Ashley says. "One, we wanted to increase access to justice for survivors; and two, we wanted to increase the number of attorneys who are willing to take these cases and feel comfortable doing it."

Partners Overcoming Domestic Violence is a collaboration between the Rhode Island Bar Association, RWU Law, Rhode Island Legal Services, the Rhode Island Commission Against Domestic Violence, and the Rhode Island Family Court. According to Ashley, the idea of building such a service had been percolating since her days

as an evening division student at RWU Law. Longtime RWU Law lecturer Liz Tobin Tyler – now an assistant professor at Brown University's Albert Medical School and School of Public Health – headed a group to come up with ideas and, when she left in 2013, Ashley replaced her as chair.

In the end, Ashley explains, participants settled on a model that would effectively fuse the bar association's existing Volunteer Lawyer Program with a new mentoring program designed to pair experienced lawyers with younger attorneys seeking pro bono opportunities. Ashley's group came up with a screening tool for determining which cases to forward to the new program. Once identified, the cases are assigned to available legal teams consisting of two volunteer lawyers and one mentor. In addition, an advocate from the Commission Against Domestic Violence is made available to clients for counseling and other non-legal services.

The group received commitments from six mentors, and its initial roster of volunteer lawyers numbered 17. A series of training sessions followed in February, including role-playing with contested hearings and mock negotiations, and work on the first actual cases started in early March.

because they recognize there is a problem and they want to be part of the solution."

"The attorneys we've seen volunteer all have different backgrounds and are at different places in their legal careers," Ashley says. "For most of them, this is not the area of law in which they usually practice, but they want to either give back or expand their areas of practice – and this is a great opportunity to do that. But the majority, honestly, are people who want to get involved because they recognize there is a problem and want to be part of the solution."

That's why Ashley herself has become involved in domestic violence prevention. For some 15 years prior to law school, she had worked in a variety of emergency shelters, court and advocacy programs – and she sought to apply her legal education expressly to the fight to end violence against women.

"One of the things I found so attractive about Roger Williams, and something I really appreciated, was the Feinstein Institute [now the Feinstein Center for Pro Bono & Experiential Education] and the school's commitment to teaching students the importance and value of service to others," she recalls.

Looking forward, Ashley is optimistic about Partners Against Domestic Violence.

"It's been a group effort and I'm very proud of what we've accomplished," she said. "I think it's going to grow and be a really great program that will impact survivors in our community."

Mark your calendar
Events and Important RWU Law Alumni Dates

September 22

5th Annual Professor Santoro Business Law Lecture
Omni Providence Hotel

September 24

Law Alumni Weekend Evening Reception
Watch <http://law.rwu.edu/calendar> for details

September 25

**17th Annual Law Alumni Association
Scholarship Golf Tournament**
Metacomet Country Club, East Providence, R.I.

November 3 & 4

10th Marine Law Symposium: Marine Debris
RWU Law, Bristol, R.I.

For details on these and many other exciting
upcoming events, visit

law.rwu.edu/calendar

RWU LAW ●●● ALUMNI CONNECTION

SPOTLIGHT

Watch Your Mailbox!

- Featuring spotlights on alumni and their accomplishments
- Highlighting new volunteer opportunities with the Law Alumni Association
- Promoting alumni networking events

Please send alumni spotlight suggestions to
lawalumni@rwu.edu

Class Notes

1999

John A. Pagliarini, Jr. was elected state senator for Rhode Island District 11. His law practice in Tiverton is focused in the areas of property taxation, zoning, planning and land use law.

2001



Lorraine N. Lalli was appointed to the Providence School Board. She is currently the Assistant Dean of Students at RWU Law.

2002

Stephen Cooney was named partner at Higgins, Cavanagh & Cooney in Providence. His work focuses on civil litigation, including defense of products liability, toxic tort, premises liability, transportation litigation and insurance claims.

2003



Christian Frey was elected to serve as District Court Judge in Williamsport, Pa.

2004

Mitchell L. Harris was appointed as financial advisor with Raymond James Financial Services Inc. in Glenside, Pa. Mitchell will be responsible for advising businesses and individuals with their retirement and investment needs. Previously, he practiced law at Pepper Hamilton LLP in Philadelphia.

2005

Ronald M. Metcho was appointed shareholder at Marshall Dennehey Warner Coleman & Goggin, P.C. in Philadelphia. Ron and his wife, Nicole, reside in Philadelphia.

2006



Joseph A. Farside, Jr. was named partner at Locke Lord in Providence. His practice focuses on antitrust and environmental issues, including merger review counseling, Hart-Scott-Rodino Act (merger control) compliance, and state and federal environmental enforcement matters.



Adam Ramos was named partner at Hinckley Allen in Providence. His practice concentrates on energy-related matters and complex business and commercial litigation. Adam was named

a Rising Star by *Super Lawyers* for the areas of business litigation, intellectual property litigation and civil rights/First Amendment. He serves on the Rhode Island Board of Bar Examiners, Rhode Island Fair Funding Formula Working Group, Bristol Warren Education Foundation and Hope Alzheimer's Center.

2007

Elizabeth Suever was promoted to shareholder at Roberts Carroll Feldstein and Peirce in Providence.

2008

Robert J. Humm was named counsel at Adler Pollock & Sheehan P.C. in Providence.



Marc A. Antonucci was named partner with Iseman, Cunningham, Riester & Hyde LLP in Albany, N.Y. Marc practices primarily in the areas of litigation and health care. He also serves on

the board of the Center for Disability Services Foundation, Inc. and is a member of the Commercial Services Advisory Board for the Center for Disability Services.

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Alicia J. Samolis, partner at Partridge Snow & Hahn in Providence, was named a 2015 Rising Star *Rhode Island Super Lawyers*. She was also recognized by *Providence Business News* as a 2015 "Woman to Watch" in the professional services industry.

2010



Regina Curran is the director of student conduct and civility education at Towson University, Md.




John Dorsey was named partner at Ferrucci Russo in Providence. John handles receiverships, insurance claims, environmental regulations and collections of accounts receivables.

He serves as counsel to court-appointed receivers in the Rhode Island Superior Court and was named to the Superior Court panel of receivers based on his experience in matters involving insolvency, turn-around and repositioning of distressed business operations, and resurrecting distressed real estate projects. John was named a Rising Star in the area of real estate law in 2015 by *Super Lawyers*. He serves on the Board of Directors for the Quonset Development Corporation, and is a member of both the Rhode Island Black Business Association and the Thurgood Marshall Law Society.

2011

Lauren Oliverio is a deputy attorney general with the Department of Children and Families, Office of the Attorney General, Newark, N.J.



Coming Home

Three accomplished alumnae return to their alma mater, bringing deep skills and experience

PROFILE **Katie Ahern '07, Jenna Hashway '11, Deborah Gonzalez '07**

By Lorraine Lalli '01, Assistant Dean of Students

When I joined RWU Law's administration in 2005, I brought a unique perspective as an alumna: I was familiar with the Roger Williams student experience. I already knew the faculty and most of my new colleagues.

Most importantly, I was fully invested in the future success of the law school and our students, based on our shared experience.

This year, three other alumnae returned to RWU Law to join me. Drawing on their own student experiences and their outstanding legal practices, they are leading our flagship experiential programs, and providing our students with hands-on, practical learning opportunities.

Katie Ahern '07 is the new director of our Start-up Business Clinic, where students work directly with nonprofit and small-business clients to gain practical transactional lawyering skills. Katie brings tremendous experience, having served as an associate at the firm of Hinkley, Allen & Snyder, where her practice focused on all areas of federal, state and local tax matters affecting businesses, individuals, governmental entities and tax-exempt organizations. She holds an LL.M. in taxation from Boston University School of Law, is recipient of *Providence Business News*' "Forty Under 40" award, and was rated a 2015 *Super Lawyers* Rising Star.

Jenna Hashway '11 returns as Professor of Legal Practice. Jenna was a standout student at RWU Law, graduating as class

valedictorian and editor-in-chief of the Law Review, and receiving 16 CALI awards for the highest grade in a class. Since 2011 she has clerked for Chief Justice Paul Suttell of the Rhode Island Supreme Court, Judge O. Rogerice Thompson of the U.S. Court of Appeals for the First Circuit, and Judge Arthur Votolato of the Bankruptcy Court for the District of Rhode Island.

Deborah Gonzalez '07 is the new Director of our Immigration Law Clinic – a job she knows well, having served as interim director for two years while maintaining her own busy immigration law practice in East Providence, R.I. Deborah is experienced in all aspects of immigration law including deportation and removal cases, as well as family and business immigration cases. Under her direction, clinical clients have won important immigration victories. In 2015, her powerful, client-focused approach to clinical education and unmatched commitment to public interest work earned her recognition as RWU Law's inaugural Alumni Public Interest Champion for Justice. She recently led students on an Alternative Spring Break trip to aid women and children detained crossing the border into Texas, and she is founder of the Brazilian Information Group, dedicated to helping Brazilian and Portuguese-speaking communities adjust to life in the U.S.

Welcome home to three accomplished alumnae who are helping to make RWU Law stronger than ever!

2012



Nicholas Hemond was re-appointed vice-chair of the Providence School Board. He is currently an attorney with DarrowEverett in Providence. His practice is in the areas of litigation and government

affairs where he regularly represents clients in civil, criminal defense and family court matters. Nicholas also serves as the assistant city solicitor for the City of Central Falls. In addition, he works as a lobbyist at the State House and is vice president of Capitol Communications Group LLC.



Kate Kishfy was appointed development and planned giving officer at the Rhode Island Foundation. Kate will be responsible for inspiring philanthropy with new prospects and current donors,

and their professional advisors, by providing charitable planning advice and high-level relationship management and customer service. Previously, she was an associate at Hinckley Allen and a law clerk for the Honorable Chief Justice Paul A. Suttell of the Supreme Court of Rhode Island. Kate serves on the Board of Directors of the Partnership for Philanthropic Planning of Rhode Island.

Amanda Montgomery is the chairperson of the Board of Trustees at the Rhode Island School for the Deaf.

Elizabeth Pytlik and **Aaron Cardenas '13** were married on October 31, 2015, in St. Augustine, Fla. Fellow RWU Law alum Caitlin Humphreys '13 was in attendance. Elizabeth is pursuing her Masters of Public Administration at the University of South Florida and Aaron



is pursuing his LL.M. in Elder Law at Stetson University College of Law. Elizabeth is a special projects manager with Hillsborough County, where she manages the County's HIPAA compliance, coordinates strategic planning and performance management initiatives, manages grant funding, and provides compliance support to the human resources department. Aaron is practicing Elder Law and provides pro bono services to Gulfcoast Legal Services in St. Petersburg. They currently reside in Clearwater, Fla.

2013



Kendra Levesque is the brand and marketing attorney for Hasbro, Inc. Kendra is responsible for monitoring several of the Hasbro brands, including Playskool®. She reviews product packaging,

television commercials, print ads, social media promotions and all advertising aspects of the brand, in addition to general legal tasks.

James Harry Oliverio is an associate at Hill Wallack LLP in Princeton, N.J. He focuses his practice on complex insurance coverage and contractual disputes. Previously, he served as a law clerk to the Honorable Charles E. Powers, Jr., J.S.C., Law Division, Bergen Vicinage.

2014

Sarah Bratko was appointed manager of governmental affairs for the Rhode Island Hospitality Association in Newport. Sarah is responsible for evaluating proposed legislation to determine its impact on the restaurant and hotel industries, as well as communicating the Association's position on legislation.

Samantha Clarke is an associate at Pannone Lopes Devereaux & West in Providence. She is a member of the corporate & business and litigation teams. Previously, she was a law clerk for Justice William P. Robinson III of the Rhode Island Supreme Court.

Brandy Disbennett is the western regional manager for the Virginia Department of Veterans' Services in Roanoke, Va.



Marcus Swift is a staff attorney for the Northwest Workers' Justice Project in Portland, Ore. He also serves on the Board of Directors of *Street Roots*, a nonprofit weekly newspaper

that creates income opportunities for people experiencing homelessness. He is engaged to marry Lauren Macbeth.



Nicole M. Verdi is a litigation associate at Adler, Pollock & Sheehan in Providence. Previously, she was a law clerk for Justice Maureen McKenna Goldberg of the Rhode Island Supreme Court.

Nicole serves on the Law Alumni Association Board of Directors, and on the boards for the Rhode Island Women's Bar Association and Youth in Action.

Volunteer Opportunities!

Alumni are a valued resource for the School of Law and are encouraged to participate in available opportunities. Are you interested in:

- Serving on a Law Alumni Association Committee (events, golf, etc.)?
- Serving as a Law Alumni Admissions Ambassador assisting with student recruitment?
- Serving as a judge during student oral arguments?
- Career development mentoring or professional networking with students?
- Serving as a class agent for the Office of Law Alumni Relations?

To learn more, contact the Office of Law Alumni Relations at lawalumni@rwu.edu or (401) 254-4541 with any questions or to volunteer your time. Thank you.

In Memoriam



Cynthia M. Bessette '13, 56, of Cumberland, R.I., passed away unexpectedly at her home on May 28, 2015. A realtor and later a paralegal for much of her professional life, Bessette was also an elementary-

school theater director and a local Girl Scout troop leader. "She was a wonderful person, and returning to school to earn her J.D. later in life was an important personal accomplishment for her," said Assistant Dean of Students Lorraine Lalli. Bessette was an attorney with the Law Offices of Orlando Andreoni in East Providence, R.I. She is survived by her husband Robert, son James and daughter Rebecca, all of Cumberland, as well as two brothers, a sister, and several nieces, nephews and cousins.



Rising 3L Michael P. McNulty, 44, of Clarks Summit, Penn., passed away unexpectedly on August 29, 2015. McNulty had completed his second year at RWU Law the previous May and was actively pursuing his interests in maritime and admiralty law as well as criminal law, having completed an internship at the Baltimore City state's attorney's office. Last summer, he worked at the Law Offices of Charles Garganese, Jr., LLC, in Providence. He had planned to participate in the prosecution externship program in the Providence City Solicitor's office in the fall.

"He loved sports, politics, was an avid reader and actively engaged in all aspects of the world around him," a family spokesperson said. "To his friends he was a constant source of quick-witted and intelligent humor. He was a calm and thoughtful presence in our lives and he will be very much missed." Added Lisa Quinn, Pro Bono & Experiential Education Coordinator, "Michael touched many lives here at RWU Law and his absence has created a huge hole at the law school." He is survived by his wife Tara, as well as two brothers, a sister, and several nieces, nephews, aunts, uncles and cousins.

*In his memory, the family has established the **Michael McNulty Scholarship Fund**. Donations may be made to the Roger Williams University School of Law, c/o Office of the Dean, 10 Metacom Ave., Bristol, RI 02809. All donations should include a memo indicating that they are for the Michael McNulty Scholarship Fund.*

Michael Voccola '97 Wins Alumni Service Award

The RWU Law Alumni Association (LAA) has established a new alumni award program.

For its inaugural year, the LAA presented its Alumni Service Award to Michael Voccola, Esq. '97 in recognition of his years of outstanding service to the School of Law. He was the first Law Alumni Association President and served on the LAA Board of Directors from 1999-2002.

Michael volunteers for various activities at the School of Law, including the Champions for Justice Committee. In addition, he serves as a mentor to current students and most recently delivered an address entitled "How to Become a Sought-After Deal Maker," providing guidance to those interesting in pursuing careers in corporate law. Thank you, Michael, for devoting your time and talent to enriching the students of RWU Law – and congratulations!



Michael Voccola, Esq. '97 receiving the 2015 RWU Law Alumni Service Award from LAA President, Kimberly Ahem, Esq. '09, at the Annual Law Holiday Reception



- New Job? Promotion? New Child? Award Recipient? New Marriage? Other?
- Keep us informed and your fellow alumni in the loop! You may submit submissions for the Class Notes section of the next RWU Law magazine by emailing lawalumni@rwu.edu
- Professional and personal photos are welcomed and will be published in the magazine as space allows.



When Fear Clouds Reality



A Muslim alumna describes the struggle and complexity of responding to Islamophobia in an Era of Terror

By Hinna Mirza Upal '07

When I moved to the United States in 2002, it never occurred to me that I was following in my parents' footsteps by leaving my birthplace, Canada, for greener pastures. That said, there is a substantial difference between leaving Canada for the United States, and leaving Pakistan for Canada. The most important difference, perhaps, is that while economic prosperity was my sole motivator, the promise of religious freedom loomed equally large for my parents.

You see, I was born into a minority sect of Islam called *Ahmadiyya Jama'at*. Ahmadis are followers of Mirza Ghulam Ahmad of Qadian, India, who in 1889 founded a reformist Muslim community. One major difference in belief between Ahmadi Muslims and non-Ahmadi Muslims, is that Ahmadis believe that Mirza Ghulam Ahmad is the awaited Messiah and Mahdi foretold in holy scripture, while the rest of the Muslim world is still waiting for a Messiah.

Some Muslims don't take such divergences lightly. In 1974, then Prime Minister of Pakistan Zulfikar Ali Bhutto, declared Ahmadis a non-Muslim minority by Constitutional amendment. And while other religious groups, such as Christians and Hindus, were non-Muslim minorities by their own declaration, Ahmadis were forcibly declared a non-Muslim minority through legislation.

The aftermath was that any attempt by an Ahmadi to profess herself a Muslim was considered blasphemy. In 1984, blasphemy was criminalized when Ordinance XX added sections 298-B and 298-C to the penal code, which remains the law in Pakistan to this day. As a result, Ahmadis are imprisoned and fined for the ordinary expressions of their faith because they are "posing as Muslim." This may be as simple as saying *Asalaamu Alaikum*, a religious greeting that doubles as the local way of saying hello, or reading *salaat*, which is the Muslim ritual prayer. My parents left Pakistan in 1979, at a time when the already heavily persecuted members of our faith were facing an even more dangerous climate of criminalization.

Given recent events, our family is having a sense of *deja vu* in the U.S. It was reported that by the end of 2015 in the United States, the rise in number of hate crimes against Muslims and mosques sharply increased. What has been called a surge in "Islamophobia" appears to be a response to the tragic and violent events perpetrated by radical Muslims, including the Paris attacks and the San Bernadino shooting. In a watershed moment, presumptive Republican nominee Donald Trump called for a "total and complete shutdown of Muslims entering the United States," resulting in an uproar from all sides for a variety of reasons and bringing

a specific brand of xenophobia into the mainstream. Following Trump's remarks, the following thoughts occurred to me:

1. Where are all our passports?
2. We are lucky to live in upstate New York where the drive to the Canadian border is only about two hours.
3. This is ridiculous. That couldn't be constitutional, at least with respect to U.S. citizens (looks at youngest daughter). See Equal Protection Clause and First Amendment to the U.S. Constitution.
4. But see Chinese Exclusion Act and *Korematsu*, which is still good law (looks at older daughter and husband).

In some ways, I probably should have felt more shock and outrage than I actually did. It was like I was waiting for this conversation to happen, and then it finally did. The reasons behind my almost fatalistic view, however, are somewhat embarrassing to admit.

First, I am acutely aware of the luxury that it is for me to publicly call myself Muslim. I frankly could not do this in many majority-Muslim countries because the tide of anti-Ahmadi sentiment continues to grow around the Muslim world. Second, I am kind of afraid of Muslims too. And not just the extreme ones.

The author's mother (with her younger brother in stroller) protesting Pakistan's Zia regime in Ottawa in 1982.



PICTURE: Colin Shaw

Protest

The importance of political protest was lost on this tired toddler, who tuned out for a mid-day snooze while Mom demonstrated on the legislature grounds Friday. They were part of a group of about 100 Ahmadi Moslems who want Ottawa to pressure the Pakistani government of President Zia-ul-Haf to stop persecuting members of the sect.

As a kid growing up in Canada, I was taught to speak loudly about my Muslim faith and debate freely with Christians, Jews and people of other faiths. I was well trained to use logic and make religious arguments based on whatever authority my audience found compelling, religious text (Bible, Torah or Quran), science and history. However, I was also taught to keep my mouth shut and head down when I was around non-Ahmadi Muslims, a group that I was told would hurt me at the first chance. As I grew older, I realized that my parents' fears were less applicable here, where new generations were mostly unaware of the battles over religious dogma occurring abroad. But it still took considerable conscious effort to feel comfortable enough to share my faith with other Muslims. Then, as my own Muslim feminist interpretations of the Quran began to clash with the majority (and even Ahmadi) Muslim patriarchal interpretations, once again I learned to be careful of expressing my opinions too freely, this time even with my fellow Ahmadis.

While I am grateful to be able to declare myself a Muslim in the United States without facing blasphemy charges or criminal punishment, there is a certain sense of irony in realizing that finally being part of the group identified as "Muslim" is clearly not all it's cracked up to be.

So, yes, a part of me understands what Trump is saying. He is responding to the very real fears of an electorate that feels powerless in the face of a violent, faceless enemy. And he is responding in such a way that makes (at least some) people feel empowered. By giving the enemy a face and a name, he has already created a promise of security. It is no wonder that Trump remains a popular figure. The driving force behind the rhetoric is the power of fear, which the term "Islamophobia" captures quite vividly.

"Fear, however, cannot be the mechanism through which we empower each other."

But it is not enough to simply dismiss those who would feel its power. Islamophobia may not be a real disease, but it represents a common story in human history. Just replace "Islam" with any other marginalized

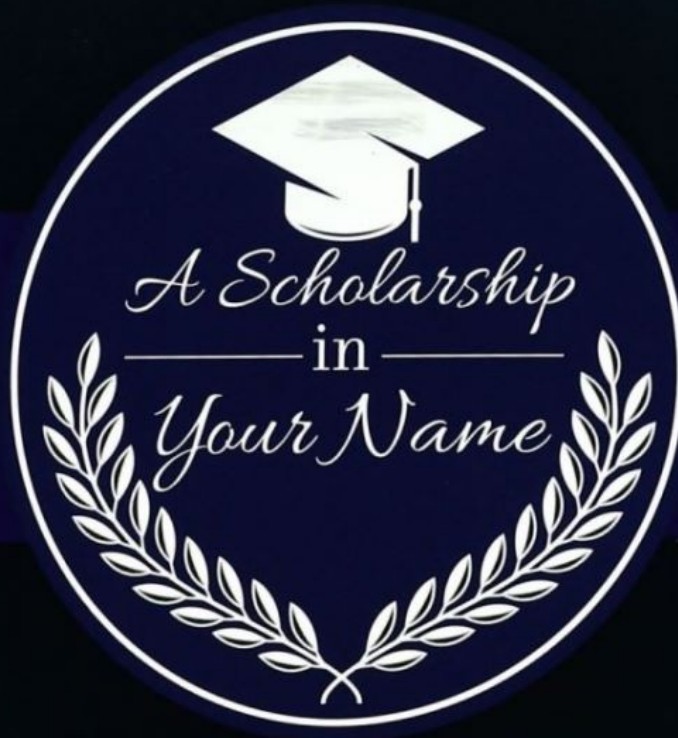
group from our past, or any one of the many marginalized groups that exist today around the world, Ahmadis included.

Fear, however, cannot be the mechanism through which we empower each other. Understanding the power of fear and acknowledging its validity is an important step to creating common ground from which a true discussion can emerge. This does not mean that complacency is acceptable. Rather, those who hold the values of religious liberty, diversity and inclusion should speak louder and with more conviction than ever before.

And yet, the same rules that I was taught as a child when engaging in religious debate are just as applicable today. We must learn to speak the language of those with whom we wish to engage, which requires understanding their values and motivations, and using the authority that is most compelling to them. Targeting Muslims may present a catchy election sound bite, but we all share the responsibility to be ready with alternatives and solutions that are better and more precise than the ones being offered.

While there are those who may view humanity on a clear upward path towards the progression of human rights and freedoms, reflecting on my family's past and present situation reminds me that such progress is not universal – and it's certainly not inevitable. Ultimately, the most difficult obstacles we must overcome are our own fears. Those who seek to divide us along lines of religion, color and race cannot do so without our permission, and it is up to us to cross those lines and render them insignificant. **RWU LAW**

Hinna Mirza Upal, Esq. '07 is an associate with Littler Mendelson P.C., in Rochester, N.Y., and a member of Roger Williams University School of Law's Board of Directors.



Under the Dean's Scholars Program, with every gift of \$500 you make to the RWU Law Annual Fund a law student will be awarded a scholarship in your name.



It has been my distinct pleasure to work with many students during my time at the Law School, and I have seen first hand how much they benefit from donors' support of their education. The prestige of a scholarship is a consistently compelling tool to attract and retain deserving students. Two of the main challenges the Law School faces are providing adequate financial aid to students and increasing revenues through the RWU Law Annual Fund. The Dean's Scholars Program addresses both of these issues head on.

– Linn Foster Freedman, Esq.

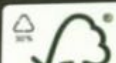
Recipients will be selected based on their academic performance and demonstrated financial need – and you will have the opportunity to meet your RWU Law Dean's Scholar in the coming academic year. By supporting this program, you will help provide funds that are used to award vital scholarships to qualified and deserving students at RWU Law.

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The view from RWU Law's new Providence campus, which formally opened its doors in May.



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