

Spring 2012, Issue 1

*Our mission is to serve as a forum for Republican attorneys to provide data and legal and policy implication analysis to policy makers and our fellow citizens at the local and state levels.*

## CELEBRATING ONE YEAR

The NCRAA is celebrating our one-year anniversary! During this past year we began to raise lawmakers' awareness about the need to protect the individual freedoms of our State's citizens.

We are excited to have such an accomplished Board of Directors. We are privileged to have serving our on board Former Chief Justice I. Beverly Lake, Jr. Chief Justice Lake brings to the

board years of leadership and service to the legal community in North Carolina. We are also fortunate to have Mr. Bob Crumley, a former member of NCs 6<sup>th</sup> District GOP and State GOP Executive Committees, and Former Justice Bob Orr who is a champion for the North Carolina Constitution and served on the North Carolina Judiciary for 18 years. Also serving our on board are Bill Graham, who is also actively

involved in the Jesse Helms Center and the American Conservative Union, Richard Harper, who is also a member of the N.C. Advocates for Justice, Marshall Hurley, who served as a presidential elector in 2000 and was also president of the North Carolina electoral college, and Gary Clemmons who is also on the Board of Governors of the North Carolina Academy of Trial Lawyers. Our entire board brings great achievement to our Association. (continued on pg. 2)

### Inside this Issue

- 1) Celebrating One Year, Starting a Republican Group
- 2) Celebrating One Year cont., We Believe, News Around NC, Court Decisions
- 3) Featured Attorney and Letter Contributor Information, A Brief History Article, Media, CLE Survey
- 4) Understanding the Role of the Civil Jury Trial Article

*Want to start a Republican Group at your law school? Contact [admin@ncgopatattorneys.com](mailto:admin@ncgopatattorneys.com) for more information and assistance with scheduling speakers, discussion topics, ways to stay involved in the law community, and drafting a constitution.*



## News Around NC

“NC man charged in Va. bus wreck that killed 4”

<http://www.wral.com/news/news-briefs/story/10750210/>

“Man could escape execution due to NC law”

<http://www.wral.com/news/local/story/10663948/>

“Police group suing Fayetteville over consent search freeze”

<http://www.wral.com/news/local/story/10767534/>

“Judge throws out Zebulon BP’s smoking ban case”

<http://www.newsobserver.com/2012/03/14/1933564/judge-throws-out-zebulon-bp-case.html#storylink=misearch>

## Court Decisions

Pacific Operators Offshore, LLP v. Valladolid

Hosanna-Tabor Evangelical Lutheran Church and School v. Equal Employment Opportunity Commission et. al.

Minneeci et al. v. Pollard et al.

Smith v. Cain, Warden

Over the past year we selected our first Featured Attorney, Justice Paul Newby, a North Carolina native, who has been committed to serving the legal profession and uses his passion to better legal education in our state. He is an adjunct professor at Campbell University’s School of Law and donates his time to various student advocacy programs. He is a member and the former Vice President of the North

Carolina Bar Association. He is a frequent lecturer at the North Carolina Judicial College and in various continuing legal education programs. He is an active member and former Vice President of the North Carolina Bar Association, serving on numerous Councils and Committees. In 2011, the Bar Association recognized Justice Newby’s exemplary public service when it bestowed upon him its Citizen Lawyer Award.

## WE BELIEVE...

We believe, in the strength of and the reliance upon a Constitutional government, that people should be free to succeed or fail and that government does not create wealth but should be a protector or conservator of it.

We believe, as Republican attorneys, that government is too large, its impact on the lives of our citizens is too invasive and the decisions of the past to entitle have brought our state and country to a point where our solvency and our freedoms are at risk.

We believe, as Edmund Burke, that “a state without the means of some change is without the means of conservation.” Therefore, we support quality reform carefully designed to protect the fundamental freedoms and rights of our fellow citizens, but also to move our state forward.

We believe, processes of government from the structure of our voting districts to the final decisions of our courts must be open, accessible, fair and reasonable.

We believe, as officers of the courts of this state and as Republican attorneys, that we have a duty to protect the right of every citizen to have an open and accessible court system so they may redress wrongs, receive a fair hearing or trial, and so that they may have the ability to check government when it strays from Constitutional underpinnings.

We believe, because of our training and experience, our voice, while not unique, can prove valuable to policy makers and to our fellow citizens in the public discourse of our day.

## NCRAA FEATURED ATTORNEY

We are accepting nominations for the next NCRAA Featured Attorney. The candidates should be Republican attorneys in North Carolina that exhibit excellent legal professionalism and serve their communities greatly with a non-legal, political, or legal organization or cause. Please send nominations to [admin@ncgopatattorneys.com](mailto:admin@ncgopatattorneys.com).

## NCRAA SEEKING NEWSLETTER CONTRIBUTORS

We are seeking volunteers to write an article in each newsletter. It should be brief and focus on one narrow issue or subject in the law. For more information contact [admin@ncgopatattorneys.com](mailto:admin@ncgopatattorneys.com).

### *A Brief History of the Jury in the United States* by Josh Windham

The middle ages began a centuries-long process of development which would ultimately culminate in the modern American institution of the jury. *Americanbar.org*, "Dialogue on the American Jury: We the People in Action," 2 [www.americanbar.org/content/dam/aba/migrated/jury/moreinfo/dialoguepart1.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/migrated/jury/moreinfo/dialoguepart1.authcheckdam.pdf) (last visited March 27, 2012). Over time, the notion that individuals have a right to a trial by jury became commonplace in post-Enlightenment Europe. In American colonial courts, the jury had become a useful legal means of defying the authority of the crown. As such, when the Declaration of Independence was sent to King George III, it included as a grievance a reference to the

Navigation Acts which, often times, denied this right to the his colonial subjects. *Id.* at 3. However, its inception following the end of the Revolutionary War was not immediate. When the Constitution was ratified in 1787, Anti-Federalists and the states protested that while it required Congress to provide a trial by jury in criminal cases, it neglected to require the same in civil cases. *Id.* at 4. The institution of the jury itself was later enumerated in the Bill of Rights to include the grand jury, the criminal and petit jury, and the civil petit jury in the Fifth, Sixth, and Seventh Amendments.

## Media

"Like Us" on Facebook!

**North Carolina Republican Attorneys Association**

Follow Us on Twitter!

**@NCGOPAttorneys**

LinkedIN

**North Carolina Republican Attorneys Association**

Stay posted for more information regarding pending CLE courses each weekend in June to be held across NC!

Take a survey regarding interest in NCRAA CLE courses here:

<http://www.surveymonkey.com/s/RDNQRNP>

*Understanding the Role of the Civil Jury Trial in Republican Principles: with excerpts from Oscar G. Chase's  
Law, Culture, and Ritual, Chapter 4 American "Exceptionalism" in Civil Litigation*

The jury is an exceptional and unique tool that the United States has utilized more than virtually any other jurisdiction in the world. See Oscar G. Chase, *Law, Culture, and Ritual: Disputing Systems in Cross-Cultural Context*, 55 (New York University Press 2005) (2005). The Framers of the United States Constitution deemed the right to trial by jury important enough to include the right to a jury in a civil case in the United State Constitution by way of the Seventh Amendment.

In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.

U.S. Const. amend. VII. See also *Id.* The right to a civil jury can also be found in the North Carolina Constitution: "In all controversies at law respecting property, the ancient mode of trial by jury is one of the best securities of the rights of the people, and shall remain sacred and inviolable." N.C. Const. art. 1, § 25.

While other common law countries, such as England, are abandoning their use of civil juries, America and its states are holding strong to the value of the jury system instilled in our culture. See Oscar G. Chase, *Law, Culture, and Ritual: Disputing Systems in Cross-Cultural Context*, 55 (New York University Press 2005) (2005). Oscar Chase notes in his book that "[t]he power of the jury in the American tradition has been called '[t]ruly astonishing in the Constitutional view.'" *Id.*; quoting Mirjan R. Damaska, *The Faces of Justice and State Authority* at 219-20 (1986).

He further comments "[the jury] is 'strongly egalitarian' because it gives lay people with no special expertise a fact-finding power superior to that of the judge, despite all of his or her training and experience." *Id.* at 56 (internal cites omitted). The jury and constitutional right to vote by all citizens are "the two institutions of American democracy that it 'seems simply unthinkable to criticize.'" *Id.* at 58; citing George L. Priest, *Justifying the Civil Jury*, in Robert E. Litan, ed. *Verdit* (1993) at 103.

The American civil jury system lies at the heart of America's conviction in self-government. It allows litigants to control the dispute process and be judged by their peers, with little intervention by the government. Thus, the attorneys for the litigants become a highly important and valuable piece in the litigant's ability to self-govern. It is the duty and privilege of an attorney to represent and speak for his or her client. It is of the utmost importance, therefore, that the attorney ensures a fair, equal, and thorough trial for the client. The clients, through their attorneys, control the litigation at all aspects of the civil trial. This power is a unique and valuable trait of American culture. See *Id.* at 58. Initially it is the individual who chooses to bring an action seeking justice through the civil trial. The litigant chooses the issues in the case by writing and filing the complaint and answer, through his or her attorney. Further, the litigant continues to control the issues and evidence through the pre-trial discovery process.

Individualism, egalitarianism, laissez-faire, and antistatism are also evident in another disputing practice that is particularly robust in America and not duplicated

anywhere else in the powerful form it takes there; pretrial “discovery.” This is the power that is granted to the adversarial parties to control the investigation of facts prior to trial.

*See Id.* Finally, the litigant controls the message to the jury in the actual trial or the dispute’s ultimate resolution (settlement), through their attorneys. If the dispute goes to trial before a jury, it is the jury, a group of the litigants’ peers, which ultimately decides the outcome of the trial. This process concedes little judicial or governmental intervention. The judge and legislature, through the general statutes and civil procedure, act to guarantee a fair and equal trial for litigants. *See Id.* at 53

...[P]rivate litigation is for the most part controlled by the litigants, who provide its impetus, its direction, and often its ultimate resolution through settlement. Unlike other branches of government, courts neither meddle nor rescue unless called upon to do so....

*Id.*

It is of high importance that the legislatures and government allow the litigants extensive freedom to control the dispute process themselves. Litigant control allows for individualism and an ability to exercise his or her rights directly. Oscar Chase notes that America is described by one author with five words, “liberty, egalitarianism, individualism, populism, and laissez-faire.” *Id.* at 51 (internal cites omitted). Chase further states that America’s view of the limited role of government influences its rejection of boundless interference by the government in the dispute process. *Id.* at 52. Chase notes, the court system

is not entirely independent from government control, and is itself a government institution. The extent to which the government is permitted to interfere in the dispute process will determine the amount of individualism and self-governing of his or her rights is afforded to citizens through its dispute process.

It is of equal importance that juries are able to determine and judge their peers without substantial regulation by the government. It is the civic duty of all individuals to participate as a jurist when called and has an equal vote despite age, education, or social status. *See Id.* at 56. There are specific regulations established to ensure legal competence and an equal and fair trial to all litigants. When there is “no legally sufficient evidentiary basis for a reasonable jury to find for that party...” a judge may overrule a jury verdict and grant judgment “as a matter of law.” *Id.* at 56. By allowing the judge to overrule a jury verdict, the judicial system attempts to ensure a correct interpretation and equal application of the law. If, however, there is some basis for finding as the jury did, the judge has no authority to overrule. The ultimate power of the adjudication is placed in the hands of a jury of the litigants’ peers, a manifestation of self-government. We, through the jury, regulate ourselves and our disputes. It is of equal importance that juries are able to determine and judge their peers without substantial regulation by the government. It is the civic duty of all individuals to participate as a jurist when called and has an equal vote despite age, education, or social status. *See Id.* at 56. There are specific regulations established to ensure legal competence and an equal and fair trial to all litigants. When there is “no legally sufficient evidentiary basis for a reasonable jury to find for that party...” a judge may overrule a jury verdict and grant judgment “as a matter of law.” *Id.* at 56. By allowing the judge to overrule a jury verdict, the judicial system attempts to ensure a

correct interpretation and equal application of the law. If, however, there is some basis for finding as the jury did, the judge has no authority to overrule. The ultimate power of the adjudication is placed in the hands of a jury of the litigants' peers, a manifestation of self-government. We, through the jury, regulate ourselves and our disputes.

We must keep in mind, however, the limitations of the judicial system. It is itself a creation of the government, but even so, it is the intent of a civil jury to leave the ultimate judgment with the jury. *Id.* ("Although the jury is of course an organ of government, it nonetheless has an antistatist quality because it allows the people to decide matters differently than the other institutions of government might wish."). There in fact exists a current controversy over this issue in regard to jury nullification. *Id.* The government may place limitations on the jury's ability to fully adjudicate the issues before it such as limiting the amounts a jury may award to litigants. However, as previously discussed, it is vitally important to the preservation of self-government in dispute resolution to allow extensive freedom to the jury to judge its peers. The ultimate decision maker is intended to be the jury themselves, limited only where there is no basis for their judgment, and judicial intervention is necessary to provide an equal and fair trial to all litigants.

There in fact exists a current controversy over this issue in regard to jury nullification. *Id.* The government may place limitations on the jury's ability to fully adjudicate the issues before it such as limiting the amounts a jury may award to litigants. However, as previously discussed, it is vitally important to the preservation of self-government in dispute resolution to allow extensive freedom to the jury to judge its peers. The ultimate decision maker is intended to be themselves, limited only where there is no

the jury themselves, limited only where there is no basis for their judgment, and judicial intervention is necessary to provide an equal and fair trial to all litigants.

The jury system, its clients, attorneys, and judges all play integral roles in preserving America's individual freedoms. Through zealous representation the attorney ensures his or her litigants' best interests are pursued. Republican values demand that the government exercise minimal control over the dispute process, consequently preserving and increasing the litigant's ability to control the dispute. It is through the litigant's ability to control the dispute process that he retains the ability to participate actively in self-government, specifically in the civil jury trial. The North Carolina Republican Party believes, in part:

1. the strength of our nation lies with the individual and that each person's dignity, freedom, ability and responsibility must be honored;
2. in equal rights, equal justice and equal opportunity for all, regardless of race, creed, sex, age or disability; and
3. the most effective, responsible and responsive government is government closest to the people.

Principles of the North Carolina Republican Party  
March 27, 2012, <http://www.ncgop.org/about/>.

These beliefs are carried out through the practice of civil jury trials. Civil jury trials, through the participation of its litigants, juries, judges, and attorneys, "[are] populist, 'an avatar of democratic participation in government,' because it allows the people to rule directly." *Id.* at 56 (citing Michele Taruffo, "Transcultural Dimensions of Civil Justice" 25 *Comparative Law Review* 1 (2000) at 28) (use of jury trials reflects a cultural preference for direct rule of "the people"

as opposed to the values of "professional training and efficiency"). It is through limited government regulation of civil jury trials that citizens have full individual control over their rights, provide for equal protection and justice for all citizens, and most closely govern themselves.

Therefore, to preserve individual control, equal rights, justice, and opportunity for all, and create the most effective, responsible and responsive government through government closest to the people, governments should regulate civil juries only as much as absolutely necessary. Regulation should protect the right of every citizen to have an open and accessible court system and receive a fair hearing or trial. However, any further regulation would oppose a belief in self-government and individualism. It is only through an individual's ability to retain and retake ultimate control over their rights and dispute resolutions and juries ability to retain their autonomy from government and its institutions that Republican values of self-government and individual rights will be safeguarded.