

Spreading holiday beauty

Members of the Quononoquott Garden Club decorated the town last week by filling sidewalk barrels with holiday greens and sprucing up the garden at the fire station Memorial Museum, which they helped create earlier this year.

From left are Sue Maden, Joan Vessella, Linda Warner, Barbara Tuthill, Suzi Andrews, Club President Gloria Westlake, Jill Meyer, and Betty Ann Taylor.



MURPHY'S LAW

An elfin man, not much more than five feet tall, Senator Theodore Francis Green, nevertheless, "stood up to" the towering Lyndon Johnson, a man who, on occasion, relied upon his substantial physicality to get his way.

Senator Green never had a driver's license. He served as a Lieutenant during the Spanish-American War.

T.F. Green served in the United States Senate for 24 years, retiring when he was 93 years old. That record was exceeded only by South Carolina's Strom Thurman, who, of course, had the assistance of several wives to keep him going. Green was a life long bachelor.

Green was a Democrat, and, like Franklin Roosevelt and Claiborne Pell, came from a family with wealth and power going back many generations. He was labeled a "traitor to his class" by some.

Before being Senator, Green was Governor. He had the foresight to preserve beautiful Scarborough Beach for all Rhode Islanders. This was just one of his progressive and forward thinking achievements. He was, in many ways, a Rhode Island version of Theodore Roosevelt when it came to matters of the environment and preservation of open space for future generations.

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Parties file briefs in Swain appeal in civil case

By Dotti Farrington

Pre-briefing statements have been completed by both parties in the state Supreme Court appeal by Jamestown businessman David Swain of a Superior Court civil judgment last February that found him responsible for the drowning death of his wife, Shelley Arden Tyre, while they were scuba diving in Tortola, British Virgin Islands, in 1999.

A former Town Council vice president, Swain has denied that he caused his wife's death. He admitted during his trial that he did not follow usual safety practices, but he suggested those omissions did not cause or contribute to his wife's death. The failure to follow safety protocol led to the loss of his professional status as an advanced level scuba trainer. He did not have a lawyer represent him during the trial, and he did not attend most of the 10 days of the trial.

The Supreme Court will rule now on Swain's innocence or guilt, but on procedures. Swain wants a reversal of the judgment and a new trial.

The February jury finding included more than \$4 million in punitive and compensatory damages, plus interest, to be paid by Swain to his wife's estate. Swain, who has

spent much of the nearly \$1 million his wife left to him in her will, was granted federal Bankruptcy Court status in May, absolving him from paying hundreds of thousands of dollars in additional bills he created before a lien was placed against the estate. The bankruptcy decision, however, does not free him from the damages due under the wrongful death judgment.

In a Probate Court judgment during the past year, Swain was removed as executor of his wife's estate, and the lien was placed against the remaining assets of the estate. Swain is named as sole beneficiary in his wife's will, but cannot collect if the wrongful death finding is upheld.

The civil case of wrongful death was brought by his wife's parents, Richard and Lisa Tyre, both semi-retired college professors and long-time Jamestown residents. The Superior Court finding specified that the death was violent, and Swain was labeled a murderer in the Superior Court documents.

Represented by J. Renn Olenn, an attorney in Warwick, the Tyres are seeking to have Swain's appeal dismissed and the jury judgment upheld. Olenn's brief contends that Swain's claim about his children's inheritance status remains to be decided by the Probate Court, which has not acted further, pending the outcome of Swain's Supreme Court appeal.

The preliminary briefs were completed in November after the court granted Swain two delays so he could find an attorney, and by grants for each party to use more than 10 pages, the usual maximum, to state their positions. Olenn did not challenge the first delay, but objected to the second delay as "examples of dilatory practice that Swain is engaged

in . . . a self-inflicted wound."

Swain's statement, filed on his behalf by Anthony Leone II, a Cranston attorney, was 16 pages long. It focused on Swain's contention that Superior Court Judge Patricia Hurst did not give him enough time to find an attorney, an argument he raised several times during the four years before the trial began, and during the trial itself.

Leone charged that Hurst erred and denied Swain a fair trial. He said the Superior Court has no jurisdiction to declare Swain a slayer, and erred about allowing punitive damages, and allowing a judgment about damages that affects the possible inheritances of Swain's children. Leone also alluded to "constitutional issues . . . about self-incrimination," but did not detail that issue.

Leone identified Swain as executor of his wife's estate, but also acknowledged the assignment of that job to a court appointed lawyer, James Reilly.

Olenn, in 13 pages, listed the claims Swain is making as examples of his having waived many options during the trial and pre-trial process. Swain had lawyers during nearly four pre-trial years, and he told the court he was looking for another lawyer because of the two-year illness of his main lawyer. The court record shows that Hurst several times advised him during those pre-trial years to get another lawyer.

"Swain used his failure to get a lawyer as a delaying tactic and ultimately as a strategy for trial. He cannot now complain on appeal that his strategy was unsuccessful," Olenn wrote in his brief.

The next stage of the appeal process calls for the court to decide if the issues raised in the pre-briefing statements warrant full briefing

statements and arguments. Leone asked for such a full hearing. If granted, the lawyers will file additional documents and then prepare for a session before a full five-judge panel that meets only in closed session. If designated a full case, the lawyers will each have 30 minutes to present their sides, with the option of reserving up to 10 minutes for rebuttal. If full status is not granted, each side will have only 10 minutes, with no rebuttal time, on items granted a hearing.

After the presentations, the judges will meet again in closed session, decide the issues, and write their joint ruling. This is expected to take several more months.

For the record

Town Councilman Michael Schnack took exception to a story in last week's Press that might give the impression that he is against putting the teen center at the Community Center.

Written by Dotti Farrington, the article said that Schnack "balked about officially authorizing any town teen center."

"The point I was trying to make" at the Nov. 27 meeting was that "it's not the Town Council's job to determine where offices or programming happens for teen or any other function," Schnack said. "That's micromanaging," he said, adding, "We're not supposed to do that."

"I fully support teen programming," Schnack said. But it is the job of the Town Administrator, "who is doing a great job and we fully support him" to decide where teen programs should occur, he added.

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