

# Alternatives

to the High Cost of Litigation

Law & Business, Inc./Center for Public Resources

## Resolving Disputes

### *Transamerica Executives Settle \$100 Million Suit By Subordinating Legal Questions Through Letter Exchange*

When Transamerica Corp. divested itself of a subsidiary a couple of years ago, it did not contemplate that a complex dispute would arise over the use of investment tax credits. But arise it did, to the tune of claims of \$50 million in actual damages and \$50 million punitive damages. But three months into the inevitable discovery, discussions began on how to resolve the battle without firing any shots. Settlement talks are, of course, not unusual, but this one was. For according to Maryellen B. Cattani, Transamerica senior VP & GC, the active participants in the discus-

sions were the business executives, not the lawyers. And within eight months of the lawsuit's filing, the dispute was resolved.

The "main driving force behind the settlement was not cost," says Cattani; "it was the time and attention of management." To reach the settlement point, the executives on both sides maintained communication through an exchange of letters, drafted by lawyers, but put in business terms. The two principal letters were six or seven pages long, and they did not rehearse every nuance in the

*(Continued on page 2)*

## New Forums

### *Breakthrough Reached In Asbestos Discussions; General Agreement Set To Create Asbestos Claims Facility*

At press time, we learned that representatives from companies facing asbestos claims and executives of major insurance companies have reached a landmark breakthrough in negotiations to establish a non-profit Asbestos Claims Facility and settle the many insurance coverage disputes around the country. The proposed facility would provide a prompt, economical, and fair alternative to costly and lengthy court resolution of thousands of asbestos related injury claims, according to CPR President James F. Henry.

The resolution of the complex disputes among companies and their insurers over the application of various insurance policies to asbestos-related claims would be provided by this negotiated framework. It also allows for the use of alternative dispute resolution procedures to handle further conflicts among companies and their insurers.

The negotiators made the announcement after meeting for over 17 months under the auspices of the CPR Legal Program. Harry

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## *The Non-Union Complaint System At M.I.T.: An Upward-Feedback, Mediation Model*

by Mary P. Rowe, Ph.D.

*Editor's note: This is the first in an occasional series of in-depth looks at non-litigious approaches to preventing and resolving employee and other types of complaints. Mary Rowe is special assistant to the president of the Massachusetts Institute of Technology.*

Many corporations, universities, and other institutions have, in the past decade, developed explicit, non-union complaint systems. The non-union complaint system at MIT is in many ways similar to those of several hundred universities and corporations. In particular, MIT shares with some other employers and educational institutions the provision of several different options for people with problems. At MIT this is called "redundancy": provision of simultaneously available channels for complaint in order that most people will find such a channel easily. One of these channels, the ombudsman-like offices of the Special Assistants to the President, is a special focus for this article.

The MIT complaint system is also a mediation-oriented service, available with many other helping services, to all students and to all non-union employees including faculty and managers. The emphasis is on communications, counseling, fact-finding, conciliation, and mediation, with adjudication where necessary. The complaint structure also serves as an explicit "upward-feedback" channel, designed to help bring information to line managers in an orderly, timely and supportive fashion. This article sets forth elements of the policy and a discussion of the structure, functions, and performance of the MIT complaint system.

### A. STRUCTURE

The major elements of the system at MIT are these. Various channels allow for both informal concerns and formal complaints, with particular emphasis on informal problem-solving. Redundancy and multiple options for help are major features at every stage of the complaint process, except at the end of the line. One option is available to everyone at MIT who is not in a union. This general option is represented by the Special Assistants to the President, who are designated (in-house) neutrals, or "quasi-ombudsmen." (A "pure" ombudsman is paid outside the institution or the community over which he or she has oversight.)

Confidentiality and privacy are meant to be protected throughout the complaint system. Rights of both offended persons and alleged offenders are explicitly safeguarded. The complaint system is designed to be used only so long as people keep their complaints "in-house."

#### *1. Redundancy and Options Within Formal and Informal Structures*

Any student with a formal or informal complaint may bring it up either through the Dean for Student Affairs Office, or the Dean of the Graduate School Office (hereafter "the Deans for Students"), or through the appropriate academic or administrative hierarchy, or both.

Every student therefore has at least two complaint and appeal channels which are usually simultaneously available. There are, in addition, many other channels for students, including the Office of Minority Education, the housemaster and tutor systems in living groups, in-house judicial procedures in living groups, and the Committee on Discipline. Serious complaints against students (by anyone at MIT) may go to the Committee on Discipline. Complaints by students against others at MIT may go upward within the relevant academic or administrative hierarchy.

Any employee or manager or faculty member with a formal or informal complaint may bring it up either through the line of supervision or the personnel structure or both. Every employee, including faculty and managers, therefore usually has two possible complaint and appeals channels, which are usually simultaneously available. There is, in addition, a Faculty Administration Committee to which the faculty and academic staff may appeal on faculty-administration matters. Faculty appeals about negative promotion decisions go up the academic hierarchy, usually to the appropriate academic dean or the Provost.

There are many other services for the whole community which receive complaints and concerns. People bring complaints to the Campus Patrol and to the wide range of health care practitioners and employee assistance people in the Medical Department. There are also religious counsellors, the student-run Nightline, and dozens of networks of special interest groups. Some areas of the Institute also have special complaint structures like the Patient Advocate and Medical Advisory Board of the Medical Department and the Safety Coordinators at Lincoln Laboratory. Discrimination complaints may be brought through general complaints channels or to designated Equal Opportunity officers or both. Safety problems go to the Safety Office and through the general complaints channels.

Finally, there is one general option available to everyone at MIT not in a union, whether they are faculty, managers, employees or students. The two Special Assistants to the President serve as designated neutrals who will hear or help with any kind of concern within the MIT community. They usually see people on an informal, problem-solving basis, but occasionally serve at the "end of the line" to make formal recommendations to the President. It is very common for several offices to work together, with the permission of the complainant.

Nearly all complaints and con-

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cerns at MIT are heard and resolved informally within the relevant academic or administrative hierarchy, within the Offices of the Deans for Students and within Personnel. In the rare case of a formal (usually written) complaint, the complaint must go into the appropriate line management channel, and may also go up through the channel of Personnel or of the graduate or undergraduate Deans for Students.

The tradition of "redundancy and options" serves many purposes. In this context, *redundancy* is seen as necessary, in the engineering sense of fail-safe and backup. It provides a safeguard against the subjectivity of coopting of any one complaints handler. It provides backup in cases of conflict of interest, illness, vacation or overload. It provides a potential, where permission has been given, for collegial counsel. *Options* are equally seen as necessary. The most important problem of any complaint system is how to get people actually to feel free to use it. The MIT complaint structure includes, in its different offices, older people, young ones; technical people and non-technical; people of formal demeanor and informal; minorities, men and women, non-minorities. At the end of this procedure and as a general, informal option for everyone are two Special Assistants to the President, one black male, the other white female.

## 2. Confidentiality and Privacy

Everyone in the complaint system is required, if asked, to keep confidential whatever concerns may be brought to him or her. Of course a supervisor or counselling dean or personnel officer or Assistant to the President may not be able to act on a concern brought in by someone, if the individual requests confidentiality. Often the complaint handler can, however, provide information to respond to a concern. Or the grievant can be helped to resolve a problem on his or her own. Sometimes a complaint handler will wish to ask permission to speak to others to resolve a complaint. Except in the rare case

when there is a "duty to warn," it is expected that confidentiality will be observed.

All offices of MIT observe strict privacy codes with respect to records. In addition, the office spaces of the Special Assistants are especially private. Many people with concerns may feel freer to come to the Assistants' offices because these offices are down a small corridor and out of the way.

## 3. Protecting the Rights of All Concerned: "Neutrality."

A complaint system could be devised on the principle that such a structure should strive to be perfect—to make no errors. The system at MIT is designed a little differently, on the principle that mistakes and partial mistakes will occur despite the most dedicated efforts to the contrary. The process is then guided by the principle first of all to do no damage. In a context where it appears that there will always be some errors of omission (too little being done), or some errors of commission (too much being done) there is an expectation that mistakes, if they occur, would be of the first type.

The complaint system of MIT explicitly seeks to protect the rights of alleged offenders as well as of offended persons. The Deans for Students and Personnel officers and Special Assistants are frequently asked, "Whose side are you on?" The MIT complaint system does not specify advocacy, either for MIT or for a grievant. MIT believes that the institution has a common interest with people who have been wronged. The complaint handlers' role is to exemplify this common interest with those who have been wronged. Or, in the case of people who have wronged each other, MIT may have a partial interest on each side of a question.

Complaint handlers are expected to seek to illuminate and to support the common interest of MIT with those who have been wronged, in whole or in part. This very frequently means endeavoring to improve a situation as well as the condition of an individual. A steadfast refusal to be drawn into simple polarization frequently leads to third

alternatives. Although many people feel strongly that "he who is not with me is against me," the refusal to permit simplistic polarization appears in the long run to bring people the greatest sense of relief. For people who see themselves and everyone else as having many different motivations, the opportunity to see a problem in a balanced way may permit a grievant more comfort and more room to grow, and may help to protect the rights of those against whom a complaint is brought.

It is unusual for anyone in the complaint system to listen to a third party complaint. The Special Assistants in particular do not play the role of inspectors-general. One may of course suggest to a third party that people with problems be referred in, to talk about their problems themselves. By and large, however, complaints handlers do not seek out concerns. Complaints offices, especially those of the Special Assistants, are "consumer-driven" on a first-party basis.

This principle extends also to relations between senior administrators and the Special Assistants. Obviously senior officers regularly express concerns to the Special Assistants. They do not, however, "assign" problems and conflicts to the Special Assistants. They may instead refer people with problems to the Assistants, but support the right and privilege of such people to come in or not, as they themselves may choose.

People may present concerns or complaints accompanied by any MIT colleague. There is an expectation of reasonable speed in responding to complaints. MIT formally proscribes reprimand or punishment for raising a concern or grievance.

MIT complaint handlers will not ordinarily agree to see people accompanied by their lawyers. People with problems may often wish to consult with their lawyers on the outside. But offices in the complaints system, and especially those of the Special Assistants, are meant to stand free of polarization so far as possible. For the same reason this complaints and mediation

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process is usually available only so long as members of the MIT community stay "in-house," and not during or after formal application to outside agencies or courts. (An exception could occur where a criminal matter has been taken outside.) Once a specific problem has been dealt with outside, the Special Assistants in particular will no longer deal with that question, although different questions from the same person may be brought in. MIT people who choose to go to outside agencies or the courts without having exhausted the internal complaints procedure, and those who choose to be represented by counsel rather than by themselves, deal primarily with a different office at MIT (for example, the Director of Personnel) or with MIT's law firm.

## B. FUNCTIONS

Complaint systems should perform at least the following functions: communications with individuals; counselling; fact-finding, conciliation and mediation; adjudications; "upward feedback" to the employer as part of the management information system.

### 1. *Communications and Counselling*

All channels in the MIT complaints system are engaged in one-to-one communications and problem-solving counselling. This is usually on a confidential basis. The goal is, if possible, to help people help themselves, through listening to problems, helping to deal with anger, providing data, helping to frame a problem, and possibly extensive role-playing. Most people enter the system with "inquiries and concerns," rather than complaints; this is much encouraged. In the offices of the Special Assistants in particular, visitors are offered whatever seem to be all the reasonable options for the "next step." Most people choose the option of learning, with support, how to go back and deal with problems at the appropriate level, on their own. And sometimes people can, thereby, learn a *process* of problem-solving as well as an answer to a specific problem.

Many problems are resolved with confidential (and responsible) access to appropriate information. An MIT employee can find out in confidence, for example, whether the Wage and Salary Office believes she or he is being fairly paid. A student may talk with a department head about the fairness of a grading system in a given class. Often some information, and discussion with an objective person, will resolve a concern. This is especially true in times of inflation, budget crunch, adjustment to regulation, etc., when the complaint system serves an important information dissemination function. Sometimes a complaint handler can help just by listening, especially where an employee or student is extremely angry. The "individual communications" function goes two ways.

### 2. *Fact-finding, Conciliation, Mediation*

Fact-finding, conciliation, and mediation are also functions in all channels of the MIT complaints system at all levels up to the top. In these functions the complaint handler, having been asked to intervene, has received permission to talk with other people. If nearly all "inquiries and concerns" are resolved by providing information and counselling, nearly all complaints and grievances are resolved through some brief or extended conciliation or mediation.

Because the complaint process is designed to be consumer-driven, and to help people who can do so, to help themselves, the Special Assistants rarely fashion a unique remedy by themselves for someone else. Through listening and negotiation and exploring all reasonable alternatives the Special Assistants do seek to illuminate new possibilities for people with problems. Often however, people with problems will choose an alternative an Assistant might not have chosen had this been an arbitration situation. People often appear to seek less redress, or less of a specific settlement than an arbitration might have determined. (A few people appear to fight for more.) The hope is that this procedure provides people with more control

over their own lives. It may also permit them to evaluate "subjective" considerations (such as the feelings of co-workers), in a way which may minimize damage and lead to a better solution in the long run.

### 3. *Adjudication.*

Adjudication is the province of the complaint and appeal channels: supervision, the Personnel Office, the Offices of the Deans for Students, and some specific judicial bodies like the Committee on Discipline. Following the rule of ombudsmen, the Special Assistants do not normally adjudicate, although they often make informal recommendations and may be asked to make formal recommendations to the President.

### 4. *Upward Feedback*

The upward feedback function is part of the role of all complaint handlers at MIT. In fact the principle of upward feedback is consonant with the general ethos of the Institute. It is deeply rooted in a general MIT commitment to "design the future."

The Special Assistants in particular have two explicit charges. They are to help each individual visitor as well as they can. They are to seek ways to reflect back to line management, in a supportive way, data which came to the Assistants which would be useful to managers to run their areas effectively and humanely. This "upward feedback" must be done with a high degree of sensitivity to the privacy of people who raise problems and of line managers. For example, sometimes a Special Assistant will receive permission from a visitor to repeat an illustrative problem to a manager or department head. Sometimes confidentiality and privacy can be protected by raising problems in a *generic* way rather than by using individual stories. For example, where sexual harassment has been alleged, a department head may not need to know the identities of individuals in order to institute an apparently "routine" departmental discussion of harassment which eliminates the problem.

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Often data can be brought to a line manager in such a way that the manager can improve a process, without being embarrassed or exposed, and in such a way as to (rightfully) receive credit for progress in the system. This expected contact with line managers also serves on occasion to help keep open the lines of communication with a department where there have been unusual problems.

## C. HOW DOES IT WORK?

Little is known about the total volume of complaints and concerns brought throughout the MIT complaint system. Most inquiries and complaints go to academic and administrative supervisors, to the Deans' Offices and to Personnel. Most academic problems are resolved within academic structures and most appeals of any kind are resolved within the appropriate academic and administrative hierarchies.

The Special Assistants receive calls and visits and letters from 50-100 people a week, from a non-union community of about 16,000. (This has been a relatively steady case load since 1973 when these offices began.) Many questions can be answered quickly; many visitors need appropriate referrals. Most of the rest can be rather quickly helped to go back to work on a problem directly by themselves. There are in any given year a few hundred more serious cases leading to conciliation and mediation.

Most university ombuds offices receive more students than employees. The MIT Special Assistants' offices tend to receive more faculty, staff, and support staff. Among employee groups, visits to the office generally reflect the kinds and numbers of faculty and employees at MIT. Middle level and senior administrators and faculty are heavily represented; research staff come in proportionately less often. Among students, graduate students come in more frequently than undergraduates.

Because so many contacts with the Special Assistants are brief and informal, it is difficult to categorize types of concerns, and prevalent complaints change year by year.

For example in 1973 the first Special Assistant got almost daily salary equity complaints. These are now very uncommon, due to changes in wage and salary administration. On the other hand disagreements about scientific attribution, for example, problems of plagiarism, are more commonly reported than in 1973. On the whole the Special Assistants appear to get "new" cases—whatever is a new kind of problem. Their offices tend to receive people who for one reason or another do not trust other services, who are particularly anxious about confidentiality, who particularly want their problems "heard at the top," who see themselves as whistleblowers, who have very bizarre problems, who do not know where to go and how the system works. Some visitors are extremely angry; an important function of the offices is to deal with rage.

Success of this complaint system may be seen to lie in the eye of the beholder, but some data may be useful to the reader. In the past ten years there have been about a dozen non-union complaints a year carried out of house. Most of these did not exhaust internal complaint services. No complaints in the past ten years have gone to trial.

In the past ten years there have been hundreds of small and large changes in policies and procedures and structures as a result of concerns and inquiries and complaints. These range from building improvements by physical plant to improvements in information materials, to a change in the pension plan, to numerous changes in policy, to procedural changes brought about by the Salary Office.

Some kinds of complaints seem to come in now much sooner after a precipitating incident, for example in harassment cases. Some kinds of problems have all but disappeared. There are very few reports of attempted or actual retaliation for a person's bringing complaint. Most department heads have become very adept at complaint handling. On the other hand, unexpected problems continue at the same pace. And some problems, like the "loneliness and isolation" of gradu-

ate students, are reported more frequently, perhaps as proxies for other underlying issues.

It is particularly difficult to gauge user satisfaction throughout the system. It is typical of mediation-oriented services that they are much more popular than are systems oriented toward adjudication, so it is difficult to know how to judge MIT's largely favorable data. On the basis of anecdotal information from similar institutions it appears that MIT may have a higher reporting rate of "concerns and inquiries" and a lower incidence of the most serious problems. This appears particularly true with regard to all kinds of harassment. It is fair to say, however, that from the complaint-handlers' perspective much improvement is possible, especially with regard to making the complaints system better known in the community and more widely trusted.

## D. CONSIDERATIONS WHICH MIGHT BE OF INTEREST TO OTHER EMPLOYERS

In the MIT non-union complaint system the Special Assistants are quasi-ombudsmen, reporting to the President of MIT, who is the chief executive officer. Similar positions are now relatively common among major U.S. companies and universities, but many have different titles. Illustrative titles are Work Problems Counsellor (Control Data), Director, Personnel Communications (Anheuser-Busch), ombudsman (AT&TIS), many universities), Mediator (Carleton College). The Resident Managers of IBM and open door investigators and "trouble shooters" of many companies have similar functions. Many are designated as in-house neutrals.

How to select internal mediators or ombudsmen is a question that is often raised. Probably the point of principal importance is the choice of the selection committee and selection process. It is very important that internal mediators be widely credible within a given com-

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pany or institution. This means that the selection process should include a wide representation of those who will be served. It may help to have candidates meet informally with a number of regularly established committees and networks. Relationships with senior officers are of such importance that it will help if candidates can meet at some length with the chief executive officer and colleagues.

Quasi-ombudsmen should have the highest educational credentials relevant to a particular company or institution, and extensive experience with people of all kinds. Multi-cultural experience is of such extraordinary importance as to commend more than one person at the end of the line, even if several people must serve part-time. Redundancy in the ombuds office also may help to prevent problems of subjectivity and cooptation on the part of mediators. Redundancy provides a choice of mediator, and provides a vital backup and point of collegial counsel for the mediators themselves, but multi-cultural experience is the point of paramount importance in finding more than one person for this role. This is especially true if there is otherwise racial and gender homogeneity in top management.

The other goals being met, the most important personal characteristic of a mediator or neutral, is an interest in fostering the growth of others rather than in self-advancement or personal decision-making. Rather than seeking candidates of any particular disciplinary training, a company or institution is likely to be best off selecting widely credible "natural" mediators (who may already exist in the institution or company). People who are skilled in finding common ground and building common loyalties are more effective as quasi-ombudsmen than are assertive, ambitious entrepreneurs. Such people take high emotional risks rather than high business risks and are likely to be rather low-key and self-disciplined rather than aggressive and outgoing. Those who select mediators may wish to keep these points in mind.

## APPENDIX

### REVISED GRIEVANCE PROCEDURES FOR STUDENTS AND ALL PERSONS EMPLOYED BY M.I.T.

(M.I.T. Policies and Procedures, Section 3.24)

Any M.I.T. student and any person employed at M.I.T. who believes that he or she has been treated unjustly for any reason, or that the Institute's stated policy of non-discrimination has been violated, should have access to a clear means of seeking redress.

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All employees at M.I.T. who are represented by a labor union are covered by collective bargaining agreements which include grievance and arbitration procedures and equal opportunity provisions.

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All other persons employed by M.I.T., who have a concern, grievance, or inquiry about their employment should seek first to discuss their work situations and problems with their immediate supervisors. Supervisors are expected to provide a supportive environment which fosters open communication related to work life at the Institute and are encouraged to resolve work problems and grievances at the departmental level. If the problems are not resolved with their immediate supervisor, individuals may choose to discuss the problem with successively higher supervisors in the office, department, laboratory, or school. In the cases of other than academic staff members, this process may include the departmental Administrative Officer and/or Personnel Officer in the Office of Personnel Services on campus or their Personnel Representative at Lincoln Laboratory. Individuals who are not satisfied with these discussions should consider talking with the Director of Personnel on campus or, at Lincoln Laboratory, the Personnel Manager, and ultimately the Laboratory Director or his/her des-

ignate. Individuals who feel that the matter has not been resolved may then take the problem to one of the two Special Assistants to the President. Either of them will discuss the apparent alternatives with the individual and will attempt to resolve the complaint. If the problem is not resolved, the Special Assistant may recommend that a formal inquiry be conducted.

In most instances it is expected that individuals will take concerns, inquiries, and complaints through the process specified above. There may be unusual circumstances which warrant direct inquiries with any of the above persons regarding advice about a work situation.

Individuals should feel free to obtain the support and assistance of a co-worker or any other M.I.T. associate in presenting their concerns. Throughout the entire process, the individual should be assured that the information provided will be kept confidential insofar as the individual wishes it or until such time as the individual agrees that a third party or parties must be informed to facilitate action. It is the Institute's policy that individuals will not be reprimanded or discriminated against in any way for initiating an inquiry or complaint. It is also the Institute's policy to protect the rights of an individual against whom complaints are brought.

Once an inquiry or complaint is presented, a sincere attempt should be made at each step to either resolve the problem or refer it to the next step within one week. If this time schedule cannot be met, the status of the investigation should be communicated to the parties involved on a weekly basis. In cases where response or resolution is delayed more than two weeks, the individual may, after informing his or her supervisor, elect to proceed to the next level indicated in the above procedure.

The above procedure serves also as the grievance procedure for employees as required by Title IX of the Federal Education Amendments of 1972 with regard to grievances arising out of alleged dis-

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introductory statements, and exhibits prior to the information exchange and will become familiar with such papers to the extent he feels it appropriate.

Prior to the presentations, the advisor may talk jointly with counsel to resolve procedural questions. If the advisor wishes to consult with the parties' technical experts on substantive issues either prior to or after the presentations, he will outline his general areas of inquiry and, on agreement by both sides, he may submit written questions jointly to the parties. ■

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## MIT

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crimination on the basis of sex, and to handicapped employees alleging failure to comply with Section 503 and 504 of the Rehabilitation Act of 1973.

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Undergraduate and graduate disciplinary procedures are available for students to seek resolution of grievances vis-a-vis other students.

For grievances related to their academic or work situations, students are encouraged to seek resolution of grievances directly with their immediate work supervisors, faculty, instructors, and academic advisors—as appropriate to the nature of perceived unjust treatment. If a problem cannot be resolved at this level, students should either seek assistance within their department or school or avail themselves of the assistance of the Office of the Dean for Student Affairs or the Office of the Dean of the Graduate School. Students may also choose to bring the problem to the attention of one of the two Special Assistants to the President.

As in the case of the grievance procedures described for employees, it is Institute policy that students will not be reprimanded or discriminated against for initiating an inquiry or complaint and that the rights of the individual against whom a complaint is made are protected.

These procedures are available

similarly to students for the purpose of resolving complaints alleging actions prohibited by Title IX, and to handicapped students alleging failure to comply with Section 503 and 504 of the Rehabilitation Act of 1973. ■

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## Transamerica

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tween this situation and the one that commonly confronts the lawyer, Cattani asserts, is that the lawyers' motivation, once the executives had reached the guts of the settlement, was to reach agreement ("that's our job now," was the way they viewed it), rather than to forge disagreement, as is so often their role when fighting a lawsuit in the traditional way. In this negotiation, the lawyers saw that solving the fine points in order to nail down the agreement was the critical task they faced, not warning their bosses against the pitfalls of settlement discussions. "Lawyers try to separate people and polarize them," Cattani says, adding that they were not allowed to do so in this case.

While not every lawyer will agree with Cattani's characterization of the lawyer's role in such lawsuits, Cattani for one is convinced that the Transamerica experience is worth repeating. "Business problems cause lawsuits," Cattani says, "and it is positive and fruitful for business people to talk, because business executives can solve their problems on business terms." ■

## Coming . . .

In future issues, *Alternatives* will explore:

- The emerging issue of confidentiality surrounding the mini-trial.
- How to prepare an agreement to submit to private-judge arbitration.