Gants unveils court initiatives at Bench-Bar Symposium

Supreme Judicial Court Chief Justice Ralph D. Gants outlined a four-point agenda to improve the state’s justice system and stressed the importance of cooperation in his first State of the Judiciary address on Oct. 16, at the Massachusetts Bar Association’s Annual Bench-Bar Symposium.

“We in the judiciary increasingly are recognizing that our role is not only to do justice, but to solve problems,” Gants said. “Once we recognize that every court is a problem-solving court, we see that the problems that come to us cannot effectively be solved without the funding and legislation that only the legislature can provide, without the drug and mental health treatment programs that only the executive branch can establish and administer, and without the legal advocacy that only the bar can offer.”

Addressing the crowd of lawyers, judges, legislators, clerks and court staff at the John Adams Courthouse in Boston, Gants called for an end to mandatory minimum sentencing in drug offenses. Noting that such punishments have had a “disparate impact” on minorities, the chief justice advocated for individualized, evidence-based sentencing “that will not only punish and deter, but also minimize the risk of recidivism by treating the root of the problem behind many drug offenses — the problem of addiction.”

Gants also challenged the courts and bar to “compete with private arbitration” by developing more litigation options for civil court cases “to ensure that each Election Day reminds us of how fortunate we are to be citizens in a country where the right to vote is sacrosanct. It’s also a good time to remember how privileged we are as lawyers to play a critical role every day with something just as integral to our democracy: the rule of law.

The rule of law is the principle that laws should govern a nation — not arbitrary decisions by rulers, government officials, or small, unrepresentative groups. The rule of law gives us the right to expect peace and order, and to expect and demand that our rights are protected and defended. And it’s the rule of law that allows us the freedom to think the things we want to say, all without fear of persecution or prosecution. But none of this happens without some very key components. One is an independent and impartial judiciary to enforce the rule of law. In Massachusetts, we are fortunate to have judges who are appointed, not elected. The rule of law also requires our government to implement it; that’s where our right to vote comes into play. And lawyers serve in the most essential role as the foot soldiers charged with defending the rule of law.

As lawyers we understand that we work under the rule of law to protect all of our rights. Take criminal matters, for instance. Prosecutors defend victims, prosecute crimes and seek convictions and punishment in order to keep us free from fear, harm, loss of property and loss of life. Defense lawyers force...
the prosecution to do their job while ensuring that their client receives a fair trial and that their client’s rights are not trampled in the process.

Sometimes it isn’t easy for everyone to embrace this proposition. But I never really felt it as strongly as when I had a case in New Hampshire years ago where the world would be a much better place without lawyers. But he meant exactly the opposite.

In the play, Dick the Butcher is giving advice to his boss, Jack Cade, an anachronist with a diabolical desire to overthrow the government and rule the people. Dick, after giving some thought, said the only way to overthrow the government is to destroy democracy’s first line of defense: lawyers, the protectors of truth and justice. Getting rid of the lawyers, he reasoned, would make it easier to pillage the minds and will of the people without being challenged, questioned or opposed.

So while that well-worn phrase is often used for negative connotations about lawyers instead of positive, it is, in fact, the highest compliment one could give to our profession. And it’s illustrative of how our relationship with the public is so important. They come to us to protect them and to right the wrongs done to them. And no one — not the police, the court, the not the government — can interfere with that relationship.

Because that is the rule of law in our country. That is the right that gives all Americans true access to justice. That is what sets us apart from everyone else.

And that is what we, as lawyers, are proud to defend.
LEGAL NEWS

Class action residuals make a major contribution to equal justice

BY JAYNE TYRRELL

You provide pro bono services and contribute to your local legal aid program. What more can you do?

If you are involved in class action litigation, you may have an opportunity to support equal justice in a major way — by designating class action residual funds for distribution to the Massachusetts IOLTA Committee or directly to a legal aid program. In the past two years, such designations have brought local legal services for the poor such amounts as $473,256 and $483,279.

What are “residual funds?” At the conclusion of a class action, funds designated for the members of the plaintiff class are sometimes left over and not distributed. Perhaps members of the class cannot be located or fail to submit claims. Or the amount due is so small that the cost of notice, disbursement and administration may exceed the value of the claim. These are residual funds.

Both state and federal courts have broad discretion in determining how residual funds should be distributed. Courts have found interest on lawyers’ trust accounts (IOLTA) programs and legal aid societies to be appropriate recipients of these funds. Under Rule 23 in both federal and state procedure, the class action is designed to afford otherwise powerless class members access to equal justice. Legal services for the poor have a similar purpose, affording access to justice to people who would otherwise have no way to protect their rights.

In 2009, the Massachusetts Supreme Judicial Court amended Mass. R. Civ. P. 23 to explicitly provide for the payment of residual funds in class actions either to one or more nonprofit organizations whose activities benefit the class (which could include legal services programs) or to the Massachusetts IOLTA Committee, which provides funds for legal services programs. The IOLTA program, established by the SJC, requires lawyers and law firms to use interest-bearing accounts for client deposits which are nominal in amount or expected to be held for a short term. The interest is remitted to the IOLTA program, which then distributes it to three charitable entities — the Boston Bar Foundation, the Massachusetts Bar Foundation and the Massachusetts Legal Assistance Corporation. These entities distribute the funds to legal aid and administration of justice projects.

If you find yourself involved in a class action in which residual funds are showing up, contact the IOLTA Committee at (617) 723-9093 or www.maiolta.org for help in determining whether a contribution to support equal justice is appropriate in your case.

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Jayne Tyrrell is the director of the Massachusetts Interest on Lawyers’ Trust Accounts.

News from the Courts

Susan J. Goldberg appointed as circuit executive for the First Circuit

On behalf of the Judicial Council, Chief Judge Sandra Lynch of the United States Court of Appeals for the First Circuit has announced that the Judicial Council has unanimously selected Susan J. Goldberg as the new circuit executive.

Goldberg, who has served the court as deputy circuit executive since 2001, assumed the role of acting circuit executive upon the resignation of Gary H. Wente on July 31, 2014. A 1984 graduate of Vassar College, Goldberg has a long history of service in the federal judiciary. She earned her J.D. from New York University School of Law in 1989, entered private practice after completing her clerkship and joined Arnold & Porter LLP’s New York office as an associate in the litigation department.

In 1993, Goldberg moved to Boston and practiced in Testa, Hurwitz & Thubeault’s litigation department, where she litigated various types of commercial disputes. In 1995, she became executive director of the Gender and Race Ethnic Bias Task Forces of the First Circuit. In 1996, she joined the Office of the Circuit Executive as the assistant circuit executive for legal affairs, a position she held for four years, until she became deputy circuit executive in 2001. As deputy circuit executive, Goldberg managed every aspect of judicial administration for the First Circuit.

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idea what was coming.”

It’s probably safe to say that given the tumultuous and frustrating history of his case, McCollum, like Johnston, wasn’t exactly ready for what he heard that day after spending more than three decades behind bars as an innocent man. Someone even had to show him how to use a modern seashell when he got in a car to begin his new life.

McCollum, a 50-year-old mentally disabled African-American, was a victim of circumstance who unfortunately found himself at the wrong place at the wrong time when he was just 19. A native of Jersey City, New Jersey, McCollum went to North Carolina in 1983 to visit his mother and relatives. Just days before heading back home, he and Brown were arrested and charged with the rape and murder of 11-year-old Sabrina Bue. Although the brothers initially confessed to the crime, the confession was quickly repudiated and was later proved to have been coerced.

A challenging case

Johnston’s firm got involved in the case on a pro bono basis through its Washington, D.C., office in 1995, nine years prior to the merger of Hale and Dolitt and the formation of the Hale and Dorr firm. The merger took place in 2011-2012. Johnston has managed the Hale firm as its lead attorney on the case for Wilmer-Hale’s office in Washington, D.C., since 1995, nine years prior to the merger between Hale and Dolitt. Johnston’s former Boston partner, was the lead attorney on the case for Wilmer-Hale after the merger until his retirement in 2011-2012. Johnston has managed the case since then.

The case had a lengthy procedural history, even before Hale and Dorit became involved. When the firm first came on board to represent McCollum, he had already been tried once, was found guilty and was sentenced to death. That initial decision was appealed, and the death penalty was reversed. McCollum was then granted a new trial on the basis that it was not fair to try both he and his brother together. Once again, McCollum lost his case and was sentenced to death. That decision was also appealed and a civic petition reached the Supreme Court, which denied a request to review the case in 1994. McCollum was once again on death row when the firm took the case, in 1995.

One of the first things the firm did was to draft a motion for appropriate relief, a post-conviction motion that said McCol- lum was coerced into a confession, was provided ineffective assistance of counsel and was mentally disabled and shouldn’t be sentenced to death. The motion also stated that there wasn’t sufficient evidence of McCollum’s guilt in the case.

In 2002, the Supreme Court ruled in Atkins v. Virginia that executing mentally disabled individuals violates the Eighth Amendment’s ban on cruel and unusual punishment. But individual states still de- fined who was mentally disabled. North Carolina also passed the Racial Justice Act in 2009, which gave death row inmates the opportunity to change their sentences if they could prove that racial discrimina- tion had been a factor in their cases. Based on these two developments, the firm began pushing to revoke McCollum’s death sen- tence.

The firm also filed a motion to have DNA evidence taken as it was not available at the time of McCollum’s previous two trials. Some of the initial results came back in 2005 and McCollum’s DNA was not on the particular pieces of evidence that were tested. While the evidence found did not contain McCollum’s DNA, it was not enough for exoneration as the evidence did not implicate another person.

New agency offers hope

A key period in McCollum’s case came in 2006 with the creation of a state agency known as the North Carolina Innocence Inquiry Commission. Established by the state’s General Assembly, the commission investigates and evaluates post-conviction claims of factual innocence. Composed of eight members selected by the chief justice of the North Carolina Supreme Court and the chief judge of the North Carolina Court of Appeals, this innovative commission is the first of its kind in the nation.

The commission investigates post-conviction innocence claims first on a preliminary basis to determine if the case warrants further investigation. If enough evidence is gathered, a case is taken for full investigation and can be presented to an innocence tribunal for a trial outside of the court system. A person exonerated by this process is declared innocent and can- not be retried for the same crime. However, if a person loses, all pending court motions are wiped out.

The firm was involved in an innocence claim concerning Brown, McCollum’s half-brother, who was sub- mitted to the commission and they began investigating the case. The Wilmer-Hale team had its first hearing in 2007, when new DNA evidence provided a major shift in the case. DNA found on a cigarette at the crime scene was linked to Roscoe Ar- tis, meaning another person could be iden- tified as the perpetrator. Artis had been sentenced to death for the identical crime one month later, back in 1983, in the same North Carolina town as the Buie murder.

Freedom at last

When the commission presented this new evidence to the Center for Death Pen- alty Litigation (CDPL) and Artis’s co-counsel for Wilmer-Hale in North Carolina, the gears were switched from working to elimi- nate McCollum’s death penalty sentence to preparing for a hearing on innocence. The hearing was scheduled for Sept. 2.

At the hearing, Robeson County Dis- trict Attorney Johnson Britt expressed to the judge that he was not going to take issue with the new evidence. The defense team provided four hours of testimony from the commission and then rested. In his closing argument, Britt said that the new evidence was compelling and he did not have the evidence to retry the two brothers nor did he object to the dismissal of the charges. Superior Court Judge Doug Sasser then read an order that entitled McCol- lum and Brown to have their convic- tions overturned by virtue of the new DNA evidence. After 31 long years, McCollum and his brother were finally free men.

“In my practice which is mostly busi- ness litigation and arbitration, you don’t usually get the results right there in the courtroom,” said Johnston. “The magni- tude of getting somebody released who’d been in jail for 30 years unjustly just under-whelmed any other thing. There’s no doubt that will go down as one of the most memorable case I’ve had. The impact on Mr. McCol- lum’s life has just been so dramatic.”

“It was an amazing moment that fea- tured the emotions not only for John- ston and the defense team but certainly for McCollum, who had always been insistent on his innocence from the day one. After the trials and motions, a just result had fi- nally been delivered.

“At first he was still a little bit shell shocked because he was not waiting 30 years for this day,” said Johnston, describ- ing McCollum’s reaction in the courtroom. When his release was final on a late fall day, McCollum got to hug his family members, breathe some free air for the first time in three decades and sit in his owner chair. An avid fan of basketball, he plans to take in a game as soon as he gets the chance. After so many losses, he is fi- nally in the win column.

A team effort

Johnston credits the success of the McCol- lum case over the past 30 years to a talented team of attorneys and investigators. Wilm- erHale has devoted nearly 20 years of pro bono service to the case through the work of Johnston and his co-counsel, Ken Rose, a graduate of Bos- ton University Law School, and Vernetta Drew Dahlberg. Johnston made four trips north to North Carolina over the last two years to meet with McCollum and the CDPL, its co-counsel Ken Rose, a graduate of Bos- ton University Law School, and Vernetta Drew Dahlberg. Johnston made four trips north to North Carolina over the last two years to meet with McCollum and the CDPL, its co-counsel Ken Rose, a graduate of Bos- eno service to the case through the work of Johnston and his co-counsel, Ken Rose, a graduate of Bos- ton University Law School, and Vernetta Drew Dahlberg. Johnston made four trips north to North Carolina over the last two years to meet with McCollum and the CDPL, its co-counsel Ken Rose, a graduate of Bos- ton University Law School, and Vernetta Drew Dahlberg. Johnston made four trips north to North Carolina over the last two years to meet with McCollum and the CDPL, its co-counsel Ken Rose, a graduate of Bos-

Pro bono: A way of life

Over the course of his career at WilmerHale, Johnston has worked between 50 and 100 pro bono cases, some criminal with most being civil. He has also worked two pro bono cases in Alaska one of the first of its kind in the nation. The chief judge of the North Carolina Court of Appeals, this innovative commission is the first of its kind in the nation.

Upon his release from prison the fol- lowing day, McCollum got to hug his fam- ily members, breathe some free air for the first time in three decades and sit in his own chair. An avid fan of basketball, he plans to take in a game as soon as he gets the chance. After so many losses, he is fi- nally in the win column.
ANTHONY V. AGUDELO, ESQ.
MODERATOR, “MAKING THE WINNING ARGUMENT”

Agudelo is a partner at Sugarman, Rogers, Barshak & Cohen and he handles complex cases in the areas of product liability and toxic torts, including asbestos, mass torts, medical malpractice, premises liability, personal injury, liquor liability and business disputes. His practice encompasses not just matters in Massachusetts, but throughout the New England region, and many of the cases have involved complicated medical and scientific evidence. In addition to his trial practice, Agudelo has been active in pro bono work. He has represented a volunteer emergency rescue worker injured at the World Trade Center after 9/11, an indigent person who was wrongly evicted from her home and a victim of the 2013 Boston Marathon bombing, among others. He also served on the Massachusetts Bar Association’s Health Law Section Council for three years and currently serves as vice chair on the MBA’s Civil Litigation Section Council. Agudelo has authored a number of articles that have appeared in various legal publications and moderated a very well-received number of articles that have appeared in various legal publications and moderated a very well-received number of articles that have appeared in various legal.

THE MBA’S LEGAL LUNCH SERIES
FEED YOUR MIND: How to represent individuals in front of licensing boards Wednesday, Nov. 19, 12:30–1:30 p.m. MBA, 20 West St., Boston

FACULTY: Craig Levey, Esq., moderator, Looney & Grossman LLP, Boston; Courtney Shea, Esq., moderator, Peabody & Arnold LLP, Boston; Dorothy S. Anderson, Esq., Office of Bar Counsel, Boston; Kevin Scanlon, Esq., Massachusetts Division of Professional Licensure, Boston

Additional faculty to be announced.

FACULTY SPOTLIGHT

MAKING THE WINNING ARGUMENT

Wednesday, Nov. 12, 4–7 p.m. MBA, 20 West St., Boston
MODERATOR: Anthony V. Agudelo, Esq., Sugarman, Rogers, Barshak & Cohen PC, Boston

FACULTY: Robert M. Higgins, Esq., Lubin & Meyer PC, Boston; David M. Rogers, Esq., Campbell, Campbell, Edwards & Conroy, Charlestown; W. Thomas Smith, Esq., Sugarman and Sugarman PC, Boston; Benjamin R. Zimmerman, Esq., Sugarman and Sugarman PC, Boston

THE ETHICAL RULES FOR THE FAMILY LAW ATTORNEY:

Where is the line between zealous and over-zealous? Wednesday, Nov. 19, 4–6 p.m. Plymouth Probate and Family Court 52 Obery St., Plymouth

PROGRAM CHAIR: Michael I. Flores, Esq., Michael I. Flores, LLC, Chelsea
FACULTY: Hon. Patricia A. Gorman, Middlesex County Probate and Family Court, Cambridge; Mark I. Berson, Esq., Mark I. Berson, Greenfield; Michael Predicakosi, Esq., Commonwealth of Massachusetts, Board of Bar Overseers, Boston

The number of newly admitted attorneys who completed the Massachusetts Bar Association’s Practicing with Professionalism course in 2013–14.

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March 19—UMass School of Law, Dartmouth
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Sept. 17—UMass Lowell (inn and conference center)
Oct. 23—Western New England University School of Law

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our courts … continue to create the common law that is the legal infrastructure of our civil society.” He also announced plans to release information sheets that will help self-represented litigants know how and where to access legal assistance.

Gants concluded his remarks by pledging his commitment to voir dire and thanking the Supreme Judicial Court Committee, which includes former MBA President Douglas K. Sheff.

“By February 2015, when the new statute takes effect, there will be a provisional Superior Court standing order that will establish protocols for attorney voir dire, and the Superior Court, hand in glove with the committee, will learn from our experience with the provisional standing order before issuing a more permanent one,” he said. “We will make attorney voir dire work.”

Collaboration on display

MBA President Marsha V. Kazarosian delivered opening remarks at the Bench-Bar Symposium, which celebrated the strong and long-standing collaboration between lawyers and judges, as well as legislators and others who work closely with the legal community. “This is truly a community of people used to working toward common goals, and achieving those goals. And each time I have the honor of speaking to our legal and legislative community, I am reminded of the humbling power of cooperation and collaboration,” she said.

Kazarosian singled out the passage of voir dire as a recent example of unity. “Voir dire is a goal that the MBA and the Massachusetts Academy of Trial Attorneys have worked toward for a very long time, and we are extraor-
dinarily grateful to Gov. [Deval] Patrick and our legisla-
tive leaders, as well as our partners in the judiciary, for recognizing its worth as an incomparable tool in rooting out hidden bias.”

Looking ahead, the MBA president noted that “al-
though we have certainly moved mountains together, there are still more mountains to move,” citing the MBA’s goal of higher salaries for assistant district attorneys, public defenders and bar advocates. Kazarosian noted she had accepted an appointment by Patrick to serve on his Commission to Study the Compensation of ADAs and CPCS attorneys.

“I look forward to continuing down that road paved by the MBA’s Blue Ribbon Commission on Criminal Justice Attorney Salaries,” Kazarosian said. “Without appropriate funding for a balanced system of criminal justice that provides for the rights and securities afforded to us by our constitutions, we are not meeting our obligations to provide true access to justice for those who need it most.”

Before turning over the podium for Gants’ first State of the Judiciary address, Kazarosian reiterated that one of the greatest benefits about the MBA was the “terrific rapport” it shares with the judiciary, including Gants.

“Whether he is chairing commissions or task forces to ensure legal services for the underrepresented … or [rushing] back across the state after a long and difficult day to attend an evening reception because he promised he would be there,” Kazarosian said, “Justice Ralph Gants is the respected and admired voice of our judiciary, the leader of our legal community and a really nice guy.”

Serving the people

Chief Justice of the Trial Court Paula M. Carey and Trial Court Administrator Harry Spence also spoke at the symposium. Spence praised the trial court admin-
istration’s organizational and technological advances, including an attorney’s portal being piloted in Bristol County.

“The pilot allows lawyers to go online to view their cases, including all docket and event information. We expect to expand it across the state and across trial court departments,” Spence said. “Soon we also expect to of-
fer, for a small fee, an application that pushes informa-
tion on scheduled events to attorneys’ electronic devic-
es.”

Carey celebrated the state’s addition of nine new specialty courts — five drug courts, two mental...
Clients’ Security Board
Continued from page 1

Clients’ Security Board is “one of the crown jewels of the profession,” according to Morrissey, who explained that the process in Massachusetts is different from other states. In Massachusetts, there is no cap on the amount of money a wronged party can receive and there is no statute of limitations related to claims. “The legal community in Massachusetts is very protective of the integrity of the overall justice system,” said Massachusetts Bar Association Chief Legal Counsel Martin W. Healy. “Attorneys fully realize that when clients come to an attorney for help they expect to be treated fairly and not further traumatized. The MBA wholeheartedly supports compensating those few victims of attorney theft fully, and in a speedy manner. The trust between the public and a lawyer is a special bond and needs to be rightfully safeguarded and never treated casually.” Morrissey said that staff attorneys, such as Karen D. O’Toole, assistant board counsel, deserve much of the credit for the board’s work. O’Toole explained that the board had to work at an expedited pace in 2014 to deal with all the claims related to Clayton’s conduct. During her disciplinary proceedings, Clayton’s attorney made contact with all of Clayton’s former clients and wrote to them. Contained in the letter was the information for the Clients’ Security Board and an instruction that if any of them felt that they were owed money, to contact attorney O’Toole. Many of them did. As a result, a record 76 awards were given out. According to Morrissey and O’Toole, the relationship between disciplined attorneys and the board varies from case to case. Some former attorneys want to try to make amends and see that former clients receive the compensation they deserve while others challenge claims for a variety of reasons.

Since each year presents new challenges and every case is different, it’s hard to find any sort of pattern in year-to-year reports. A pattern has emerged though, and that’s a pattern of hard work and diligent service from the board and its staff attorneys, and a pattern of dedication to helping those wronged by their attorney in Massachusetts.

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Clients’ Security Board

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<th>FY2013</th>
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<td>23 out of 58,485 (0.04 percent)</td>
<td>-43 percent</td>
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The trial court would not have been able to effectively deliver justice over the five years of the fiscal crisis without the help and commitment of the bar,” Carey said, adding: “As we move forward, we are keeping the needs of the bar in the forefront.”

Jason Scally contributed to this story.

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The Massachusetts Bar Association
Judges offer secrets to moving civil cases quickly

BY MICHAEL HAYDEN

The Massachusetts Bar Association’s View From the Bench series recently traveled to the Montvale Plaza in Stoneham, where seven Superior Court justices provided a balanced, informative and exceedingly helpful view of what civil litigators can, and should, be doing to move their cases toward a speedier and more efficient resolution.


The judges spoke about the origins of Standing Order 1-88 and encouraged attorneys to think about whether the tracking order requirements of Standing Order 1-88 should be modified in particular cases. Over the last 25-plus years, the Superior Court has become familiar with the cases. Over the last 25-plus years, the Superior Court has become familiar with the cases.

The judges also spoke about the benefits and under-utilization of Rule 16 conferences. The Rules of Civil Procedure offer this effective tool to facilitate case management and, often times, a Rule 16 conference can be scheduled with a simple telephone call to the courtroom clerk. Anything from scheduling requests to discovery issues often are ripe for discussion during a Rule 16 conference and judges will routinely use a Rule 16 conference to encourage the parties to start thinking early in the litigation process about an efficient path to resolution (i.e., settlement).

Speaking of settlement, the judges pointed out the fantastic mediation resources provided to litigants by the Superior Court, free of charge, namely by James F. McCormack, Hon. Paul A. Chernoff (ret.) and Hon. Thayer Freemont Smith (ret.). Judge Curran identified certain types of cases that generally are good candidates for early ADR: negligence/personal injury and sale of goods or services actions.

Throughout the View From the Bench seminar, members of the audience contributed helpful questions and valuable practice points from the litigators’ perspectives. Included in this audience feedback was the point that many attorneys regularly volunteer to provide free mediation service to litigants who sign up through the court. Unfortunately, these attorneys are often underutilized and remain ready, willing and able to assist parties who cannot afford private mediators with settlement discussions.

Not surprisingly, the distinguished panelists generally were not in favor of discouraging cases that generally are good candidates for early mediation. As expected, the judges would prefer that counsel work out their differences on their own, without the need for judicial intervention. Surprising to some, however, was a consensus among the judges that when parties do file motions concerning discovery disputes, they often noticeably lack the specificity the court would like to see with regard to a requested remedy. In other words, the court may agree that a discovery violation has taken place, but if the moving party can elaborate, with specificity, what relief they would like the court to grant, and
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DROP OFF FOOD DONATIONS:
Start date: Thursday, Oct. 16
End date: Monday, Nov. 17
Location: MBA lobby, 20 West St., Boston

All collected items will be donated to the Merrimack Valley Food Bank, www.mvfb.org.

MEMBERSHIP ADVANTAGE
Massachusetts solace chapter connects legal community

Do you know someone who needs help due to a death, illness or other catastrophic loss? Join the Massachusetts SOLACE chapter and become part of a statewide community of legal professionals who assist fellow practitioners in times of need.

What is SOLACE?
SOLACE is an email based network of legal professionals in Massachusetts who are interested in helping other members of the Massachusetts legal “family,” including lawyers, paralegals, legal assistants and legal staff, court personnel, and anyone who works in the legal profession. SOLACE harnesses the backgrounds and connections of its members to provide critical assistance in times of need, especially when there has been a death in the family, illness or other catastrophic loss.

How SOLACE works
You will receive an email from the SOLACE administrator when someone from the legal “family” needs assistance. If you are able to help, you can reply and be put in touch with the requester. There is never any pressure to offer assistance — participation is purely voluntary. SOLACE will not seek cash contributions from participants. The program is an opportunity to offer clothing, housing, transportation, medical community contacts and a myriad of other contributions to those in need.

Sign up today and give yourself the chance to help your fellow members of the legal community.

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Sign up today and give yourself the chance to help your fellow members of the legal community.

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MBA to present 12th Annual In-House Counsel Conference

The Massachusetts Bar Association will be holding its 12th Annual In-House Counsel Conference on Friday, Dec. 5, from 9 a.m. to 1 p.m., at the MBA, 20 West St., Boston. As with prior conferences, this year’s conference will feature several high-level speakers on topics critical to in-house counsel.

The theme for the 2014 conference is “Compliance and Risk Management.” Companies are facing a constantly changing risk and regulatory environment, that requires self regulation and self examination, and imposes consequences for those who are not engaged in appropriate internal practices. This has created new burdens for in-house counsel. In-house counsel and compliance officers are expected to implement and manage compliance systems and procedures in a variety of new and evolving areas, and to do so efficiently. A legal officer with legal and compliance responsibilities may perform multiple functions ranging from providing traditional legal advice to management functions such as oversight of controls, investigations, outside disclosures and employee training. There are fresh challenges involved in identifying the need for compliance programs, configuring those programs for forward-looking sufficiency, and then managing and sustaining the programs company-wide.

This year’s In-House Counsel Conference will include a panel discussion regarding managing a culture of compliance. Panelists will include William Sinnott, former corporation counsel with the city of Boston, and presently practicing with Donovan, Barret & Singal PC; and Tim C. Mazar, chief operating officer of the Ethics & Compliance Officer Association, and former ethics officer at two Fortune 500 corporations. Conference co-chair James C. Donnelly Jr. of Mirick, O’Connell, D’Aulouise & Loughlin LLP, will moderate the panel discussion.

The keynote address will be delivered by F. Bierce Lovel Jr., general counsel of the Archdiocese of Boston. The Hon. Mary Thomas Sullivan, associate justice of the Massachusetts Appeals Court, will be the judicial speaker.

With today’s mobile workforce and new and alternative work arrangements for employees and other personnel, company counsel must be increasingly attentive to laws regulating employees’ rights and a company’s HR obligations, and the risks associated with non-compliance with such laws. The conference will present a panel discussion focused on managing wage and hour risks, featuring Matthew Berge, division chief of the Fair Labor Division of the Massachusetts Attorney General’s Office. Conference co-chair Robert J. Kerwin, chief legal officer of Mortgage Master Inc., will moderate the panel discussion.

Many companies face compliance challenges in connection with managing relations with non-U.S. employees. The conference will present a discussion by Alan M. Pampanin of the Pampanin Law Offices, regarding management of immigration law risks.

This year’s full agenda promises to continue a tradition of providing, in a half-day conference, a wealth of valuable information that is responsive to in-house counsel’s needs. Please plan to arrive early to meet and network with fellow in-house counsel. With a robust schedule of topics and speakers, conference co-chair James A. Parke of Bulkley, Richardson and Gelinas LLP plans to start the conference promptly at 9 a.m. More details regarding this year’s conference agenda and registration information are forthcoming and can also be found at the MBA’s website (www.massbar.org).

Why such motions may prove more successful in the future. The take-home point: be concise. Include a draft order with your discovery motion and narrowly tailor your requested relief to the issue at hand and the authority of the court to remedy the alleged discovery violation.

Finally, there was some lively debate among the panel regarding the utility of the judicial rotation system that relocates Superior Court judges to different sessions every 90 days to the enjoyment of difficulty regarding the logistics of relocating every 90 days to the enjoyment of moving between civil and criminal sessions and from one county to another.

The distinguished justices graciously extended their participation in the 90-minute seminar to attend the social reception with the audience members that followed the panel discussion. Clearly, many of the attorneys in attendance found this unique opportunity to converse directly with our Superior Court justices an exhilarating and welcomed treat. The room stayed full right to the end and the audience members left raving about the success of this most recent View From the Bench seminar.
Q: Why is it important to do pro bono work as an attorney?
A: It’s a recognition that lawyers, as a licensed group of individuals, have been part of creating a system that has made getting to court incredibly expensive. By no means are lawyers the only people responsible for it. Middle-class people, poor people, even a lot of upper-middle-class people often can’t afford the rates lawyers charge. So, along with the privilege of being able to charge that much money for basically things that are just in my brain, comes the responsibility of leveling the playing field to make it so that people who can’t afford attorneys can still be represented.

Q: What’s the most rewarding aspect of pro bono work?
A: You have to care enough to do a really good job, but not enough that you take the problems home with you. I know that there are women who’ve been able to get a financial settlement that they normally wouldn’t have been able to get without an attorney’s help. Some of them have represented themselves the only people responsible for it. Middle-class people, poor people, even a lot of upper-middle-class people often can’t afford the rates lawyers charge. So, along with the privilege of being able to charge that much money for basically things that are just in my brain, comes the responsibility of leveling the playing field to make it so that people who can’t afford attorneys can still be represented.

Q: What makes working with domestic violence cases particularly difficult?
A: One of the problems you have in domestic violence cases is that most victims don’t get to court until after the black eye is gone, the blood is dried off and they’ve been cleaned up. One of the things that happens when you do domestic violence work and you get very intimately connected with your clients is you really do learn about the violence from their perspective — what the fear was really like of not knowing when somebody was going to go off on you. Not knowing when you’re going to get your nose broken or when someone is going to slam your head against a wall. You get a sense of what it’s like to be in a situation where the adrenaline is going through you the whole time. Court is this very ritualized state where the person gets up there and they say, almost in a monotone, because you’re not supposed to be too theatrical, “He did this to me. He did this. … He did this.” I think there’s often a disconnect with a lot of judges, court officials and other lawyers about domestic violence because they haven’t lived it every day, even through their client.

Massachusetts Bar Association member Andrew P. Cornell has been practicing law in Massachusetts for 20 years, concentrating on all aspects of family law. He is a volunteer attorney for Community Legal Services and Counseling Center (CLSCC) in Cambridge, where he has represented several victims of domestic violence on a pro bono basis. He was awarded the MBA’s Access to Justice Pro Bono Publico Award in 2003 and serves as a member of the MBA’s Access to Justice Section Council. The MBA’s Mike Vigneux recently spoke with Cornell about his pro bono experiences.
Member Spotlight

MBA members named Access to Justice Fellows

The Massachusetts Access to Justice Commission, in partnership with the state judiciary, has announced the selection of 17 Access to Justice Fellows, including eight members of the Massachusetts Bar Association. Access to Justice Fellows will partner with nonprofit, legal service organizations and the courts on pro bono projects throughout the commonwealth in 2014-2015.

The fellowship, now in its third year, brings experienced and accomplished attorneys who have retired or are transitioning into retirement an opportunity to work for a year providing needed legal services to underserved groups and individuals. Each fellow is expected to devote between 10 to 20 hours per week to individual pro bono projects from September 2014 to June 2015.

The MBA members who have been selected as fellows are:
- Richard Allen, retired partner, Casner & Edwards LLP
- Hon. Leila Kern, retired associate justice, Massachusetts Superior Court
- Erik Lund, retired senior partner and current senior counsel, Posternak & Lund LLP
- Hon. D. Lloyd Macdonald, retired associate justice, Massachusetts Superior Court
- Richard Neumeier, partner, Morrison Mahoney LLP
- Allan Taylor, retired partner, Taylor Duane Barton & Gilman and current counsel, Peabody & Arnold LLP
- Hon. Herbert Wilkins, retired chief justice, Massachusetts Supreme Judicial Court
- Jeffrey Wolf, former staff attorney/current consulting attorney, Massachusetts Law Reform Institute and former legal director/current consulting attorney, Community Legal Services and Counseling Center

House of Delegates holds first meeting of 2014-15

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The Massachusetts Bar Association’s House of Delegates (HOD) met for the first time under current MBA President Marsha V. Kazaroasian at the inaugural meeting of the 2014-15 association year on Sept. 30.

Kazarosian kicked off the meeting by congratulating President-elect Robert W. Harvard, and Chief Counsel Christopher P. Sullivan on their recent awards from the Quincy Bar Association and Federal Bar Association, respectively. The MBA president also announced that she has been appointed by Gov. Deval L. Patrick to serve on his Commission to Study the Compensations of assistant district attorneys and Commission for Public Counsel Services (CPCS) staff attorneys.

In addition to discussing her newly created Voir Dire Task Force and the MBA’s role in discussions over voir dire implementation and education, Kazarosian highlighted several important dates for the 2014-15 year, including the MBA’s Annual Dinner, which will be held May 7, 2015.

Following reports from other MBA officers and Chief Legal Counsel and Chief Operating Officer Martin W. Healy, the HOD took action on several agenda items, voting to:
- Elect Richard P. Campbell, William T. Hogan III, Josephine A. McNeil and Brigid E. O’Mara each to a two-year term as MBA Delegates to the ABA House of Delegates; and
- Appoint appointments on the MBA’s Executive Management Board and to elect Martha Rush, Mitchell each to a two-year term as MBA Delegates to the ABA House of Delegates; and
- Support the recommendation of the Probate Law Section Council that SJC Rule 1:14 be deleted altogether since Section 3-904 of the MUPC makes such Rule unnecessary; and
- Authorize the MBA to engage the SJC to hold a more detailed review of Rule 45 prior to any amendments being adopted.

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Following reports from other MBA officers and Chief Legal Counsel and Chief Operating Officer Martin W. Healy, the HOD took action on several agenda items, voting to:
- Elect Walter A. Costello Jr., James Gavin Reardon Jr. and Paul E. White to three-year appointments on the MBA’s Executive Management Board and to elect Martha Rush, Mitchell O’Mara to fill the vacancy created by Veronica J. Fenton.
- Elect Richard P. Campbell, William T. Hogan III, Josephine A. McNeill and Bridget E. Mitchell each to a two-year term as MBA Delegates to the ABA House of Delegates;
- Support the recommendation of the Probate Law Section Council that SJC Rule 1:14 be deleted altogether since Section 3-904 of the MUPC makes such Rule unnecessary; and
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Today's Events:

**Monday, Nov. 3**
- Mock Trial Teacher Orientation: 5:30-7 p.m., MBA, 20 West St., Boston

**Tuesday, Nov. 4**
- Mock Trial Teacher Orientation: 6-7 p.m., Plymouth Public Library, 132 South St., Plymouth

**Wednesday, Nov. 5**
- Mock Trial Teacher Orientation: 6-7 p.m., Mass. School of Law, 500 Federal St, Andover

**Thursday, Nov. 6**
- Mock Trial Teacher Orientation: 6-7 p.m., MBA, 73 State St., Springfield

**Friday, Nov. 7**
- Mock Trial Teacher Orientation: 6-7 p.m., Mirick O’Connell DeMallie & Lougee LLP, 100 Front St., Worcester

**Saturday, Nov. 8**
- Tiered Community Mentoring: Murder One Appeal and Speed Networking: 8:30 a.m.-12:30 p.m., Social Law Library, 1 Pemberton Square, #4100, Boston

**Wednesday, Nov. 12**
- Making the Winning Argument: 4-7 p.m., MBA, 20 West St., Boston

**Thursday, Nov. 13**
- Second Annual Probate Law Conference: 9 a.m.-4 p.m., MBA, 20 West St., Boston

**Friday, Nov. 14**
- Second Annual Probate Law Conference: 9 a.m.-4 p.m., MBA, 20 West St., Boston

**Saturday, Nov. 15**
- Executive Management Board: 4 p.m., MBA, 20 West St., Boston

**Wednesday, Nov. 19**
- MBA’s Legal Lunch Series: Feed Your Mind: How to represent individuals in front of licensing boards: 12:30-1:30 p.m., MBA, 20 West St., Boston

**Thursday, Nov. 20**
- The Ethical Rules for the Family Law Attorney: Where is the line between zealous and over-zealous?: 4-6 p.m., Plymouth Probate and Family Court, 52 Oberry St., Plymouth

**Friday, Dec. 5**
- 2014 MBA Holiday Party: Casino Royale: 5:30-8 p.m., MBA, 20 West St., Boston

**Saturday, Dec. 6**
- Western Mass. Holiday Reception: 5:30-7:30 p.m., Storrowton Tavern, 1303 Memorial Ave., West Springfield

**Thursday, Dec. 11**
- 2014 MBA Holiday Party: Casino Royale: 5:30-8 p.m., MBA, 20 West St., Boston

**Friday, Dec. 12**
- Executive Management Board: 4 p.m., MBA, 20 West St., Boston
BY MIKE VIGNEUX

Western Mass. MBA members offer legal advice during Pro Bono Week

Volunteer attorneys from the MBA fielded 173 phone calls on Oct. 22 at the MBA’s semiannual Western Massachusetts Dial-A-Lawyer call-in program, hosted at Western New England University School of Law.

Residents of Berkshire, Franklin, Hampden and Hampshire counties had the opportunity to have their legal questions answered by local attorneys who volunteered their time during Pro Bono Week, which was celebrated from Oct. 19-25 this year. The legal advice was provided at no charge as a public service of the MBA.

The calls featured legal questions on a wide range of topic areas, including employment law, consumer law, tax law, real estate law, elder law and family law.

Launched in 1994, the MBA’s Western Massachusetts Dial-A-Lawyer program is in its 20th year. The program is co-sponsored by Western New England University School of Law, The Republican, El Pueblo Latino, the Massachusetts Association of Hispanic Attorneys and the Hispanic National Bar Association.

“This program really provides a service to people who otherwise wouldn’t have access to an attorney,” said attorney Kimberly Klimczuk, who has been a Dial-A-Lawyer volunteer for several years.

“A lot of people can’t afford legal bills, and they have real-life issues,” added attorney James Winston.

The MBA thanks the following members for donating their time and expertise to this important public service effort:

- Jeffrey A. Burstein, Burstein Law Offices, Springfield
- Corey M. Carvalho, University of Massachusetts Legal Services, Amherst
- Leslie A. Curley, Berkshire Mediation Group, Pittsfield
- Michele Feinstein, Shatz, Schwartz and Fentin PC, Springfield
- Stephanie Fitzgerald, Fitzgerald Attorneys at Law PC, East Longmeadow
- Lisa L. Halbert, Bacon Wilson PC, Northampton
- Kimberly Klimczuk, Skoler Abbott & Presser PC, Springfield
- Stephen R. Manning, Stephen R. Manning PC, East Longmeadow
- Amy J. Megliola, Siddall & Siddall PC, Springfield
- Timothy F. Murphy, Skoler Abbott & Presser, PC, Springfield
- Thomas O’Connor, Thomas D. O’Connor, Jr., Attorney at Law, Springfield
- David W. Ostrander, Ostrander Law Office, Northampton
- Stephen J. Phillips, Dunn & Phillips PC, Springfield
- Katherine A. Robertson, Hampden County District Attorney’s Office, Springfield
- Daniel M. Rothschild, Bulkeley, Richardson & Gelinas LLP, Springfield
- Barry M. Ryan, Doherty, Wallace, Pillsbury & Murphy PC, Springfield
- Michael Siddall, Siddall & Siddall PC, Springfield
- James B. Winston, Winston Law Offices, Northampton

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The phone affair: Redefining the relationship between a lawyer and his phone

By Dmitry Lev

Just as seeing a payphone or an answering machine is a rarity these days, so too, should be seeing a phone plugged into an old phone jack in a modern law office. If the constraints of an old style phone are not obvious, the advantages of modern well-configured voice-over-Internet-protocol (VOIP) systems should be self-evident.

For starters, the main phone number of a law firm does not need to have a concrete physical location. Because providers have redundant backups, the phones will always be answered and will always greet clients, regardless of power outages, floods or hurricanes. The calls can then be routed literally anywhere: the home number of the telecommuting associate, the mobile number of the partner in court for the day, the voicemail of the assistant handling the call made or received through the system, because it is not tied to a specific physical location. There is no need to change phone numbers or worry about down time. Setting up at the new office is as simple as plugging things into the wall — as long as there’s Internet, the phone system remains unaffected to callers, as it would ever be revealed.

Returning calls is just as transparent: Regardless of where the return call originates, even if it’s on a cruise ship headed for Bermuda, the person receiving the call would only see the main number for ABC Law Firm, and no private or home number would ever be revealed.

Fax machines are a thing of the past, as well. Most VOIP systems will have integrated digital fax capabilities, meaning that one would send a fax by simply sending an email with an imaged document to a special address, and it would be delivered like an ordinary fax on the other end. Similarly, faxes are received as attachments to emails which could be routed to anyone on the team, or kept on a centralized location for everyone at the office to access from wherever they may be. No more paper jams or busy signals, or the realization that the expected settlement agreement is collecting dust in a fax machine in a closed office over a four-day weekend.

Perhaps the most significant advantage is that virtually no special hardware or expensive equipment is required. The systems integrate into existing computer networks, mobile phones and, yes, even the old style analog phones, but with the power to control and route calls seamlessly. No more PBX boxes, or those messy bundles of colored wires hanging from the basement ceiling. VOIP works over network cables already in place wherever there is a desktop computer, or as a part of the wireless network in the office.

If the law office needs to relocate, there would be no interruption in the phone system, because it is not tied to a specific physical location. There is no need to change phone numbers or worry about down time. Setting up at the new office is as simple as plugging things into the wall — as long as there’s Internet, the phones are up and running. But even in the event of an Internet outage, the VOIP system remains unaffected to callers, as it will continue to answer and forward calls as programmed.

On the administrative end, detailed reports can be generated showing every call made or received through the system. This is useful in a variety of contexts, from billing to responding to the client who erroneously claims that his call was never returned.

The cost is, perhaps unexpectedly, usually less than existing monthly service from major providers, and scalability is a breeze. Adding an extension requires a few keystrokes on a website instead of costly and time-consuming appointments with the phone company.

A law office considering a switch to VOIP should conduct due diligence and compare options among various providers. For starters, those averse to technological leaps can have their VOIP systems configured exactly like their old phone systems, and then slowly begin the process of implementing new features over time. Once the freedom and flexibility of VOIP is fully realized, there is no going back.

Dmitry Lev is the principal of the Lev Law Firm, based in Watertown. His practice is focused in the areas of bankruptcy litigation, personal injury and criminal defense. Lev has been using VOIP in his office since 2008 and he is in his second year as a member of the Law Practice Management Section Council.
Tsarnaev friend using marijuana defense

If they are trying to convince the jury that this wasn’t a thought-out scheme — it was just that he wasn’t thinking clearly and was nervous on top of that — this can only enhance that argument. I think it’s a smart move by the defense. It’s clear that they want to paint him as a kid who wasn’t thinking clearly, and not a diabolical schemer out to throw the police off track.

MBA CRIMINAL JUSTICE SECTION VICE CHAIR
PETER ELIKANN, BOSTON HERALD, OCT. 7

Elikann spoke to the Herald about the defense of Robel Phillipos, who is accused of lying to investigators during their investigation of the 2013 Boston Marathon bombings.

No-fault auto insurance

It really has created an administrative nightmare in terms of claims, and the costs are passed on to consumers. Therefore, premiums increase.

MBA PAST PRESIDENT KATHLEEN M. O’DONNELL
NERDWALLET.COM, SEPT. 25

O’Donnell was quoted by financial news site NerdWallet.com in a piece on no-fault auto insurance. A total of 12 states, including Massachusetts, introduced no-fault auto insurance to lower costs, but results have been mixed.

State of the judiciary address

So many people involved in the criminal justice system have substance abuse and mental health issues. That’s the root of the problem, and this gets back to individual, evidence-based sentencing.

CPCS CHIEF COUNSEL ANTHONY J. BENEDETTI
THE BOSTON GLOBE, OCT. 17

Benedetti, a member of the MBA Executive Management Board, was quoted in a front-page article about Supreme Judicial Court Chief Justice Ralph D. Gants’ call for an end to mandatory minimum sentences for low-level drug offenders, which he made at the MBA’s Annual Bench-Bar Symposium on Oct. 16. MBA President Marsha V. Kazarosian was also quoted in the article, where she called Gants’ announcement a “gutsy move.”

Brockton courthouse bans cell phones

It really does hamper law enforcement efforts from the beginning of an investigation all the way through to a trial. We’re concerned about witnesses being retaliated against for coming forward. They’re going to be less willing to come forward in the community. People go in with the intent of using that cell phone as a weapon.

MBA CHIEF LEGAL COUNSEL AND CHIEF OPERATING OFFICER
MARTIN W. HEALY, THE ENTERPRISE (BROCKTON), OCT. 4

Healy was quoted in a piece about a ban on cell phones that will go into effect on December 1 at Brockton District Court. There are now 30 courthouses in the state that have banned cell phones.

Your rights when retailer goes out of business

You have to be proactive. You can’t sit back. The fact that they’re not answering, the fact that they took my property, this could be considered a criminal act on their part.

MBA PRESIDENT-ELECT ROBERT W. HARNAIS
WHDH TV CHANNEL 7, OCT. 9

Harnais provided his analysis for “Solve it 7,” a new segment on WHDH which aims to address problems faced by consumers and local residents. In this featured case, a recently married couple tries to get a wedding dress back from a bridal shop that went out of business while still in possession of the dress.
BY SARAH E. WORLEY, SHARON APPLAGATE and KENDRA TIMKO-HOCHKREPEL

We enjoy a proud history in the commonwealth of Massachusetts of accurately identifying and swiftly addressing areas in which our legal services can better serve our citizens. In the aftermath of the Boston Marathon bombings, the leadership of the Massachusetts and Boston Bar Associations coordinated efforts to provide the highest level of legal services on a volunteer basis to victims of the attacks who suffered personal injury, property damage, and business disruption. Beyond the initial damage assessment, MBA President Douglas R. Sheff founded the Traumatic Brain Injury (TBI) Task Force “to educate the public, and to overcome bias which often accompanies an ailment that you can’t see, that people aren’t familiar with.” In focusing attention on the struggles faced by individuals suffering from TBI, hearing loss and tympanic injury following the bombings, Sheff also shed light on a larger issue in the administration of justice: The unique challenges faced by deaf individuals in our court system.

Equal access to services and institutions is a civil and human right. Deaf citizens are denied that right on a daily basis simply because too few people in this country can communicate in American Sign Language (ASL). That barrier to adequate communication creates circumstances that we would not otherwise tolerate. For instance, all hospitals in the Boston area prominently post lists of language interpreters available upon request to assist patients. While ASL interpreters are featured on those lists, it can take days to locate one for hospital work. Consequently, hospital personnel routinely fall back on asking an accompanying friend or family member to act as an interpreter. In a time when HIPAA regulations are meticulously enforced, often to the frustration and mutually-beneficial collaboration with the courts to communicate with deaf community members, judicial services and will enhance dramatically the ability of lawyers, judges, court personnel and others connected with the courts to communicate with deaf individuals.

DEAF Inc. looks forward to an exciting and mutually-beneficial collaboration with the legal community as we all work together to build a bridge between deaf consumers and our system of justice.
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