THE RULE OF LAW

How Do We Preserve It in the Modern Age?

CBA President Jonathan M. Shapiro welcoming event attendees.

It seems too often today we see the Rule of Law attacked and criticized. When a judge makes a decision that is unpopular, even if well-reasoned, it may be assailed as motivated by other factors. The media is criticized as distributing "fake news" and as biased. Social media does not apply the same journalistic standards as traditional media, and we have seen public opinion manipulated through social media. Connecticut has a requirement that all high school graduates must earn half a credit of civics education, but is that enough to instill civic principles in the public?

By Alysha Adamo and Leanna Zwiebel

"Politics and the Rule of Law" panelists (L to R) Hon. Ingrid L. Moll, Hon. William H. Bright, Jr., Secretary of the State Denise W. Merrill, State Representative Matthew D. Ritter, State Representative Thomas P. O'Dea, Jr., State Representative Steven J. Stafstrom, and Kelley Galica Peck.

Connecticut Supreme Court Chief Justice Richard A. Robinson providing the event's welcome remarks.

"The Rule of Law: Ensuring the Future" panelists (L to R) Justice Maria Araujo Kahn, Chief Justice Richard A. Robinson, Hon. Douglas S. Lavine, and Hon. Ingrid L. Moll.

CBA President Jonathan M. Shapiro introducing Connecticut Supreme Court Chief Justice Richard A. Robinson.

(L to R) Justice Andrew J. McDonald; CBA President Jonathan M. Shapiro; Steven Hernández of the Commission on Women, Children and Seniors; Hon. Nina F. Elgo; Keynote Speaker Asha Rangappa; Justice Maria Araujo Kahn; Chief Justice Richard A. Robinson; Hon. Douglas S. Lavine; Hon. William H. Bright, Jr.; and Hon. Ingrid L. Moll.

CBA President Jonathan M. Shapiro and Hon. Kenneth L. Shluger with student attendees from the Interdistrict School for Arts and Communication (ISSAC) of New London.

Keynote Remarks from Asha Rangappa

It's an honor to be here, especially among so many esteemed guests. I am especially thrilled to see young people here, because much of what I have to say concerns them.

As members of the legal profession, we are socialized into believing that the Rule of Law means fairly and impartially applying and administering the law to all who are seeking justice. This is true: but it is only partially true. Research shows that in order for the Rule of Law to be effective, it's not enough for it to be upheld in fact; rather, it must also be perceived to be legitimate and fair by the general public.

On this front, I have bad news, and then some really bad news, and some hopeful news.

I'm going to start by going back to the Cold War. As a former FBI agent who specialized in counterintelligence, I have been very interested in understanding how Russia launched such a successful disinformation campaign in the time period leading up to the 2016 election. I conducted cases on "perception management" as the FBI calls foreign propaganda—it's the broad term to describe any operation designed to influence American attitudes and opinions in a way that's favorable to the host country.

Much of what Russia did in 2015 and 2016 took advantage of new technology, like social media. But its tactics and goals were no different than those of the KGB in the Cold War—collectively known as "active measures."

I'm sure you've heard that term before. Put very briefly, active measures is an attempt to use your enemy's weakness against itself—sort of an invisible form of judo—and in the process, subvert everything of value that your adversary holds dear.

What does this have to do with the Rule of Law? Well, very early on the KGB understood that in the United States, the commitment and adherence to the Rule of Law was a fundamental pillar of democracy. If you can weaken the Rule of Law, you can weaken democracy. But how do you do that? The decentralization of our system of government, the independence of the judiciary, and our various modes of accountability—including our free press—make actually subverting justice nearly impossible. That is, finding a way to bribe or intimidate judges on a mass scale, or trying to plant "bad seeds" into the justice system as cops or judges, is not feasible.

The easier, cheaper, and more effective way to undermine the Rule of Law is to foment mistrust in the judicial and law enforcement system. You don't have to corrupt the justice system, in fact, as long as you can convince the public to believe that it is corrupt.

The KGB's, and now Russia's, approach is borne out by research on the relevance of public perception on the Rule of Law. Professor Tom Tyler, a professor at Yale Law School, writes that people's willingness to defer to decisions by the courts—the willingness to support the Rule of Law—is based in part on their perceptions of the justice system as fair, impartial, and respectful, and not on the outcome of their decision. In other words, the question is, even when people are on the losing end of a legal battle, are they willing to accept that decision and defer to it? This is, Professor Tyler says, the essence of the Rule of Law: deferring to a legal outcome, even if the result is unfavorable to your side.

Why is this important? It's important because people who view enforcers of the law as legitimate are more likely to follow the law. And it's doubly important because the majority of people don't have personal experience with the law—so their perception, rather than their own experience, is what they have to go on.

And here's where the bad news comes in. Tyler, writing in 2007,[1] was already seeing a decline in trust in the judicial system. At that time, his research showed that between 70-90 percent of people he surveyed expressed low levels of trust and confidence in the Supreme Court.

More recent research shows an even more alarming trend. A poll in April of this year[2] by PBS, NPR, and Marist found that 61 percent of Americans believe that the FBI is unbiased and doing its job—but that was a precipitous ten percent drop from just two months prior.

With these concerns in mind, Jonathan M. Shapiro set out on a mission to protect the Rule of Law as the 95th president of the Connecticut Bar Association, believing that it is indispensable to a thriving and vibrant society. He began his presidency posing the question, "How do we preserve the Rule of Law in the modern age?"

In an effort to answer this question, along with the help of Chief Justice Richard A. Robinson and the Connecticut Judicial Branch, President Shapiro spearheaded the Connecticut Bar Association's Rule of Law Conference, co-presented with the Connecticut Commission on Women, Children and Seniors, on December 6, 2018. The conference gathered Connecticut attorneys, judges, lawmakers, journalists, business leaders, and students to examine the Rule of Law, why it matters to the success of our community, and to ensure that we preserve its sanctity. Students from schools around the state attended the conference, including The Ethel Walker School of Simsbury, Interdistrict School for Arts and Communication (ISSAC) of New London, Timothy Edwards Middle School of South Windsor, and Westfield Academy of West Hartford.

With nearly 150 attendees, President Shapiro was especially thankful for the students' attendance, stating, "You are our future, and hopefully our present. Everyone in this room has a role in advancing the Rule of Law…We need to stand up for it and defend it." He then shared an old saying that "Democracy is not a spectator sport. In order to have free press, we need to stand up for it and we need to demand it. In order to have an independent judiciary, we need to stand up for it and we need to demand it."

Connecticut Supreme Court Chief Justice Richard A. Robinson commenced the conference by defining the Rule of Law: "It basically is a social contract we have with each other in this democratic republic that we have that the law applies to everyone equally. Are we perfect at it? The answer is no, we are not. It's an ideal. An

Professor Austin Sarat, a professor of jurisprudence at Amherst College, wrote in *The Guardian*[3] that in 2017, 38 percent of people surveyed trust the president, more than judges, to make the right decisions for the United States.

These statistics are more modest than the shift we are seeing in the trust in our institutions when they are broken down generationally. Professor Sarat found that among millennials, support for the Rule of Law is even lower than it has been in previous generations: Only 33 percent of people who were born after 1980 believe it is "essential to live in a democracy," compared to 72 percent of people born before World War II. Only 19 percent of millennials and post-millenials believe that a military takeover of civilian government would be illegitimate—compared to 43 percent of older Americans (which is itself a pretty low number).

The mistrust we're seeing in the Rule of Law is part of a broader pattern of social distrust—that is, the trust we have in each other as fellow citizens. There's a concept that sociologists call "generalized reciprocity"—or "thin trust"—which is used to refer to individuals' collective decision to give their fellow citizens—even ones they don't know—the benefit of the doubt. It's deciding to have your fellow citizen's back, even though you don't really know them, or owe them anything.

Robert Putnam, a professor at Harvard Kennedy School, notes that social trust is positively associated with many forms of civic virtue, including those that impact the Rule of Law. In his book *Bowling Alone: The Collapse and Revival of American Community*, he writes:

> …people who trust their fellow citizens volunteer more often, contribute more to charity, participate more often in politics and community organizations, serve more readily on juries, give blood more frequently, comply more fully with their tax obligations, are more tolerant of minority views, and display many other forms of civic virtue….Conversely, experimental psychologists have shown that people who believe that others are honest are themselves less likely to lie, cheat, or steal and are more likely to respect the rights of others.

Unfortunately, our general social trust is at a historic low. The General Social Survey[4] reports that only 30 percent of people believe that most Americans can be trusted—the lowest percentage since 1972.

You might say that this is to be expected: the judiciary—and the Supreme Court in particular—has become increasingly politicized. And you might say that some of the mistrust in the Rule of Law, and law enforcement in particular, is justified; abuse of power by law enforcement, in particular, has received much needed and long delayed scrutiny. And maybe you, too, looking at what's happening in the world—perhaps since the 2016 election—don't believe you can trust your fellow Americans.

Keynote speaker Asha Rangappa discussing, "What Is the Rule of Law and Why Does It Matter?"

It's true that our justice system is not perfect. Our democracy isn't perfect. But even so, I would posit that the statistics that I have mentioned are disproportionate to the reality, and that people perceive our institutions, and our legal system in particular, as being worse than it is.

I started out talking about the KGB, Russia, and perception management. Can we blame all of this on them? The answer is no—much of the messaging that is portraying our institutions and the Rule of Law as something that

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should not be trusted and even disregarded is coming…from us. It's coming from people on TV, from our own politicians, sometimes right from the top. We've had members of the judiciary referred to as "so-called judges," the FBI referred to as "stormtroopers," and a consistent message that no one in the legal system can be entrusted to put their political views aside and perform their duties objectively. Russia doesn't have to do anything except amplify the content we ourselves are creating. We are basically executing the plan that they have worked for decades to achieve in this country.

And that is the good news. Because this is something that is self-created, it is also something that can be self-corrected. And so I will leave you with three concrete ways that we, as members of the bar, law enforcement, and the judiciary, can do that.

1. First, we need to counter the message. Professor Tyler, whose research I cited earlier with regard to public perception and the Rule of Law, says that law enforcement and the courts have an important service function to play when it comes to explaining how the legal system works. In particular, he says, "Courts should emphasize their position as neutral authorities whose role is to interpret and apply the law." This counter message is especially critical in today's information age, when statements to the contrary can dominate headlines and flood the public's consciousness in ways that it couldn't even a decade ago—especially when foreign entities, like Russia, can use trolls and bots to artificially amplify these messages. Research[5] also shows that counter-messages are more accepted by the public when they come from elites and leaders—which is why Chief Justice John Roberts' recent statement that "We do not have Obama judges or Trump judges, Bush judges or Clinton judges…what we have is an extraordinary group of dedicated judges doing their level best to do equal right to those appearing before them. That independent judiciary is something we should all be thankful for" was so important. While such messages have been rare in the past from an otherwise silent branch, I believe they are going to be needed more than ever in today's age.
2. Second, as members of the bar, we are uniquely positioned to help build up social trust. That's because that trust is based on shared values—which here in the United States include principles like equality, fairness, tolerance, and freedom. These values are inherent in the legal profession; they are inculcated as a part of our training, and we are socialized to understand that these principles transcend differences in matters of policy and politics. It's why Anthony Griffin, an African American lawyer at the ACLU, represented the Ku Klux Klan, or Ted Olsen, a prominent conservative and Republican, argued against California's ban on same-sex marriage in the Supreme Court. Unfortunately, tribal identities, including political identities, are taking the places of shared values and democratic principles. As a profession, regardless of where we stand on the political spectrum, we must use every opportunity to remind the rest of America that these principles can, and should, transcend our political differences if we want to retain our democratic fabric.
3. Finally, bar associations should initiate programs that teach civic values and democratic principles to younger generations. One of the things that Putnam used to measure and explain the decline of social trust in the United States is the decline in civic and community organizations. Compared to 50 years ago, organizations like the Rotary Club, school PTAs, Girl Scouts, and Boy Scouts—the ways that people learned and were socialized into civic participation—have declined and in some cases, even disappeared. The one exception is professional associations, like the ABA. To be sure, they haven't kept up with the growth in the number of professionals in the field, but they are still fairly robust—and in the absence of other mechanisms for learning about civic values, bar associations can fill the gap. These might include mock trial programs, educational talks about courts and the Constitution, or college-level conferences like this one. That young people are opting out of civic life and even embracing tenets of authoritarianism is not something we should ignore and, indeed, we have a professional duty to counter it.

I will end just by quoting some words that I co-authored in an op-ed concerning attacks on our free press:[6] "Democracy can be dismantled by words as well as actions if they contribute to a belief that no one or nothing upholding its underlying values can be trusted." The trends we are seeing can inflict long-term damage on the American psyche. We need to remember that administrations can come and go, but repairing an erosion of faith in the legitimacy of our institutions, and the Rule of Law, once it takes hold, can be very, very difficult. Our focus should turn to preventing that erosion before it goes too far. ■

Notes

1. https://digitalcommons.law.yale.edu/fss_papers/3035/
2. https://www.pbs.org/newshour/politics/fbi-support-is-eroding-but-most-americans-still-back-bureau-poll-says
3. https://www.theguardian.com/commentisfree/2017/feb/11/americans-arent-attached-democracy-rule-law
4. https://www.theatlantic.com/science/archive/2017/03/this-article-wont-change-your-mind/519093
5. http://www.dartmouth.edu/~nyhan/nature-origins-misperceptions.pdf
6. https://thehill.com/opinion/white-house/369217-only-putin-wins-in-trumps-war-on-the-press

Asha Rangappa is the 2019 recipient of the Young Lawyers Section Diversity Award. She will be honored on February 7 at Amarante's Sea Cliff in New Haven. Visit ctbar.org/2019YLSDiversityAward for more information.

"The Rule of Law for Students and Teachers" panelists (L to R) Connecticut Supreme Court Chief Justice Richard A. Robinson, Hon. Nina F. Elgo, Hon. Hope C. Seeley, and Sandra S. Glover.

ideal is one of those things where we all want to strive towards that goal. That goal of perfection. Will we ever be perfect at it? The answer, again, is no."

The first session was presented by keynote speaker Asha Rangappa, former FBI agent, CNN contributor, and senior lecturer at Yale University, discussing the perceptions and distrust of the Rule of Law in society and what we can do to self-correct this, stating, "It's true that our judicial system is not perfect, that our democracy is not perfect...[but] much of the messaging that is portraying our institutions and the Rule of Law as something that should not be trusted, and even disregarded, is coming from us." Therefore, if the overwhelming mistrust in the Rule of Law and the significantly low general social trust in each other as fellow citizens is self-inflicted, it can be self-corrected.

In quoting Robert Putnam, a professor at Harvard Kennedy School, she relayed: "People who trust their fellow citizens volunteer more often, contribute more to charity, participate more often in politics and community organizations, serve more readily in juries, give blood more frequently, comply more fully with their tax obligations, are more tolerant of minority views, and display many other forms of civic virtue." Asha recommended we self-correct the messaging that is portraying our institutions and the Rule of Law as something that shouldn't be trusted by:

1. **Countering the message.**
   The Nature and Origins of Misperceptions: Understanding False and Unsupported Beliefs about Politics, a study done by Dartmouth University, found that these kinds of messages are more widely accepted by the public when coming from elites and leaders. Asha quoted Yale Law School professor, Tom Tyler, stating, "…law enforcement and the courts have an important service function to play when it comes to explaining how the legal system works. Courts should emphasize their position as neutral authorities whose role is to interpret and apply the law."

2. **Encouraging members of the bar to help build social trust.**
   The United States' values—equality, fairness, tolerance,

"The Media and the Rule of Law" panelists (L to R) Hon. Douglas S. Lavine, William S. Fish, Jr., Christine Stuart, Andy Thibault, and Stanley A. Twardy, Jr.

(From L to R) CBA President Jonathan M. Shapiro, keynote speaker Asha Rangappa, and Connecticut Supreme Court Chief Justice Richard A. Robinson.

and freedom—are inherent in the legal profession. Asha shared, "As a profession, regardless of where we stand on the political spectrum, we must use every opportunity to remind the rest of America that these principles can, and should, transcend our political differences if we want to retain our democratic fabric."

3. **Having bar associations initiate programs that teach civic values and democratic principles to younger generations.**
   "That young people are opting out of civic life, and even embracing tenants of authoritarianism, is not something we should ignore, and indeed we have a professional duty to counter it," Asha pled, explaining that there is a decline in civic and community organizations compared to 50 years ago.

"Democracy can be dismantled by words as well as actions if they contribute to a belief that no one or nothing upholding its underlying values can be trusted," noted Asha. She went on to say that current trends can inflict long-term damage, but "We need to remember that administrations can come and go, but repairing an erosion of faith in the legitimacy of our institutions, and the Rule of Law, once it takes hold, can be very, very difficult. Our focus should turn to preventing that erosion before it goes too far."

Attendees then broke out into separate groups for focused panel discussions on the topics of media, politics, and education. While the attendees had varied backgrounds—from lawmakers to students to media professionals—common themes emerged throughout the day's discussions: 1) The obligation of the legal profession to serve as a leader in the preservation of the Rule of Law, 2) The importance of perception of the public that the judicial process is fair and just, and 3) The need for a greater emphasis on civics education for the public, especially in schools.

After each breakout session, attendees reconvened to share and expand upon what was discussed in each individual session. In order to frame the conversation of this panel, the moderator, Justice Maria Araujo Kahn, shared the proposed definition of the Rule of Law by the World Justice Project, which was founded by William H. Neukom as a presidential initiative of the American Bar Association, and how it can be used to assess whether a society or government, worldwide, is adhering to the Rule of Law. The definition, as follows, is comprised of four universal principles:[1]

1. **Accountability**
   The government as well as private actors are accountable under the law.

2. **Just Laws**
   The laws are clear, publicized, stable, and just; are applied evenly; and protect fundamental rights, including the security of persons and property and certain core human rights.
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Closing Remarks from Justice Andrew J. McDonald

I hope everyone has found today's conference informative, and that you realize the depth and breadth of the subject can't be adequately captured in just one morning. This conference should have at least given some meaning and context to the general principle that the Rule of Law, as it has sometimes been defined, is "[t]he authority and influence of law in society, especially when viewed as a constraint on individual and institutional behavior; [hence] the principle whereby all members of a society [including those in government] are considered equally subject to publicly disclosed legal codes and processes." But it also speaks to the regular, principled, and predictable ordering of authority and governance. And, as the bedrock of our constitutional republic, it informs the truism in American culture and society that no human being or entity is above the law.

There is no doubt that today the Rule of Law is being tested in unprecedented ways in American society, with tension existing between and among the three branches of our federal government and in many states. So what I would like to spend some time talking to you about is the role judicial independence plays in safeguarding the Rule of Law, and why we in Connecticut should be closely watching the incursions on judicial independence on the federal level and in several states around the country, all in an effort to undermine the Rule of Law.

Obviously, the legislative branch has the constitutional obligation to pass laws as the direct, elected representatives of the people, and the executive branch has the constitutional responsibility to implement and enforce those laws, while the judicial branch has the constitutional mandate to conclusively interpret and apply those laws and the constitution itself. The viability of our governmental structure requires that each branch of government "stays in its own lane," with due respect and deference for the other two branches of government.

That due respect and deference among the branches of government is sometimes referred to as "constitutional comity" and requires each branch of government to demonstrate mutual recognition of the other two, based on the coordinate and co-equal status of each. But, as a recent *New York Times* editorial ("Judges Shouldn't Be Partisan Punching Bags," April 8, 2018) pointed out, attempts to intrude on judicial independence are happening all over the country:

- In Kansas this year, lawmakers sought to amend the state constitution to strip the courts of jurisdiction to rule on cases involving education funding in retaliation for a Kansas Supreme Court ruling declaring that the state had failed to adequately fund public schools. That effort failed.
- In Missouri—and this one is my favorite—"a proposed amendment would let voters decide whether a federal law is constitutional. If they say no, state courts (would) be barred from enforcing that law or hearing disputes involving it or any similar state law."
- In North Carolina, between the 2016 election and the swearing-in of a new governor, legislators voted on a party line basis in a lame duck session to reduce the size of their appellate court so the new governor, of a different political party than the majority of the legislature, couldn't fill a few vacancies. But at the same time they tried, and failed, to increase the size of the Supreme Court so the out-

going governor could pack the Court before his term was over. And, as one of at least 38 states that elect their judges, they were going to redistrict trial court districts to gerrymander them in favor of one party, and at the same time reduce the term of office for judges from eight years to two years. As one legislator asserted, "If you're going to act like a legislator, perhaps you should run like one."

Earlier this year, North Carolina legislators sought to amend their constitution so that the legislature would be the body to forward just two names to the governor for consideration to fill any judicial vacancies, and the governor would be constrained to make a selection between the two. If he didn't do so on a timely basis, the legislature, by a simple majority vote, would select the successful candidate. Voters wisely rejected that power grab in November's election, 67 percent to 33 percent.

This fall, outgoing Governor Rick Scott tried to fill three spots on the Florida Supreme Court before he leaves office next month to join the US Senate, even though the justices he wants to replace won't reach retirement age until after Governor Scott is no longer governor. The Florida Supreme Court recently knocked down that attempt, and declared that the outgoing governor was attempting to exceed his authority and usurp the prerogatives of the incoming governor.

Political meddling with the authority and independence of the judicial branch of government is not limited to instances at the state level. At the federal level, we have seen national leaders attacking judges based on their ethnicity, their sexual orientation, and other immutable characteristics. Unfortunately, we have even seen the president demean judges based upon the administration that nominated them, without recognizing that it is in fact the Senate that actually confirms judges. This politicization of the judicial branch was such a worrisome incursion into the authority and independence of the judiciary that Chief Justice John Roberts—who is loath to weigh in on popular or political discourse—was compelled to publicly proclaim the independence of federal judges diligently serving this country.

The problem is not just hypothetical or merely alarming, it is landing results. Earlier this decade, in Iowa, three justices of the Iowa Supreme Court were voted off the bench in a coordinated political attack because they voted to declare that denying same-sex couples the right to marry was unconstitutional. Less than five years later, though those justices were out of office, the US Supreme Court agreed with them.

Just this past summer, a judge in California was recalled from judicial office for imposing a sentence that was considered by many as lenient, but was suggested by a sentencing report and was legally within his discretion. Perhaps most distressingly, the recall effort was spearheaded by a law professor from Stanford University, who in my view should have known of the unintended consequences such a precedent might foster.

In Boston, there is an effort to impeach a superior court judge for his perceived lenient criminal sentences and bail determinations. Some legislators have sought his impeachment because they disagree with his lawful and discretionary decisions. In defending the judicial independence of the state judges, the president of the Massachusetts Bar Association said removing this judge would "set a dangerous precedent of bowing to an uninformed mob."

Sadly, the message seems to be clear, both at the federal level and across the country. Judicial independence is under attack by some elected executive and legislative branch officials whose undertone is loud and clear: "If you make hard decisions, in difficult cases, that we disagree with, we will damage you and your branch of government."

Justice Andrew J. McDonald providing the event's closing remarks.

The Rule of Law demands more. Judges must be insulated from political pressure and threats rather than being treated as hostages in a raging political debate. Political considerations cannot be allowed to interfere with judicial independence.

Why am I telling you all of this, especially here in Connecticut where we have been largely, and fortunately, immune from such efforts? All of you are hopefully engaged stakeholders in our democracy and future leaders in our state. You also likely know the developments in other places that I have touched upon are dangerous threats to the Rule of Law and judicial independence. They have been largely fanned by restless and reckless rhetoric from some national and state leaders in the elected branches of government. I'm also telling you this because the courts in general, and judges in particular, need your help. All of us who cherish the primacy of the Rule of Law need to protect it and the judges who uphold it. The judiciary's integrity and independence depend on it. And particularly to the attorneys in this room, I would suggest it's your professional obligation and ethical duty to protect the independence of the judiciary and the Rule of Law, unfettered by external forces intent on improperly influencing judges and their decisions. The Commentary to the Rules of Professional Conduct says, "(t)o maintain the fair and independent administration of justice, lawyers are encouraged to continue traditional efforts to defend judges and courts unjustly criticized."

Judges have hard jobs, and we'll do them. But what we are ill-equipped to do is to defend ourselves and our branch of government in ways that lawyers, law professors, and engaged public citizens can do. So this is my call to action for the legal profession, and to you as future leaders of our state and protectors of our public institutions. Connecticut considers itself the land of steady habits, but the status quo can change quickly, particularly when you are either not prepared or are not well-informed. In this volatile political climate, where our legal institutions are often denigrated and diminished, more intrusions are likely to come, around the country and perhaps even one day here in Connecticut. Will our state's citizens be ready? Or will all of us, whether you are involved in the legal profession or not, wake up one day and declare in bewilderment, "How did it come to this?"

Thank you, and I hope today's conference has been informative for you. But more than that, I hope it has been eye opening and has sparked a renewed determination in you to be engaged in our participatory democracy as defenders of the Rule of Law. ■

Note: This is an edited version of Justice McDonald's remarks, as delivered at the Rule of Law Conference.

Highlights
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state regulation requiring that an electric generating company "exercise all possible care to reduce the hazard to which employees, customers and others may be subjected by reason of its equipment and facilities" addresses negligent conduct and not immoral or unscrupulous business practices. Therefore, a violation of the regulation does not constitute a violation of CUTPA. The opinion dismisses a count of a complaint seeking relief under CUTPA by a customer whose equipment was damaged allegedly by a power surge occurring over the defendant's power distribution lines.

The provision of the statute imposing fair marketing standards on electric distribution and supply companies, that defines violations of the statute as violations of CUTPA, Conn. Gen. Stat. § 16-245o(j), authorizes enforcement actions by consumers as well as the Public Utilities Regulatory Authority, even though there is no statutory express authorization for private enforcement. *Roberts v. Verde Energy USA, Inc.*, 66 CLR 642 (Moukawsher, Thomas G., J.).

Paetzold v. Metropolitan District Commission, 67 CLR 177 (Moukawsher, Thomas G., J.), holds that water customers of the Metropolitan District Commission have standing to seek a refund for past overcharges under a theory of implied contract. The commission unsuccessfully argued that because it does not have contracts with any of its individual customers, and it has no express charter authorization to form such contracts, it has no power to honor refund claims. The opinion also holds that the claim for overcharges is based on an executed rather than *executory* contract and therefore is subject to the six-year statute of limitations for executed contracts, Conn. Gen. Stat. §52-576.

Social Services

Although the state's lien against the assets of a recipient of state assistance benefits is automatically created, for the state to enforce lien against an attorney for failing to withhold proceeds obtained on behalf of an assistance beneficiary, Conn. Gen. Stat. § 17b-94a (imposing a duty to withhold recovered funds upon the state's "presentation to the attorney for the beneficiary of an assignment of such proceeds executed by the beneficiary"), the state must present an assignment from the beneficiary; merely providing notice of the lien's existence is insufficient to trigger the attorney's obligation to honor the state's lien. However, if the attorney has actual notice of the existence of a lien the state may be able to recover on the alternate theory that a knowing failure to honor a lien constitutes the tort of conversion. *State v. Dressler Strickland, LLC.,* 67 CLR 173 (Scholl, Jane S., J.).

Trusts and Estates

Pigott v. Harland, 66 CLR 908 (Sferrazza, Samuel J., S.J.), holds that the statute authorizing jury trials in "appeals from probate involving the *validity* of a will," Conn. Gen. Stat. § 52-215, does not apply to an action initiated in superior court to correct an alleged clerical error in a decedent's will, because the action is not "an appeal from probate" and, alternatively, because the dispute involves the *construction* rather than "*validity*" of the will.

In an action against an ex-spouse's estate for a payment required under a dissolution judgment, a judgment may be entered to establish the claim as a valid charge against the estate but no payment may be made until it is apparent that there are sufficient assets available to satisfy all estate obligations. *Nettles v. Bayer*, 66 CLR 735 (Jacobs, Irene P., J.). ■

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3. Open Government

The processes by which the laws are enacted, administered, and enforced are accessible, fair, and efficient.

4. Accessible and Impartial Dispute Resolution

Justice is delivered timely by competent, ethical, and independent representatives and neutrals who are accessible, have adequate resources, and reflect the makeup of the communities they serve.

The day concluded with closing remarks from Justice Andrew J. McDonald, in which he urged attendees, as current and future leaders, to help defend the judiciary, stating, "Connecticut considers itself the land of steady habits, but the status quo can change quickly, particularly when you are not prepared or well-informed. In this volatile political climate, where our legal institutions are often denigrated and diminished, more intrusions are likely to come, around the country and perhaps one day here in Connecticut. Will our state's citizens be ready?"

The overwhelming success of the Rule of Law Conference has brought President Shapiro closer to his goal of preserving the Rule of Law. He believes we must continually strive to uphold the very principles upon which it operates, declaring, "Only through the continued recognition and defense of the Rule of Law will it continue to prevail and govern our society." ■

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Notes

1. https://worldjusticeproject.org/about-us/overview/what-rule-law