

PETER J. CARUSO, ESQ.

68 MAIN STREET
ANDOVER, MA 01810
978-475-2200

PETER J. CARUSO, ESQ.
PETER J. CARUSO II, ESQ.
pcaruso@carusoandcaruso.com

NEFAC MEETING December 20, 2024

MASSASCHUSETTS

- **Access: Brothel Case.** The Massachusetts SJC ruled in November that preliminary hearings (Clerk Magistrate Hearings) should be held in public for more than 24 accused customers of a high-end sex ring, rejecting a request by some of the defendants to keep the proceedings secret. However, the SJC rejected the request by the media to make the underlying documents in the case public before the hearings are held.
Modification: the SJC modified the rulings in the two prior Clerk Magistrate Hearings (Eagle-Tribune and Boston Globe) ruling that the courts should make sure defendants are notified and given a chance to respond to future requests to open these hearings “in the interest of fairness and uniform treatment of the accused.”
- **First Amendment.** T-shirt message “There Are Only Two Genders” by a Middleborough public school student has worked its way to a petition for certiorari with the U.S. Supreme Court after a panel of the 1st U. S. Circuit Court of Appeals ruled in favor of the school district on the student’s § 1983 claims that it could ban the student from wearing the T-shirt pursuant to a school dress code prohibiting hate speech. The school also would not allow the same shirt with the words “Only Two” covered by piece of tape on which was written “CENSORED.”

- **Public Records.** State Police failed to search diligently for internal affairs records relating to a trooper who had been set to serve as a key prosecution witness in a criminal case, in which it turned out he did have a formal complaint against him, acknowledged belatedly. The Committee for Public Counsel Services brought this case forward, but the Supervisor of Public Records has consistently found the State Police improperly withholds public records. Even when the SPR rules against the State Police it takes 18 months to comply. The Heading in Lawyers Weekly was “Broken Records.” Also, a public records request by Boston 25 News resulted in a response of \$176,431 just to review records requested.
- **Defamation. Discovery Rule.** Court questions if social media platforms materials are “inherently unknowable” for purposes of applying the discovery rule in the context of defamation, right of publicity, right of privacy, and related tort claims. Even after the statute of limitation has expired, the court ruled that discovery of the injury must be based on whether the plaintiffs knew or reasonably should have known they were harmed, but given the wide distribution of social media postings this fact specific basis may be difficult to overcome.
- **Defamation.** Ex-Celtic’s Walter McCarthy alleged he was defamed in the aftermath of the loss of his coaching job in Indiana, but his case was dismissed for lack of personal jurisdiction in Massachusetts. Jane Doe, the plaintiff, filed in Massachusetts a sexual contact action but the U.S. District Court found that McCarthy did not have minimum contacts in Massachusetts to maintain a suit here to exercise personal jurisdiction. This was a 16-page decision.
- **Access. Public Records and the Work Family Mobility Act.** The New England First Amendment Coalition has written to the Attorney General requesting to amend the office’s regulations related to the WFMA and the Registry of Motor Vehicles records that were previously public and contained no immigration information. This comprehensive September 4, 2024, letter from NEFAC is attached.
- **Access.** Access to court records via court located computer kiosks and terminals. Issues arising from either non-working terminals, too few terminals, or terminals used by one person for several hours have thwarted reporter’s access to court cases and reporting NEFAC on October 9, 2024,

wrote to the Executive Office of the Trial Court expressing these concerns and requesting relief. This October 9, 2024, letter is attached.

The Response letter from the Court Administrator is also attached that they are working diligently to address these issues.

- Public Records. Treasurer Deborah Goldberg’s battle with the firing of Shannon O’Brien resulted in the disclosure that the Treasurer had a “pattern and practice” of requesting the deletion of text messages. In a public records request by WMUR for texts between Goldberg and Farley (her campaign manager) the response was that there are no messages between Goldberg and Farley, however, Farley testified that he did receive text message from Goldberg who then ordered him to delete all text message regarding O’Brien.
- Defamation. Opinion. Blog post. Appeals Court affirmed that the defendants did know they published a false statement or had reckless disregard for the truth in the context of the post. *Branch v. Kearney*, Docket No. 23-P-414, (July 21, 2024). Called “fake bishop” to a Pentecostal Bishop Tony Branch under a photo regarding issues changing the “Headmaster” at Brockton High School to “Deans” because of slavery. Author of the post: Adian Kearney “Turtleboy.”
- Public Records. Judge ordered the city of Somerville to release the names of people with parking permits. Originally, the Supervisor of Public Records ordered the records released a decade ago! City appealing. www.ma-appellatecourts.org/docket/2024-P-0398.
- Defamation - Email. Brother sued sister for defamation after the sister sent an email to the brother’s creditor that because of her concerns about her brother’s “fraudulent activities.” Court found no economic loss, statements materially true, and not acted with actual malice. U.S. District Ct. Civil No. 4:21-cv-40060-MRG.
- Access. RMV records law passed last year applies to vanity plates. No access. See Federal Drivers’ Privacy Act.
- Open Meetings. With virtual meetings set to expire on March 2025, the State advanced House Bill 4771 that would update the Open Meeting Law to require hybrid meetings. Opposed by Mass. Municipal Association.

- Access. Search warrants at various courts. Each court has their own procedure. Some do not even know where they are. See NEFAC for a full report on which courts comply.
- Access. Access to Court terminals for journalists still not readily accessible as some courts have only one; some courts have none operable. Medford/Malden eliminated their only terminal four years ago. Somerville has only one.
- NEFAC had discussion on the Press-Bar Committee which actually exists – but not really working as in the past.
- The [New England First Amendment Coalition](#) is asking the Massachusetts Attorney General to order the disclosure of certain motor vehicle records that were once public but are now kept secret due to a misconstrued law. The [Work Family Mobility Act](#) and related regulations pose an impassable barrier for journalists seeking a variety of Registry of Motor Vehicles records that were previously public and contain no immigration information — the primary focus of the WFMA.
- Political Speech. Karen Read backer who admitted to lacing dozens of yellow rubber ducks and fake \$100 bills around town in support of Read was charged with felony witness intimidation and criminal harassment. Stoughton District Court J. Schiffer, from the bench, dismissed the charges. First Amendment political speech was argued by counsel.
- Students to Attend Negri Institute. A select group of journalism students attended the 14th annual Institute in October – provided at no cost – consisting of local workshops, online classes and in-person instruction at Northeast University. Support was from the Rhode Island Foundation and the Estate of Gloria L. Negri, the late trail blazing Boston Globe journalist.
- Defamation. National. ABC News has agreed to contribute \$15 million to Donald Trump’s presidential foundation or museum to settle a defamation lawsuit filed by Trump against the network and anchor George Stephanopoulos. Raping writer E. Jean Carroll vs. sexual abuse as determined by a federal jury.