

STATE OF MICHIGAN
STATE BAR OF MICHIGAN

MEETING of the REPRESENTATIVE
ASSEMBLY of the STATE BAR OF
MICHIGAN

Proceedings had by the Representative Assembly of the
State Bar of Michigan at Lansing Community College,
West Campus, 5708 Cornerstone, Lansing, Michigan, on
Saturday, April 18, 2009, at the hour of 9:30 a.m.

AT HEADTABLE:

KATHERINE KAKISH, Chairperson

ELIZABETH MOEHLE JOHNSON, Vice-Chairperson

VICTORIA A. RADKE, Clerk

JANET WELCH, Executive Director

HON. JOHN M. CHMURA, Parliamentarian

ANNE SMITH, Staff Member

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Lansing, Michigan
Saturday, April 18, 2007
9:30 a.m.

R E C O R D

CHAIRPERSON KAKISH: Good morning, members of the Representative Assembly. If everybody will take their seats.

Once again, good morning. My name is Kathy Kakish, and I am Chair of the Representative Assembly of the State Bar of Michigan, which is the final policy-making body of the State Bar of Michigan, and I call this meeting to order. And I am told that I do need to hit this against -- that hurts.

I now recognize Clerk Radke.

CLERK RADKE: Good morning, Madam Chair. I am pleased to announce that we have a quorum.

CHAIRPERSON KAKISH: Thank you. I now recognize Michael Pope, chair of the Rules and Calendar Committee.

MR. POPE: Good morning, Michael Pope, 32nd circuit. I would move for adoption of the amended calendar as before everyone at their tables. Three changes, item eight was moved to item four, and there are new proponents on items 14 and 16.

CHAIRPERSON KAKISH: Any support?

1 VOICE: Support.

2 CHAIRPERSON KAKISH: Any discussion?

3 Hearing no discussion, all in favor of the
4 proposal to adopt the amended calendar, say aye.

5 Any opposed, say no.

6 Any abstentions, yes.

7 The ayes have it, and the revised calendar is
8 approved.

9 At this moment we move on to item 1D on the
10 calendar, and I would entertain a motion to approve
11 the September 18, 2008 summary of proceedings.

12 VOICE: So moved.

13 VOICE: Support.

14 CHAIRPERSON KAKISH: Hearing it being moved
15 and seconded, any discussion?

16 Hearing none, all those in favor say aye.

17 All those opposed, say no.

18 Any abstentions.

19 And the ayes have it. And the motion
20 carries. The summary of the proceedings of the
21 September 18, 2008 meeting is adopted.

22 It is with great honor that I introduce to
23 you our keynote speaker, Chief Justice Marilyn J.
24 Kelly.

25 Chief Justice Kelly was raised in Detroit and

1 graduated Mackenzie High School. She earned a
2 bachelor's degree from Eastern Michigan University,
3 and after a year's graduate study at the Sorbonne
4 University of Paris, France, she received her master's
5 degree from Middlebury College in Vermont.

6 She taught French language and literature in
7 the Grosse Pointe Public Schools, at Albion College,
8 and Eastern Michigan University. She then attended
9 law school at Wayne State University and was awarded a
10 law degrees with honors. She now serves the law
11 school on its Board of Visitors.

12 Before taking the bench, Chief Justice Kelly
13 was a courtroom attorney for 17 years. Her practice
14 was diverse in subject matter and geographic area.

15 In 1988 she was elected to the Michigan Court
16 of Appeals and re-elected in 1994. She was elected to
17 the Michigan Supreme Court in 1996 and re-elected in
18 2004 for a term that expires in January 2013.

19 Chief Justice Kelly is a member of the
20 Oakland County Bar Association where she has been
21 active as chair of the Family Law Committee and
22 co-chair of the President's Task Force on Approved
23 Dispute Resolution. She was an arbiter for the
24 American Arbitration Association and a panel member of
25 the State Attorney Discipline Board. She is editor of

1 the 6th edition of Michigan Family Law that is
2 published by ICLE.

3 In 2003 Chief Justice Kelly became a fellow
4 of the Michigan State Bar Foundation. Chief Justice
5 Kelly served as president of the Women's Bar
6 Association and president of the Women Lawyers
7 Association of Michigan.

8 Her community service has included Board
9 member of Channel 56 public television in Detroit,
10 Board member of the Women's Survival Center in
11 Pontiac, vice president of the Board of the Detroit
12 Institute of Technology, developing committee member
13 of St. Joseph Mercy Hospital in Pontiac, and member of
14 the Citizens Advisory Committee of the Detroit Public
15 Schools, Wayne County Community College, and Oakland
16 County Community College.

17 Chief Justice Kelly has been awarded honorary
18 doctor of law degrees by Eastern Michigan University
19 and Michigan State University College of Law and also
20 the distinguished service award by the Michigan
21 Education Association. She has been selected by Court
22 Magazine as one of Michigan's 95 most powerful women.

23 In 2003 Chief Justice Kelly received the
24 Eleanor Roosevelt Humanities Award from the State of
25 Israel Bonds Attorney Division. In 2005 she was

1 honored by Wayne State University as one of the
2 University's outstanding alumni.

3 Turning to her commitments to the State Bar,
4 Chief Justice Kelly served as a member of the Family
5 Law Council. From 1999 through 2003 Justice Kelly was
6 co-chair of the Open Justice Commission, an
7 organization of the State Bar that is devoted to
8 making justice available to all.

9 This Representative Assembly is very, very
10 proud, and rightfully so, to claim Chief Justice Kelly
11 as one of its own. Chief justice Kelly has served as
12 a member of this Representative Assembly, and in 2003
13 the Assembly presented Chief Justice Kelly with the
14 Michael Franck Award for her outstanding contribution
15 to the legal profession.

16 Over the years Justice Kelly returned several
17 times to address the Assembly on a number of matters
18 before it, and today is no exception.

19 At this time I would ask that members of the
20 Representative Assembly join me in welcoming Chief
21 Justice Marilyn J. Kelly.

22 (Applause.)

23 CHIEF JUSTICE KELLY: Thank you, Ms. Kakish.
24 What a warm welcome. I certainly appreciate it. Good
25 morning to you.

1 I must say standing here I do have a sense of
2 deja vu. It was about 20 years ago that I sat where
3 you are sitting, and I was practicing law, and I
4 remember wondering whether the work we do on the
5 Assembly did get noticed or much less appreciated by
6 the Michigan Supreme Court.

7 So I can assure you now on that score that my
8 colleagues and I value the work that you do. We
9 value, of course, the legal profession that you
10 represent.

11 As someone who has been involved in state and
12 local Bar activities for many years, I continue to
13 believe that the organized Bar, particularly the
14 mandatory Bar, is essential to maintaining the
15 integrity of the profession.

16 Obviously any Bar association must to some
17 extent support its members in the practice of law, and
18 that includes offering services and opportunities for
19 members to improve their skills and find better ways
20 to manage their practice, market their services, in
21 short to make a living. But the organized Bar does
22 more. It serves as a vehicle for each of us to look
23 beyond our own interest and the greater needs of the
24 justice system.

25 This morning I will give you an update on

1 some recent developments on the Supreme Court,
2 including our administrative work and some of my goals
3 as Chief Justice. It's my hope that you will find
4 something in my report today that will interest you or
5 engage you, recognizing that as members of the
6 profession our ultimate responsibility is to the rule
7 of law and the justice system that makes it possible.
8 You can and should, both as individuals and as an
9 organization, play an advisory role to the
10 Supreme Court and to our administration of the system
11 of justice here.

12 In that regard I would like to recognize a
13 few of the Representative Assembly's contributions to
14 the Court's administration.

15 MCR 8.126, which governs pro hac vice
16 admissions, went into effect in June 2008. It was a
17 Representative Assembly proposal. Interestingly, in
18 the first six months this rule has generated \$27,000
19 in fees that are allocated to the attorney discipline
20 system and the client protection fund.

21 The waiver of dues for State Bar members in
22 full-time military service adopted by our Court in
23 October 2008 also originated with the Assembly, as did
24 rules regarding electronic service and others that
25 have been adopted by the Court in the same or nearly

1 identical wording as proposed by the Representative
2 Assembly.

3 So we appreciate the Assembly's work. We
4 appreciate your continued involvement in the Court's
5 administrative process, particularly when that process
6 is now more public than ever.

7 As you know, beginning in January the
8 Supreme Court started holding its administrative
9 conferences in public and that they are televised by
10 Michigan Government TV. This change, in my opinion,
11 is long overdue and will help bring greater
12 transparency to the Court's administrative work.

13 Obviously our decision-making process
14 regarding cases cannot take place in public, but I do
15 not see that the Supreme Court's administrative work
16 is really different in function than the work of other
17 government branches.

18 For example, when I was on the State Board of
19 Education where I served for 12 years we held our
20 meetings in public, and throughout those 12 years I
21 don't recall ever thinking that we were impaired or
22 hampered in some way because we were working in the
23 sunshine, in the public's eye.

24 For some years the Michigan Supreme Court has
25 had a public administrative process in the sense that

1 we publish possible Court Rule changes and other
2 administrative proposals for comment and that we hold
3 public hearings. To me it made no sense that we would
4 hold part of our process in public but keep the
5 administrative conferences behind closed doors. So I
6 welcome this change.

7 That's not to say that my six colleagues and
8 I have perfected the way we are doing it. Inevitably
9 there is some awkwardness involved in making
10 significant changes, and, indeed, we are still working
11 out the rules that will govern these meetings.

12 So the famous saying about not watching
13 either sausage or legislation being made applies to
14 our administrative conferences as we adjust to holding
15 them in public, but I think that anyone watching will
16 appreciate that the justices bring a great deal of
17 passion and energy and commitment to their work.

18 When we have gotten past our initial growing
19 stage, I think that the public, and particularly the
20 Bar, is going to be much better informed and more
21 engaged in our administrative process than ever
22 before.

23 At the risk of telling you what you already
24 know, I will go quickly over how the Court's
25 administrative process works.

1 When the Court receives a proposal for a
2 Court Rule change, there is an initial period of study
3 and discussion among the justices. At our public
4 conference we decide what action to take. For
5 example, whether to publish the rule for comment, and,
6 if so, whether the proposed rule does then go on our
7 website, and it's also distributed to the media and to
8 the State Bar.

9 The State Bar publishes it, as you probably
10 know, in the State Bar Journal and electronically via
11 the weekly public policy update, which is both
12 e-mailed and archived on the State Bar's website.

13 There is a comment period, it's typically 90
14 days, and comments can be submitted to the Clerk of
15 the Court either by e-mail or by letter. Now, all
16 comments are posted on the website, along with the
17 proposed rule change that it addresses. I think this
18 is a really good step, because you can see not only
19 what you think but what other people think about this
20 proposed rule change.

21 And then, once the period expires, typically
22 the matter is brought back to the Court's agenda for a
23 public administrative hearing, and these are the ones
24 that are open to anyone, and anyone can come to those
25 and comment.

1 unwritten rule for a challenged justice to decide him
2 or herself whether to recuse, and that has been the
3 final decision that's gone out under an order of the
4 court, and I think many practicing attorneys have not
5 known, and I didn't know early, that this was really
6 not a ruling so much of the Court as of that
7 individual justice.

8 It's been unclear also what standards the
9 justice should apply, so one of my goals as Chief
10 Justice is that the Court adopt a written recusal
11 policy that's clear, fair, and workable, at least as
12 clear, fair, and workable as we can make it, and to
13 that end last month the Court published three
14 alternative proposals for public comment. The comment
15 period runs till August 1st, and I realize that does
16 not provide the Assembly an opportunity to comment as
17 a body, but I will encourage you as individuals to
18 make your views heard.

19 Now, obviously I am only one of the seven,
20 and so what I say about this really only reflects my
21 view and not necessarily the opinion of many of my
22 colleagues, although I would hope that it does.

23 Speaking for myself then, I strongly favor a
24 written recusal rule that provides some review of a
25 justice's recusal decision based on an impartial

1 review standard.

2 You may be familiar with the Caperton case
3 that's now before the United States Supreme Court.
4 That case is quite dramatic in its facts, and the
5 decision is supposed to come down in June. We are all
6 watching it eagerly. It's a reminder that we can't
7 allow a challenged justice to be the last word on a
8 recusal motion.

9 I also think that we can't have a recusal
10 standard that allows an attorney or a party to create
11 grounds for recusal through personal attacks on a
12 justice. It doesn't make much sense for us to have a
13 rule that allows Janet here to punch me and then to
14 say, okay, now you are offended, you can't rule on any
15 of my cases. Not that, of course, Janet would do
16 that.

17 So this is just an example of how complicated
18 this becomes. But that, I believe, is no reason why
19 the Court shouldn't adopt the recusal rule, why it
20 should shrink from formulating a good procedure, and,
21 as I have said, we hope to have much input from you,
22 from the Bar membership.

23 So if you go to the Supreme Court's website
24 and look under the resources tab, you will find a link
25 which will take you to the proposed Court Rule, and it

1 will take you to ADM 2009-4, which is the rule with
2 instructions on how to submit comments.

3 One particularly valuable part of this
4 process, at least for me, is that comments on this and
5 other published administrative matters are on our
6 website and that they generate more comments by others
7 who have reacted to the postings. So you may find it
8 helpful, I am sure you will, to view these comments on
9 the pages, in case you haven't already, and to submit
10 your own.

11 One of my responsibilities as Chief Justice
12 is to appear before the Legislature and budget
13 hearings, and I will be appearing before a House
14 subcommittee next week. That is a harrowing task
15 because, despite the great respect that the
16 Legislature gives to the Court, the legislators are
17 under great pressures these days to cut the budget,
18 ours included.

19 So on the other hand, I get to present some
20 of the most exciting work that the judicial branch
21 does to further the administration of justice,
22 including a new pilot project for mental health courts
23 and many technological initiatives that we are
24 undertaking.

25 Earlier this year the Pew Center on the

1 States released a report entitled One in 31: The Long
2 Reach of American Corrections that underscores the
3 dire need we have for alternatives to incarceration.
4 The report's conclusion was that we have reached the
5 point where the skyrocketing rate of imprisonment is
6 not having the desired effect, and we are not gaining
7 better public safety and certainly not preventing
8 recidivism.

9 In Michigan, \$2.18 million was spent on
10 corrections in fiscal year 2008, and as of the end of
11 2007 one in 27 adults was under some form of
12 correctional control -- prison, jail, probation,
13 parole.

14 Now, were we not prodded by the worst fiscal
15 crisis in a generation, we might be paying less
16 attention to this problem, but corrections spending,
17 formerly off limits, has become a prime target for
18 cuts in Michigan and in our sister states, and we are
19 forced to look for better ways to deal with offenders.

20 Common sense says that it would be far better
21 and far less costly to make available to nonviolent,
22 low risk offenders services that would help them avoid
23 landing in trouble again. And one very promising
24 answer to this problem is the problem solving or
25 therapeutic court movement.

1 In Michigan the therapeutic court's approach,
2 this approach is most evident in the 89 drug and
3 sobriety courts that we have instituted throughout the
4 state. Some focus, you may know, some focus on
5 adults, others on juveniles, and still others on drunk
6 driving offenders or parents whose substance abuse
7 leads to child abuse and neglect.

8 Recent studies by the Supreme Court
9 Administrative Office and the Federal Governmental
10 Accountability Office indicate that drug courts reduce
11 recidivism and save taxpayer money.

12 The 2008 study by the Urban Institute found
13 that for 55,000 people in adult drug courts about half
14 a billion dollars was spent on supervision and
15 treatment, but those programs reaped a savings of over
16 a billion dollars in reduced law enforcement, prison
17 time, and victim cost.

18 One of the challenges we now face is to
19 continue funding for these programs. The judicial
20 branch faces a two percent reduction in general fund
21 and a loss of \$550,000 for the Mental Health Court
22 Pilot Project, and we may lose federal funding for our
23 drug and sobriety courts, so I have asked the
24 Legislature for federal stimulus money for our drug
25 and mental health courts in the event of budgetary

1 shortfall, and I believe that any investment we make
2 in these courts will be well rewarded for the
3 offenders whose lives are turned around, for the
4 public's greater safety, and for the taxpayers.

5 On the technological front, also the Court is
6 doing its best to keep pace with the times, and
7 certainly, as in the law generally, the times tend to
8 outstrip the law. So keeping up is a constant
9 challenge.

10 In recent years the Judicial Information
11 Systems, this is a division of our State Court
12 Administrative Office, took the lead in the Judicial
13 Network Project through which over 95 percent of all
14 felony and misdemeanor dispositions are now reported
15 electronically on a daily basis and often immediately
16 from state courts to the Michigan State Police and the
17 Secretary of State.

18 This is a big improvement over years past. I
19 had a relative who worked for corrections, and she
20 would tell me, and she was in technology, and she
21 would tell me not too many years ago how far behind
22 the system was, and it was appalling, and trial judges
23 know this in particular.

24 Other projects include online payment of
25 traffic tickets, a statewide system for trial court

1 case management, video conferencing for prisoners, and
2 electronic filing of court documents. And we are
3 particularly excited about the judicial data
4 warehouse, well on its way to becoming a statewide
5 repository for court data for both pending and closed
6 cases.

7 As of the end of 2008, the warehouse
8 contained over 34 million documents and was
9 implemented in 219 courts. When I began practicing
10 law many years ago, more than I wish to tell you, we
11 were still using Selectric typewriters. The idea of
12 being able -- maybe some of you can remember back that
13 far. The idea of being able to collect and retain and
14 retrieve that kind of information is just astounding.

15 The warehouse has many potential
16 applications, ranging from law enforcement to child
17 welfare, and this truly is a brave new world for the
18 administration of justice, but, here again, we find
19 ourselves challenged by budgetary constraints. We
20 hope that the Legislature will allocate some stimulus
21 funding to allow judicial data warehouse to be
22 implemented in the 25 remaining courts where it isn't
23 now, and some of them are some of our biggest courts,
24 allowing us to complete the project more quickly and
25 freeing up money for other initiatives to benefit the

1 public, such as online ticket payment.

2 I do have a wish list for my tenure as Chief
3 Justice, and topping off the list of projects, to
4 improve access to justice, and let me say here how
5 much I commend the Bar for its work in this area. I
6 hope the Court can get in line and do as much in years
7 to come.

8 We have enough legal aid funding in a better
9 world to accommodate everyone who could not afford to
10 pay for an attorney, and legal aid lawyers would be
11 compensated at the level that would not compel them to
12 take on huge caseloads, in a better world, just to
13 make ends meet. Legal self-help centers, such as that
14 in Washtenaw County, offer valuable assistance to
15 those who must navigate the legal system by themselves
16 in basic matters, but they are no substitute for a
17 good lawyer for those, for example, charged with
18 serious crimes or facing termination of their parental
19 rights.

20 Recently with the closing of the Detroit
21 Police Crime Lab we have had to confront the very real
22 possibility that there may be innocent people, more
23 than in the past, serving prison terms as the result
24 of faulty evidence. And reviewing these cases has a
25 price tag, and I have asked for stimulus money for

1 vacancies for today's meeting. Jeff Nellis, chair of
2 the Assembly's Nominating and Awards Committee is
3 recognized.

4 MR. NELLIS: Good morning, everyone. I am
5 Jeff Nellis from the 51st circuit, and it's been a
6 real privilege to serve as the chair of the Nominating
7 and Awards Committee, and before I get started filling
8 vacancies, I would briefly like to thank and recognize
9 the folks on the committee who have helped us do our
10 work. We have been quite busy and have had some
11 interesting issues to deal with, so if you could
12 stand, Tom Evans 5th circuit, Rick Paul from Oakland
13 County, Eilsia Schwartz from Missaukee and Wexford
14 County, and we also have associate members Kevin
15 Lesperance from Kent and Andrea Monnett from
16 Marquette.

17 Again I really appreciate all the help.

18 (Applause.)

19 MR. NELLIS: Our goal always is to have a
20 hundred percent participation, and sometimes that's
21 more challenge than people realize. So with that, I
22 will first indicate and recognize the folks that have
23 been nominated, and when I am done listing everybody I
24 would like to have you stand, then I will make a
25 formal motion to have these folks seated as

1 representatives of their circuit.

2 First of all, from the 3rd circuit Sean
3 McNally, 3rd circuit Lauren Rousseau, 3rd circuit Lisa
4 Screen, 3rd circuit Dustin Lane, 3rd circuit Patrick
5 McLain, 6th circuit Scott Wolfson, 7th circuit Richard
6 Morley Barron, 10th circuit Jeff Scott, 24th circuit
7 Ryan Edberg, 29th circuit Rhonda Clark-Kreuer, 30th
8 circuit Catherine McClure, 33rd circuit John Jarema,
9 35th circuit Susan Thorman, 43rd circuit Victor Fitz,
10 44th circuit Dennis Brewer, 47th circuit Anne
11 McNamara, 49th circuit Pete Mekas, and 52nd circuit
12 Tami Salens. If you could give them a warm round of
13 applause.

14 (Applause.)

15 MR. NELLIS: With those introductions, I
16 would again make a formal motion that these
17 individuals be seated and become members of this body.

18 VOICE: Support.

19 CHAIRPERSON KAKISH: Hearing support, any
20 discussion? Yes.

21 MR. KRIEGER: Nick Krieger from 3rd circuit,
22 Wayne circuit. I appreciate everything Jeff did, and
23 I am sure all these people are great. I would just
24 note for the record that insofar as the 3rd circuit
25 nominees are concerned, the State Bar bylaws were not

1 followed with respect to their nominations, and I
2 realize I didn't object within 20 days, as required by
3 the bylaws, but maybe we could amend our rules so that
4 in the future we do things consistently with the rules
5 concerning the State Bar and the State Bar bylaws.

6 Thanks.

7 CHAIRPERSON KAKISH: Thank you. We do
8 welcome perhaps your participation on our committee
9 that deals with the rules of the State Bar, and we
10 would welcome your input concerning that.

11 No further discussion, we now move to the
12 motion to approve the vacancies, to fill the
13 vacancies. All those in favor say aye.

14 Any opposition?

15 Any abstentions?

16 The ayes have it, and the motion to fill the
17 vacancies carries and is adopted.

18 (Applause.)

19 CHAIRPERSON KAKISH: Welcome to each and
20 every one of you. You may now approach your circuit
21 tables and take your seats with the Assembly. Thank
22 you.

23 The next item on the calendar is item number
24 five, and that happens to be the remarks from the
25 Chair, and there is quite a lot to report on since we

1 last met in September, and you will hear more about
2 the developments that have occurred since the
3 September meeting later on through the number of
4 presentations that are scheduled for this morning.

5 This really has been a very, very busy time
6 at the State Bar, and that's due to three very
7 important challenges which impact the legal
8 profession. And I would like to talk a little bit
9 about these three challenges.

10 The first challenge is faced not only by
11 lawyers but by the entire state of Michigan, and
12 that's the economic situation of the state. The
13 State Bar on its part is working on a number of things
14 to help lawyers, and especially those small firms and
15 solo practitioners, to adapt to these rough economic
16 times and to continue meanwhile to provide the quality
17 of work that we experience in our profession.

18 Now, leading these activities is the
19 President of the State Bar of Michigan, Ed Pappas, who
20 will soon speak to you about what the State Bar of
21 Michigan is doing in this respect to help our
22 membership.

23 The second challenge goes to the heart of our
24 profession, and it goes to the heart of the
25 constitutional rights of a segment of the population

1 of Michigan, and that is the constitutional violations
2 to the due process rights of indigent criminal
3 defendants.

4 For those of us who attended last September's
5 meeting, we heard a detailed presentation on a study
6 that the State Bar had sponsored. The results of the
7 study did not present a pretty picture. For those of
8 us who were not at the September meeting, the
9 transcript of that meeting is found online at the
10 Assembly's archive of meetings and proposals on the
11 State Bar's web page. Please take a moment if you can
12 to review that transcript.

13 Developments with respect to the
14 constitutional crisis are taking place in Michigan,
15 but not only in Michigan but throughout the United
16 States, to address the problem, and the State Bar is
17 certainly there with its director of governmental
18 relations, Elizabeth Lyon. She will inform you of the
19 latest developments later on this morning.

20 Now, these first two challenges, that of
21 Michigan's economy and the constitutional due process
22 crisis, will require this Assembly's attention in the
23 near future. The third challenge may also require the
24 attention as well.

25 Here this body, the final policy-making body

1 of the State Bar of Michigan, may have to take a
2 closer look at what policies should be taken for the
3 Bar in light of the expected changes within the makeup
4 of the Bar's membership. In other words, the makeup
5 of who the attorneys in the state of Michigan are.
6 Anne Vrooman, who is the director of research and
7 development, will be giving a presentation later this
8 morning on the changing face of the State Bar's
9 membership.

10 This has also been a very busy time for the
11 State Bar in other respects, and I would like to
12 highlight with two of those.

13 First, the Board of Commissioners and the
14 staff reviewed the State Bar Strategic Plan, and if
15 you may recall, the Strategic Plan was adopted by this
16 body three years ago at its April 2006 meeting. And
17 the Board of Commissioners and the staff took a look
18 at the Strategic Plan recently to see how well it's
19 working for us, and I am delighted to report that it
20 is working very well and is being implemented
21 according to plan. Executive director Janet Welch
22 will give you more information on that this morning as
23 well.

24 The second item I would like to tell you
25 about is that I am very honored to announce that a

1 project which was initiated by Ed Haroutunian during
2 his chairmanship of the Assembly back in 2006-2007 and
3 which was carried on by the immediate past chair, Bob
4 Gardella, has now come to completion.

5 It was Ed Haroutunian's strong belief, and
6 it's a belief that I am sure most of us here, if not
7 every single person here, shares, that the history of
8 this Assembly should be commemorated. As a small
9 token, this is being done at the State Bar building,
10 and it's being done through a pictorial display of
11 past Assembly chairs.

12 Now, it took us some time to gather the
13 pictures of some of the earlier chairs, but we got all
14 pictures but one, and now the display is up at the
15 Michael Franck building. Whenever you are in town in
16 Lansing during business hours, please take a moment to
17 pass by the State Bar building. Visit the staff
18 there. State Bar building is our building, belongs to
19 all attorneys, and, please, you know, take a look at
20 the pictorial display.

21 To officially commemorate the pictorial
22 display we are going to have a reception to which all
23 the past chairs will be invited to, and that will take
24 place at the State Bar on July 24, the afternoon of
25 July 24, which will be a Friday. Stay tuned. You are

1 going to receive more information about that.

2 Some 37 years ago, in 1972, long before,
3 looking at this room, some of you were even born, the
4 Supreme Court established the Representative Assembly,
5 this body, as the final policy-making body of the
6 State Bar, thus making the leadership of the
7 State Bar, which is a mandatory Bar, more responsive
8 to practitioners all over the state.

9 Today we stand on the shoulders of the giant
10 of past Assembly members, and we kind of now take for
11 granted many of the policies that the Assembly adopted
12 and many of the resolutions and proposals that it
13 submitted to the Supreme Court and to the State
14 Legislature, who in turn adopted them.

15 Chief Justice Kelly was kind enough to
16 mention a couple of the past proposals that this
17 Assembly had passed and which are doing well and have
18 served the state very well.

19 We continue to carry on in this mission, and
20 that mission is actually carried on in many different
21 levels. One of these levels involves the officers of
22 the Assembly. To my left is Vice Chair Elizabeth
23 Johnson, and next to her is Clerk Victoria Radke, and
24 I have to say that these two remarkable lawyers are a
25 credit to this Assembly, and since the September

1 meeting they have contributed far more than their
2 duties call in helping with the day-to-day work that
3 actually led us to today's meeting and has laid the
4 ground for upcoming future meetings.

5 And with respect to today's meeting, to my
6 right is someone who is very brand new to the
7 Assembly. Judge John Chmura of the 37th District
8 Court of Warren is helping us make sure that today's
9 meeting runs smoothly. Over the last several months
10 Judge Chmura has been working with the Assembly
11 officers in all those aspects to the orderly conduct
12 of today's and future meetings. We are honored that
13 Judge Chmura has agreed to serve as our
14 parliamentarian, and we look forward to many more
15 meetings to come. Thank you, Judge Chmura.

16 JUDGE CHMURA: Thank you.

17 (Applause.)

18 CHAIRPERSON KAKISH: And, of course, another
19 level that the Representative Assembly works, without
20 doubt, is through the State Bar leadership, and
21 sitting next to Judge Chmura is the Executive Director
22 of the State Bar, Janet Welch, and I can't begin to
23 tell you how much she really is relied upon in making
24 sure that the interests of the Assembly are being met.
25 I thank you, Janet, for everything that you do. Thank

1 you.

2 The Assembly also relies on the hard work of
3 the Bar staff. We have several Bar staff members
4 around the room, and hopefully you will get to meet
5 each and every one of them. One of them is sitting
6 right next to Janet here, and we wouldn't be able to
7 operate from day to day without the hard work and the
8 expertise and the dedication of Anne Smith, who is the
9 administrative assistant.

10 For those of you who know Anne, who have
11 worked with Anne certainly will agree with me that she
12 is a great person to work with. She is very
13 dedicated, very hard working, and we are so lucky to
14 have her working with us on the Representative
15 Assembly.

16 So as to maintain -- and I move on to a
17 different level of how this Representative Assembly
18 works. So as to maintain the vital coordination
19 between the State Bar itself and the Representative
20 Assembly, the Supreme Court Rules concerning the
21 State Bar call for eight Board of Commissioners to
22 serve as Assembly members, and at this point I would
23 like all those commissioners to stand and let the
24 members know who you are. Can you please stand.
25 Don't be shy. Charles Toy, Tom Rombach, Julie

1 Fershtman, and our president, Ed Pappas. Thank you so
2 much for all the work you do.

3 (Applause.)

4 CHAIRPERSON KAKISH: The Board of
5 Commissioners meets roughly once a month, and a lot of
6 work is involved in that, and I must say the Board of
7 Commissioners, especially those who serve the
8 Representative Assembly, have been very good in
9 promoting the purpose of the Representative Assembly.

10 However, most single important people through
11 whom this Assembly works and counts on for its success
12 is actually you. Every single person sitting here in
13 the room, whether you are elected, or those of you who
14 have just been appointed today and will run for
15 election, your work is so important on this
16 Representative Assembly.

17 At the Bar Leadership Forum last summer, I
18 had the great opportunity to address a group of future
19 leaders in the profession, and the focus of my
20 presentation actually was called the Wow Factor, wow
21 as being w-o-w, I actually called it that, and the
22 reason I called it that was because of my own personal
23 experience sitting within the 3rd circuit.

24 A member can easily come into this room
25 knowing exactly how he or she is going to vote on one

1 of the action items, no doubt about it. The member
2 has done his or her homework, has contacted their
3 constituents, know exactly what the constituents may
4 or may not think about the proposal and has decided
5 that, okay, once this action item comes in I am going
6 to vote this way or that way on this proposal.

7 And it never fails to happen that when a
8 member comes in to this room and the proposal is
9 offered for discussion that fellow members will get up
10 and stand in line behind these two microphones and
11 start giving their comments about what they believe
12 the vote should go on each particular proposal. Just
13 listening to the experience, to the expertise, to the
14 professionalism, to the keen intellect of fellow
15 members, it happens over and over again. There are
16 many times when I personally, and I know that many
17 others in this room have totally changed their vote
18 based on the expertise and the experience of the
19 collective body here sitting in this room. It really
20 is a wow factor.

21 I have always left this room, left these
22 meetings as a result with a sense of great, great
23 pride to be a lawyer. And a great, great pride and a
24 feel of honor to be a part of this membership of
25 highly dedicated, highly committed, highly

1 professional, and highly courteous members of the
2 Representative Assembly.

3 The three Assembly members attend the Bar
4 leadership forum every year, and we, we meaning
5 myself, Liz and Victoria, will be there next month,
6 and I assure you that the three of us will be up there
7 promoting the Assembly, promoting the purposes of the
8 Assembly, and letting the future leaders of the Bar
9 know who you are.

10 I want to extend my sincere thanks and
11 appreciation to you for being out there in the legal
12 community promoting the work of the Assembly and
13 serving as the State Bar's voice. My many thanks and
14 appreciation to you for serving as the vital link
15 between the Assembly and the lawyers in your circuit
16 and with the State Bar sections, local Bar
17 associations and affinity groups and all of you who
18 are currently serving as Assembly liaisons. Your work
19 is so important. I can't even begin to emphasize how
20 important your work is in representing the Assembly
21 and being the voice of the State Bar of Michigan
22 within your constituents, and many thanks and
23 appreciation to you for taking the time out of your
24 very busy schedules and time out of your personal
25 lives on Saturday and for your generous gift of time

1 and talent to our profession by serving the Assembly
2 as a member. Thank you very much.

3 (Applause.)

4 CHAIRPERSON KAKISH: Well, moving on to the
5 next item on the calendar, and that's remarks from the
6 president, Ed Pappas. As you know, Ed is the 74th
7 president of the State Bar of Michigan. He is a
8 partner at Dickinson Wright. He has been with the
9 firm of Dickinson Wright for the last 35 years and has
10 significant litigation, trial, and appellate
11 experience in all types of commercial litigation.

12 As you also may know, Ed has devoted much
13 time and energy to the State Bar. He has been on the
14 Board of Commissioners since 1999. He served as chair
15 of the Access to Justice Campaign, and that's
16 something you will be hearing about later as well
17 today, which is a partnership of the State Bar and the
18 Michigan State Bar Foundation and the civil and legal
19 aid programs in Michigan.

20 However, all of the above information that I
21 have read to you it is found in Ed's bio. That can be
22 found on the State Bar's web page. What his bio does
23 not say is his energy, dedication, and leadership
24 skills as State Bar President, how he leads the Board
25 of Commissioners with both vision and practical common

1 sense and a little bit of humor thrown in, and how he
2 conveys his pride in the profession and spreads the
3 message of the State Bar's good work all over
4 Michigan. It was indeed an honor to witness Ed's work
5 during the Upper Peninsula tour and to see how he
6 related to the media up there and how he related with
7 the membership in promoting everything good about the
8 State Bar of Michigan. Ed.

9 (Applause.)

10 PRESIDENT PAPPAS: Well, thank you. This is
11 the first time I have spoken to the Representative
12 Assembly as a whole, but I know a lot of you, and many
13 of you have come to meetings and dinners and lunches
14 that I have spoken at, and I really do appreciate all
15 members of the Representative Assembly who have done
16 that. I try to acknowledge you when you are there.
17 It's a privilege to talk to you today as a group. I
18 am a little surprised that the cameras were taken away
19 before this point, but what can I say.

20 And I did read the calendar and it looks like
21 I have one minute left under the calendar, so I will
22 have to ask the parliamentarian -- I had two and a
23 half hours planned, but I assume that because I am
24 President of the State Bar that's okay.

25 JUDGE CHMURA: You need a two-thirds

1 majority.

2 PRESIDENT PAPPAS: I think I am going to pass
3 on that and stick with my ten minutes.

4 And I also appreciate Kathy. Kathy has done
5 a great job here as Chair of the Representative
6 Assembly, and she has traveled with me, she has come
7 to a lot of meetings, and what I like about Kathy the
8 most at these meetings is if I make a joke, she has
9 the loudest laugh and really gets everybody else
10 going.

11 What I would like to talk to you about today
12 is a number of things that the State Bar is working
13 on, and I want to say this, the Representative
14 Assembly is an important part of the State Bar of
15 Michigan. You heard the Chief Justice say that, and I
16 believe that the Court does believe that. The Board
17 of Commissioners believes that, and we have been
18 working on increasing our communication with the
19 officers of the Representative Assembly and the
20 officers of the State Bar of Michigan and the
21 State Bar staff, and that's because we together, it's
22 important to advance the interests of the lawyers in
23 the state of Michigan, it's important to advance the
24 interests of the citizens of the state of Michigan and
25 our justice system, and we can all do that together.

1 And I see Ed Haroutunian just came to hear me
2 speak. I always say when I work with Ed is that two
3 Eds are better than one.

4 In any event, I want to tell you about some
5 of the things we are doing, and I think this year the
6 State Bar is probably, more than any other year that I
7 have been involved on the Board, concentrated on what
8 the ABA President calls core values, and that is
9 access to justice, the independence of the judiciary
10 and the rule of law, diversity and law-related
11 education, among others. And we have projects in all
12 of those areas, and I am going to talk about a few of
13 them, and then others will be speaking about some of
14 the other things that we are talking about.

15 But I really do appreciate if anybody has an
16 interest in getting involved in anything that we are
17 doing on an individual basis in addition to your work
18 on the Representative Assembly, please let anybody at
19 the State Bar know, because we love to get people
20 involved.

21 And I want to start with Access to Justice.
22 You heard Chief Justice Kelly mention that the Court
23 is very interested in that. Matter of fact we had a
24 meeting with her and others about some of the things
25 we can do together, the Court and the lawyers. But

1 Access to Justice has been a top priority of the
2 State Bar for many years, and it still is a top
3 priority today, and our goal is to continue to
4 establish a permanent endowment that will fund legal
5 services for those who can't afford legal services in
6 civil cases well into the future. And today, as of
7 today, together with our partners, the State Bar, the
8 State Bar Foundation and legal aid organizations
9 throughout the state, have raised more than \$9 million
10 for Access to Justice.

11 Last year lawyers devoted more than 42,000
12 hours of pro bono services, and I want to congratulate
13 all lawyers who devote time and money to Access to
14 Justice and pro bono services, and I encourage
15 everybody to increase our efforts in this campaign,
16 because in tough economic times it is a really, really
17 important campaign.

18 I also want to talk a little bit about
19 law-related education. Informed citizens are crucial
20 to the independence of our judiciary, and it's, I
21 believe, our responsibility as lawyers to educate
22 nonlawyers about the importance, not only of their
23 legal rights under the law, but the importance of the
24 judicial branch of government itself, which is the
25 only branch of government which includes lawyers and

1 judges that protects individual rights and individual
2 liberties, and we have many, many great programs
3 throughout the state by local Bar associations and
4 local courts that mainly present these programs on Law
5 Day and Constitution Day, and we thought why not bring
6 all these programs together so everybody can learn
7 from each other to see what great things people are
8 doing throughout the state and expand law-related
9 education throughout the state.

10 And for that purpose we had, I believe, the
11 first law-related education summit the end of last
12 month where we invited educators, professionals, and
13 lawyers who are interested in law-related education to
14 come and develop a plan, and we are going to have a
15 plan developed in the next month or so that will
16 expand, promote, and deepen law-related education
17 throughout the state, and if you are interested in
18 law-related education or your local Bar associations
19 are interested, we are going to get a lot of people
20 involved in this project, because it's a very, very
21 important project.

22 The other area I want to talk about before I
23 get into what we are doing on the tough economic times
24 that Kathy had mentioned is professionalism, because
25 in tough economic times lawyers and law practices by

1 necessity have to treat their practices as a business,
2 and it is a business, but we always have to remember
3 that it's a profession first and a business second.

4 So we want to promote professionalism
5 throughout the state, and we started a project with
6 the law schools, because I think it's really important
7 for lawyers to connect with future lawyers, and we
8 started a professionalism orientation program. We are
9 going to start it at Cooley Law School, on May 8th is
10 going to be the first one, and this is going to
11 involve lawyers and judges to come out and work with
12 new law students about the importance of
13 professionalism in the practice of law.

14 I have talked with all of the deans of the
15 law schools, and we are going to be expanding this
16 program throughout the state in coming years. These
17 are long-term projects. So if you are interested in
18 getting involved in the orientation programs, please
19 let us know, and then we hope to expand this
20 professionalism program. As some people say, don't
21 start at the bottom, start at the top. So we are
22 going to move all the way up to the top, and hopefully
23 this will work. Professionalism programs are for
24 lawyers and for judges.

25 And, lastly, let me just talk about the tough

1 economic times, and Kathy mentioned this. We are
2 undergoing probably the toughest economic times that
3 any of us have faced in our own lives, and lawyers are
4 not an exception to the hardships. There are many
5 lawyers I have talked to around the state that are
6 struggling. They either don't have enough work or
7 they are actually out of a job and they are looking
8 for work, and the State Bar has been looking at this
9 issue since I have become president, and we have some
10 long-term programs that we put into place.

11 The short-term with the job market, there is
12 not a lot you can do with the short-term, but
13 everybody has to look at it from the long-term.
14 Michigan is a great place to practice. We are an
15 international border state. We have great businesses
16 in Michigan, but here are some of the things that we
17 are doing to try to help lawyers plan for the future.

18 And one, state of Michigan is diversifying
19 its business base. We all know that, and they are
20 starting to do a pretty good job of it. Lawyers also
21 need to diversify their own practices, and in order to
22 do that we have been working with ICLE to develop
23 seminars on new and emerging areas of the law.

24 For example, in Michigan we are bringing a
25 lot of energy companies into the state, alternative

1 fuel technology, and energy law and environmental law
2 are going to be hot areas of the practice of law in
3 Michigan. Lawyers who educate themselves and become
4 experts in that area can develop an additional
5 practice to what they are doing, and that's the type
6 of thing we are going to be working on with ICLE. In
7 our September annual meeting you will be seeing that
8 ICLE has a whole program developed for lawyers to help
9 them in tough economic times, and we are going to be
10 working with them on other seminars in that area.

11 The second area that is very important is
12 technology. You can practice anywhere in the world
13 now using technology. Technology is a crucial tool
14 for all lawyers.

15 Luckily I am with a firm that helps me with
16 technology, because technology has already passed me
17 by, but if I didn't, if I did not have my firm, I
18 would use the State Bar's Practice Management Resource
19 Center.

20 They have a center with 12 computers where
21 lawyers and staff can come in and learn about new
22 technology. They can learn about the management
23 practices. We have not only at the center, we have
24 expert staff that will go out, they do seminars
25 throughout the state, they do private consultations.

1 And I have told this story before, but I want to tell
2 the story about how important technology is, because I
3 had a case against a lawyer from Traverse City, has a
4 small firm, and I asked him how often he came down and
5 practiced in southeast Michigan, and he says he
6 practices all over the state and all over the country
7 because he developed a blog site where he writes
8 articles on current issues in his field of expertise,
9 and he has companies and individuals from all over the
10 country looking at his blog site. They consider him
11 the expert in this area in the state of Michigan and
12 maybe in the country, and he has got business more
13 than he can handle. And, interestingly, his expertise
14 was sort of my expertise, so I am just trying to look
15 at what he is doing for the future. But technology is
16 very, very important.

17 One of the other things we are doing at the
18 State Bar is we are trying, we already started
19 developing a centralized job bank for lawyers who are
20 looking for work and for employers who are looking for
21 lawyers to hire, and it's really through linking to
22 other job banks, and I think we have highlighted that
23 now on our website, and we are still expanding that
24 area.

25 And, lastly, and I am going to leave a lot of

1 this part to Janet to talk about, but it's our new, I
2 will call it program. It's A Lawyer Helps program,
3 and what we are doing there Janet will explain more,
4 but the reason I think that's important to lawyers in
5 the tough economy is that we are promoting the good
6 work that lawyers do throughout the state of Michigan,
7 and we have a logo A Lawyer Helps with T-shirts, caps,
8 buttons, and you will see this, and the importance of
9 this is that lawyers do so many great things, not only
10 the pro bono work that they do, Access to Justice, but
11 if you go into our community or any charitable
12 organization, lawyers are leaders in every activity
13 that you would want to find.

14 We want to promote that so that the citizens
15 of our state, the nonlawyers, know all the good things
16 that lawyers do, and I think that's going to help
17 lawyers in the long run, because this is a statewide
18 program that we will be working with local Bar
19 associations and courts and anybody else. In fact, I
20 have handed a ton of T-shirts out to people when I
21 have spoken, and I have told them to wear it to court,
22 and I had meetings with the Chief Justice, the Chief
23 Justice the other day, and I told her, I said I have
24 been telling lawyers to do that, and I have been
25 telling them that the Chief Justice of the

1 Supreme Court says that you can wear that T-shirt into
2 court, and she did not say no, she smiled. I
3 appreciate all the work you do, and thank you. Thank
4 you very much.

5 (Applause.)

6 CHAIRPERSON KAKISH: Thank you very much, Ed.

7 Next are the remarks from the Executive
8 Director, Janet Welch. We do have quite a few new
9 members on the Representative Assembly, and I would
10 like to let you know a little bit about who Janet
11 Welch is and what she does here.

12 Janet oversees the day-to-day operations of
13 the State Bar. She implements the policies that are
14 set by the Representative Assembly and the Board of
15 Commissioners, and she directs the efforts of the
16 State Bar staff.

17 Now, Janet's background in state government
18 is extremely valuable to the Representative Assembly
19 and to the State Bar. This is particularly true when
20 it comes to the issues that this Assembly votes on.
21 She has a good working relationship with the
22 Supreme Court and with the Legislature and with key
23 figures in the Lansing government, and she does have a
24 deep understanding of how the government works. And
25 that is very, very vital to the work of the

1 Representative Assembly here to make sure that our
2 proposals and resolutions reach maturation.

3 Janet's career in state government started as
4 a legislative analyst for the Michigan House of
5 Representatives. In 1980 she was chosen to create a
6 nonpartisan legislative analysis office for the
7 Michigan Senate, and she served as its director for
8 about five years before she decided to attend law
9 school at the University of Michigan.

10 After a clerkship with Michigan Supreme Court
11 Justice Robert Griffin, Janet became executive analyst
12 in the Office of the Chief Justice of the Michigan
13 Supreme Court, and her work included, among other
14 things, analysis of legislative issues affecting the
15 judicial system. She then served as the
16 Supreme Court's counsel for a period of four years.

17 In the year 2000 she left the Supreme Court
18 to become general counsel for the State Bar. She
19 served in that capacity until about a couple of years
20 ago when the Board of Commissioners hired her as
21 Executive Director. And since then she has served the
22 Representative Assembly, the Board of Commissioners,
23 and the State Bar with dedication and commitment and
24 with great wisdom as it relates to working with the
25 Supreme Court and the government. Janet.

1 (Applause.)

2 MS. WELCH: Thank you very much, Kathy.

3 I need to say that listening to that
4 rendition of everything I have done makes me feel very
5 old. Of all the work that I have done, and I have
6 enjoyed almost all the jobs I have ever had, except
7 for when I was a UPS truck loader, being Executive
8 Director of the State Bar is by far the most
9 challenging and the most inspiring work I have ever
10 done. And it is a privilege to stand before the
11 Representative Assembly today.

12 The last time I stood before you, literally I
13 think as I was talking to you, we now know that the
14 global financial system was on the verge of perhaps
15 having its plug pulled out of the socket. That didn't
16 happen, but the world has changed in dramatic ways
17 from that morning in September, not in good ways
18 financially. Economically we know there have been
19 many references to that.

20 Because of that it's not surprising that I am
21 asked on a regular basis how is the State Bar doing
22 financially, and I am pleased to be able to tell you
23 that we are doing just fine. I am telling you so I
24 don't have to have 150 individual conversations with
25 all of you, and because I can affirm the same thing

1 that I told you in September, which is that we are on
2 target with our budget projections, and there is no
3 reason to expect that we will be coming back to you
4 any time soon to ask for a dues increase.

5 Like every other organization, we have taken
6 some hits with our investments, and if we hadn't, we
7 probably would have the SEC on our backs saying who
8 have you invested with. But we have been able to
9 manage those hits, and we are doing just fine.

10 I want to elaborate on what Kathy told you
11 about the Strategic Plan, which the Board of
12 Commissioners yesterday adopted in an updated version.
13 I want to talk to three new goals that were added to
14 the Strategic Plan, and they really flesh out what you
15 heard both from Kathy and from Ed.

16 One of the new strategic goals is to assist
17 Michigan lawyers in adapting to changing economic
18 conditions, technology, regulatory change which we
19 anticipate in the next five to ten years at least, and
20 globalization. And the end part of the goal is that
21 we will do these things to position Michigan as a
22 leader in providing legal services to emerging global
23 markets.

24 The second new goal that's been added to the
25 Strategic Plan I want to call to your attention is

1 that we have committed to taking positions on and
2 advocating concerning public policy issues at the
3 national level to the extent that the positions
4 promote the interest of the legal profession and the
5 public in Michigan.

6 We have on a regular basis been part of
7 national advocacy for increasing legal aid in the
8 national appropriations to the Legal Services
9 Corporation, but we understand that in the world we
10 live in today it's important also to pay attention to
11 other ways in which the national government impacts
12 Michigan lawyers and can help Michigan lawyers in the
13 way they help the public, and the chief justice's
14 several references to the stimulus package certainly
15 underscore the importance of that new goal.

16 And, finally, the last new goal of some
17 magnitude is that the Strategic Plan now requires us
18 to adopt and promote practices that are
19 environmentally sustainable. This is not an issue
20 that really was on the radar screen when the Strategic
21 Plan was developed several years ago, but it is front
22 and center now and in our thinking about the ways in
23 which we provide all services, and you are about to
24 get an example of that in the mail when you receive
25 your new member directory.

1 It is smaller, because as a result of a very
2 comprehensive member survey, user survey, we were told
3 that there were portions of the bound version of the
4 member directory that were not used very much and it
5 costs a lot of money to print, costs a lot of money to
6 mail, so you have a smaller version. The paper it's
7 printed on is more environmentally friendly than what
8 you have gotten before, and at the same time that we
9 are doing that we are also updating the member
10 directory, so it is a more useful resource online, and
11 for those of you who use the online directory you are
12 obviously getting much more up-to-date information
13 than when you use the bound directory.

14 So those are the changes to the Strategic
15 Plan, and I hope to reassure you that we are on top of
16 what we need to do and keeping the Bar modern with the
17 needs of the profession and the public.

18 It's my privilege to share with you details
19 about the A Lawyer Helps program, which was sort of
20 conceived last year out of a provision of the
21 Strategic Plan that called on the State Bar to help
22 publicize and promote the good deeds of lawyers, and
23 it really was initially sort of a public relations
24 campaign.

25 I hope this looks a little bit familiar. We

1 did a soft lunch at the annual meeting. We hadn't
2 really figured out all the details of the campaign,
3 but we had this wonderful phrase A Lawyer Helps, and
4 that covers a lot of ground, because it is the essence
5 of what we want the public to understand about
6 lawyers, not just believe but understand this is who
7 we are, and that, in fact, you may be in some jeopardy
8 if you attempt to undertake legal matters without the
9 help of a lawyer. So that's the underlying message
10 that we want to promote.

11 We have some unbelievably talented artists
12 on the staff of the State Bar. What you see in front
13 of you is the sort of look and program that companies
14 pay millions of dollars for advertising agencies to
15 develop, and we did all of this inhouse. I think it's
16 a really spectacular and ingenious program.

17 There are two ways that we are delivering the
18 message. One is through the gear that Ed talked
19 about, the T-shirts and the caps and actually aprons
20 that say A Lawyer Helps that we give to lawyers who
21 are doing projects in group kitchens, for example.

22 The other way is we have a website which is
23 going to be unveiled at the same time that the May Bar
24 Journal comes out, so you are getting a sneak preview
25 of this, and I am going to take you through a formal

1 presentation that will be available on the website and
2 that we hope that you will take advantage of in
3 helping to be ambassadors for the program.

4 We are ready for the first slide. There are
5 two goals with A Lawyer Helps program. One is to
6 celebrate lawyers who do make a difference in the
7 community, and many, many of our Bar members already
8 do that in major ways, and also to provide tools to
9 all of our members so it's easy for them to be helpful
10 in the community and in pro bono.

11 I said that this started out as an image
12 campaign, but we are beyond that now. We understand
13 that the importance of what we are doing is to help
14 lawyers be helpful in the community and to do both
15 pro bono. It isn't just for us to look good, because
16 we will look good if we do what we are doing. It's
17 also to recognize that we do good and to help us do
18 that.

19 The phrase A Lawyer Helps we chose because it
20 really does get to the heart of what lawyering is, to
21 solve legal problems, to provide free legal help to
22 the poor, which is part of our ethical obligation as
23 lawyers, and also to give time to other community
24 efforts beyond legal help.

25 The program promotes lawyers doing good works

1 in two ways, by inspiring other lawyers who may not
2 have begun that work by the good role models that are
3 already out there and providing the tools to help them
4 do it more easily.

5 The center of the program will be our
6 website, and the website is alawyerhelps.org. You can
7 also stumble on it through alawyerhelps.net and
8 alawyerhelps.com. We purchased the whole universe of
9 A Lawyer Helps, but there are other tools as well.

10 The State Bar staff will be assisting local
11 Bars and anyone who wants to participate in the
12 program by helping prepare news releases. We will be
13 doing articles about the ways in which lawyers can
14 help and do help, public service announcements.
15 Again, and tying this into law-related education,
16 because a lot of ways in which lawyers help is by
17 going into the community and educating about the legal
18 system and through special events and meetings.

19 The website is a portal for all the ways in
20 which lawyers can help, including giving pro bono
21 services, the Access to Justice fund, and through
22 community service.

23 When you go on to the website, it will tell
24 you as a lawyer how to connect to providing meaningful
25 pro bono help, what assistance there is out there for

1 you to do pro bono, how to donate to the Access to
2 Justice fund, how to get the gear which will help
3 advertise the good works that you are doing, and we
4 also want this website to be a repository of stories
5 about the good things that lawyers are doing out in
6 the community so that we can help push those back out
7 and show the world what good guys we are.

8 The website will also have frequently asked
9 questions, question and answer, and we have that
10 brochure also ready to go in print, and you will find
11 those available for you today. We are really
12 indoctrinating you today. You are going to be the
13 first, the shock troops out there to get this thing
14 going.

15 The program is really intended to work
16 through a variety of partners whom we have consulted
17 with in developing the program over the last several
18 months. It's one way in which the State Bar can help
19 the whole legal community work together and be more
20 effective in spreading our messages.

21 The benefits of participating in A Lawyer
22 Helps, obviously there is the satisfaction of doing
23 good, but the A Lawyer Helps program will also give
24 participants the products that will promote the
25 message and that will give marketing assistance and

1 publicity, and all this is available through a
2 resource and tool kit on the website.

3 In exchange for the help that the State Bar
4 is giving to lawyers to help, we are asking for just a
5 few things, that the slogan, that our phrase be
6 intact, not be messed with at all, that the logo
7 itself not be changed as people use the program,
8 although we do encourage local Bars, affinity Bars who
9 want to use this program to help publicize their
10 events and the pro bono that they do, we are
11 encouraging them to add their own logo to our logo.
12 Just as long as they don't change the basic message
13 and the logo and graphic, they can add to it.

14 We are also asking them to promote A Lawyer
15 Helps goals, and if they are part of our program and
16 they use our gear, then we want to hear. We want them
17 to tell us what they have done and provide us with
18 pictures and help us promote them in that way.

19 So we have boilerplate language that we need
20 to have tagged to the use of the program in order to
21 preserve its integrity and coherence so there will be
22 consistent messages, and I think the next slide has
23 the cobranding language that we are asking everyone to
24 use. Lawyers make a difference for people and
25 society. They solve legal problems, provide free

1 legal help to the poor, and give time to many other
2 community efforts.

3 So we are hoping that when this program has
4 been up and running for a while, and we see it as a
5 permanent program, not a one-time image campaign, we
6 are hoping that once it gets up and running the phrase
7 A Lawyer Helps will have this meaning behind it for
8 everyone who hears it.

9 Why does A Lawyer Helps prioritize pro bono
10 services and ATJ fund donations? Well, the formal
11 answer on the website and in this presentation is
12 because of the Bar's historical commitment and because
13 our own ethical guidelines prioritize pro bono
14 services and financial help.

15 But the insider story is that we really had
16 to work out a way in which pro bono, which is at the
17 heart of what we do, not get lost by the community
18 service stuff that lawyers do that is, frankly, more
19 photogenic for the program. If you are out in the
20 community and you have a baseball cap and are on the
21 sidelines coaching a soccer team that says A Lawyer
22 Helps, that's more photogenic than when you are in
23 your office doing a pro bono case, because in your
24 office doing a pro bono case it's like not a pro bono
25 case.

1 So that's the inside story. We are very,
2 very careful that as we promote the program that
3 pro bono and financial contributions stay front and
4 center.

5 I am driving Nancy crazy by ad libbing here.

6 So part of the program and part of what we
7 are asking you to do if you use this presentation to
8 promote the program is to educate everyone about what
9 pro bono is and, of course, elements of pro bono is
10 that it's free or reduced fee legal services for low
11 income individuals and groups. It isn't, as some
12 lawyers would hope it would be, a program that
13 includes clients who don't pay their bills.

14 We want to remind lawyers that the
15 Representative Assembly has adopted an explanation of
16 what in Michigan the voluntary pro bono standard
17 means, and you have said that it, in 1990 you said
18 that it means three cases a year, 30 hours of pro bono
19 service or a \$300 contribution minimum to the Access
20 to Justice fund.

21 We want to remind lawyers that financial
22 donations are a part of the pro bono obligation, and
23 it is a way that lawyers like me who probably would be
24 a hazard in the courtroom doing pro bono can fulfill
25 the ethical standard.

1 And because Access to Justice fund is our
2 vehicle for lawyers and others to donate to support
3 legal aid, the A Lawyer Helps site will also have a
4 link to contributions to the Access to Justice fund.
5 So there are going to be two ways online that people
6 can contribute to the Access to Justice fund, the
7 Access to Justice fund site and the A Lawyer Helps
8 site. But this will look familiar to those of you who
9 have contributed online through the current page.

10 Finally, we want to recognize the distinction
11 between pro bono service and community service and say
12 that in addition to this basic ethical obligation that
13 lawyers have and to carry out pro bono that lawyers
14 also assist in other community efforts outside the
15 community, and we want to make sure that that is also
16 recognized on this website.

17 A key function of this website is going to
18 be, as I said, making it easier for lawyers to provide
19 help, so on the website there is information about how
20 to volunteer for a pro bono case and options for
21 supporting and for making ATJ contributions.

22 And we are going to make it easy for you to
23 tell your stories to us and through us to the whole
24 state about what you are doing and what others in your
25 community are doing, what other lawyers in your

1 community are doing to help support the program.

2 We also will make it easy for lawyers to get
3 the gear which will help them be walking billboards
4 for the message that we are putting out there, and
5 this shows the way in which the website will promote
6 all three ways in which lawyers help, legal services
7 by giving money, and by giving time for the community.

8 That is the program, and I hope that by
9 formally presenting it to you that I have turned you
10 all into ambassadors for the program. I really look
11 forward to standing in front of you in September and
12 telling you what we have done from our part and having
13 you tell us your stories about how A Lawyer Helps in
14 your community, so thank you very much.

15 (Applause.)

16 CHAIRPERSON KAKISH: Thank you, Janet. Now
17 the lights will be turned on.

18 The next item on the agenda relates to an
19 overview of the public criminal defense crisis in
20 Michigan. I believe that's number eight. And giving
21 the presentation is Elizabeth Lyon, who is the
22 State Bar's director of governmental relations.
23 Elizabeth.

24 MS. LYON: Good morning. It's a pleasure to
25 be with you all this morning and to provide you with

1 an update of some significant steps that have been
2 taken since your September gathering in our efforts to
3 reform how legal services are provided to indigent
4 persons for criminal proceedings in our state.

5 You know, I have sat through David Carroll,
6 who is with the National Legal Aid and Defender
7 Association, who was the main author and researcher of
8 the Michigan Report, I sat through his Power Point
9 many times, and I sort of in the audience thought,
10 wow, if I were seeing this for the first time and not
11 living it day to day I would just sort of take a step
12 back and say, oh, wow, how are we going to do that?

13 Because certainly the problem that's
14 illustrated through the presentation, you all received
15 signals that we need a wholesale systemic reform in
16 our criminal courts, and probably associated with that
17 effort is a rather hefty price tag, and how do we do
18 that in our state today? So I am pleased that I can
19 show you some positive movement towards how we are
20 going to accomplish that in our state.

21 Back on February 18th a new group in
22 Michigan, Michigan Campaign for Justice, who many of
23 you have had an opportunity to interact with, and they
24 have been on the ground working for well over a year
25 now, but they had their official media launch back on

1 February 18th.

2 That is a group that is a new nonprofit in
3 Michigan whose sole purpose is to reform our indigent
4 criminal defense system. They are really motivated,
5 tremendous people. They have full-time staff members,
6 they have various consultants, and what they have done
7 is gone out throughout the state into courts, into
8 various state poller organizations and presented them
9 with the problem that we are all facing, and they have
10 motivated people to sign on to this campaign. They
11 have an impressive list of stakeholders that goes all
12 along the political spectrum and includes social
13 justice representatives, investigators, lawyers, local
14 Bar associations, and other folks, and they will be
15 working as a partner with the State Bar of Michigan in
16 addressing this problem.

17 Another very significant step that was taken
18 in March, the speaker of the House, Andrew Dillon, and
19 chair of the House Judiciary Committee, Representative
20 Mark Meadows, appointed a special committee on
21 indigent defense. Two members of the House were
22 appointed to that group. Representative Bob Constan,
23 who is an attorney from Dearborn Heights, was
24 appointed to chair that group, and then Representative
25 Justin Amash, who is a republican from Kentwood, also

1 an attorney, who was appointed to work with
2 Representative Constan in this effort.

3 They were tasked with pooling together
4 stakeholders, reviewing the problems, and drafting
5 legislation to produce effects in Michigan. I am
6 really happy to report that we have been able to have
7 an informative meeting with both of those
8 representatives where David Carroll provided
9 information about the Michigan Report. We have Robin
10 Dahlberg from the ACLU provide information about the
11 current litigation that is pending in our court
12 system, and other sort of a look at what other states
13 are doing and other issues so that folks have an
14 opportunity to really get a firm grasp of what it is
15 they are tackling and then to start moving forward
16 with, okay, so how are we going to fix it. There have
17 been numerous events along the way as well that sort
18 of pool together and let folks know what's happening.

19 On March 19th the State Bar of Michigan
20 cosponsored a forum with Michigan State University
21 Institute for Public Policies and Social Research and
22 did a forum on public defense over at the Capitol. We
23 had over 70 legislators, staff, and policy
24 professionals attend that event and engage in a
25 dialogue about what we are going to do to pull

1 together and fix this.

2 Another really significant step that was
3 taken that actually was borne out of a symposium held
4 at Wayne State University Law School on public defense
5 back in November was a congressional hearing on public
6 defense.

7 Chairman of the U.S. House Judiciary
8 Committee, Chairman John Conyers from Detroit,
9 obviously was at the Wayne State University symposium
10 back in November. He stayed for over four hours
11 listening to the various panelists present the
12 problems.

13 After he listened to all of the information,
14 he stayed after and sat and talked with David Carroll
15 and I and said, you know, it's time that we do
16 something to address this on the federal level, and I
17 think that Michigan provides an opportunity to have
18 that discussion nationally. So since November David
19 Carroll and myself and others worked to shape sort of
20 what a congressional hearing might look like that
21 really illustrated this problem and motivated a
22 federal response.

23 That hearing took place on March 26. It was
24 a hearing before the House Judiciary Staff Committee
25 on Crime, Terrorism, and Homeland Security chaired by

1 Congressman Bob Scott. The title of the hearing was
2 Representation of Indigent Defendants in Criminal
3 Cases, a Constitutional Crisis in Michigan and Other
4 States. So the title certainly implies that Michigan
5 was used as a poster child of what is really occurring
6 on a national level as a constitutional crisis.

7 Now, I got a couple of reactions on that.
8 Really, do we need more negative attention on
9 Michigan? And my response to that is, you know, if I
10 didn't have a firm belief and commitment that
11 providing Michigan in this way on a national scale
12 would motivate something really positive in response,
13 then, no, I wouldn't want Michigan to be highlighted
14 in that way either. But from that hearing I am
15 hopeful that all of my confidence was well placed,
16 because we had -- the hearing was significant in that
17 everybody recognizes and identifies that what is
18 happening in Michigan is also happening nationally,
19 and it's imperative that we do something to make sure
20 that that constitutional right to an attorney is
21 upheld.

22 The hearing then focused on sort of what can
23 we do about it. We know that it's a crisis, what can
24 we do about it? There were five witnesses at that
25 hearing. The State Bar of Michigan was represented by

1 two of our past presidents, Mr. Dennis Archer and
2 Ms. Nancy Diehl. Mr. Archer also represented the
3 American Bar Association and Ms. Diehl the Wayne
4 County Prosecutor's Office.

5 The panel also learned about the Michigan
6 experience of representing juveniles, which is often
7 thought as some of the most egregious problems in our
8 system, because juveniles, as David Carroll said, is
9 the afterthought to the afterthought, and they are
10 perhaps the most vulnerable to collateral consequences
11 of ineffective representation.

12 So Regina Daniels Thomas, who is the chief
13 legal counsel for juveniles at the Detroit Legal Aid
14 and Defender Association, presented the perspective of
15 what happens in the cases of juvenile representation.
16 She really has an effective and compelling story, and
17 it is just -- when people listen to Regina talking
18 about what's happening with the kids in our court
19 system, they really sign on to try to make a change.

20 From that hearing we now anticipate that
21 there be federal action. I can tell you there is a
22 huge range of options that are being talked about that
23 are on the table. We anticipate that there will be
24 another hearing in either May or in June that will
25 actually mark up federal legislation to start

1 addressing this issue.

2 Certainly on the table is appropriations and
3 also some sort of a regulatory scheme to make sure
4 that states are complying to standards. Some of the
5 appropriations pieces could especially be helpful here
6 in Michigan. If the federal government was able to
7 provide matching dollars to state dollars to help
8 build our system would certainly be helpful and help
9 us to motivate the discussion here in this state.

10 A couple other things that are being talked
11 about. I know all of you are aware that there was, on
12 the congressional level, an act passed that would do
13 loan forgiveness for law school for attorneys who
14 entered into public service, and that funding of that
15 act is on the table is something that I know a lot of
16 you are interested in, and that's being discussed
17 about now too on that level.

18 I know there are certain things that have
19 been proposed by the American Bar Association,
20 American Civil Liberties Union, and the National
21 Council of Criminal Defense Attorneys and other folks
22 also looking for perhaps opportunities under JAG and
23 Byrne grants on the federal level. There are
24 prosecutorial resources provided to the state, and we
25 are looking at perhaps being able to match what

1 resources are being provided to the states for
2 prosecutors but also public defenders, so lots of
3 interesting things happening there.

4 I am happy to say that when we talk about
5 standards, I don't throw that term around loosely.
6 The American Bar Association did an intense effort to
7 come up with ten standards of an effective public
8 defense system, and this Representative Assembly in
9 February of 2002 only waited two months to adopt the
10 American Bar Association's standard, and you, in fact,
11 went a step further and adopted an 11th principle,
12 which we sort of refer to as the Michigan principle,
13 which talks about a collaborative approach to the
14 delivery of public defense services. It identifies a
15 public defense attorney as somebody who can
16 appropriately coordinate perhaps social services for
17 individuals and other things.

18 We heard the Chief Justice this morning talk
19 about treatment courts and that perhaps defense
20 attorneys when trained well are in the best position
21 to identify those opportunities and referring their
22 clients appropriately.

23 There are a couple other events, if you want
24 to get involved and I can entice you to join us in
25 this important effort as individuals, certainly to

1 further the actions you have taken as a Representative
2 Assembly. There is on May 21st a three-day long
3 conference in Lansing on public defense that the
4 State Bar of Michigan is cosponsoring. The theme this
5 year is Reforming Michigan's Public Defense System:
6 The Economic, Social and Human Benefits. Again, it's
7 a really great program. We are bringing national
8 speakers to look at this. There is going to be panel
9 discussions.

10 If you would like to learn more about it, I
11 really encourage you to attend. You can register for
12 this event and find out more about the Michigan
13 Campaign for Justice at mijustice.org. I encourage to
14 you take a look. They also have sort of a mailing
15 list where you can get all the information on a
16 regular basis about events that are happening, and I
17 have saved some time, because I am hoping that you
18 will have questions that I can answer and tell you
19 more about what we are doing for this important
20 effort. If there are questions.

21 CHAIRPERSON KAKISH: Any questions. To ask a
22 question you have to go to the microphones and state
23 your name and circuit.

24 MS. HAITH: Good morning, everyone. My name
25 LaNita Haith. I am from the Oakland County 6th

1 circuit. I am the immediate past chair of the
2 Criminal Law Committee in Oakland County.

3 One of the discouraging factors for those of
4 us who do appointments of indigent persons is that
5 there seems to be an emphasis in this Campaign for
6 Justice, and we have had two presentations in Oakland
7 County, on us, the attorneys being ineffective, and it
8 pits us against the very people we are there to
9 represent.

10 In Oakland County we have to have extensive
11 continuing legal education to represent indigent
12 persons. We have our own individual law firms that we
13 must maintain, and I really would ask the Campaign for
14 Justice to shift that emphasis away from the attorneys
15 and talk a little bit more about systemic problems.

16 It has been quite a challenge, to say the
17 least, and we are not very enamored with the Michigan
18 Campaign for Justice as a result of that.

19 MS. LYON: I am more than happy to carry that
20 message and will do so, and I think that you very
21 appropriately pointed out that this is not the fault
22 of criminal defense attorneys, and, in fact, when I
23 talk with criminal defense attorneys, I am so
24 respectful and enamored with them and the work that
25 they do and how they try so hard to work to represent

1 their clients well, and I think when we do have this
2 discussion, it's really important to point out that
3 our current system has counties providing these
4 services and county funding and how can counties
5 effectively do that when they are faced with budget
6 cuts, and even narrowing it down more than that that,
7 not even on the county level, but sometimes courtroom
8 to courtroom there is a different way of providing
9 these services.

10 We have evolved into a system where
11 attorneys, prosecutors, and judges cannot effectively
12 meet their responsibilities to zealously advocate and
13 represent their clients. It's no one's fault. It's a
14 systemic problem, and we need to address it as such.

15 MS. HAITH: Okay, but the message is not
16 coming across that it's systemic.

17 One other thing I think you need to take into
18 consideration is where there are public defense
19 systems that are public defender offices, unlike
20 Oakland County, where they are funded, they are
21 failing. So I am not so sure that a statewide system
22 is the answer. And I think you need to talk to more
23 criminal defense attorneys who have been in the
24 trenches.

25 MS. LYON: The Criminal Defense Attorneys

1 Association of Michigan is on board with us. We talk
2 regularly with that association, and I appreciate very
3 much your passion and your looking at this issue, and
4 certainly we know that we need to look to other states
5 and other national experts in addressing this problem,
6 and those folks are coming to the table, and they are
7 ready to help Michigan look at what would be the best
8 solution for our state that's state specific that
9 addresses our specific needs.

10 CHAIRPERSON KAKISH: Yes.

11 MS. POHLY: Barry Poulson, first circuit. I
12 am a contract county defense attorney, solo law firm,
13 and I believe that my reading of the press releases
14 and forum traffic that I read imply that that type of
15 situation is, per se, ineffective. In other words,
16 that the only way, at least for a large part of this
17 movement that supposedly is effective, is to have a
18 defenders office.

19 I am not saying that defenders offices are
20 not a good solution. Don Johnson in Wayne County, how
21 could it be solved any differently. It's a huge
22 operation with huge number of cases, but in the
23 situation of a county defender, I am reminded most
24 recently of an arraignment Judge Smith had in our
25 county asked a young defendant if he had had an

1 attorney for his conviction in another county, and he
2 said, oh, no, Your Honor, only a public defender. And
3 the judge assured him that perhaps this person was
4 also an attorney. I am not faulting the judge here.

5 But there is a perception in this movement
6 that county defender offices or defender offices is
7 the only solution. For my office, I pay for my
8 WestLaw by taking money out of my retirement program.
9 I pay \$1,078 per month out of my retirement program
10 for health insurance. All these things are, you know,
11 it's my own plight, because I wanted to get into this
12 profession, but at the same time it's a very difficult
13 thing to have to hear that the only solution, and we
14 do hear this, is the defenders office.

15 There are other possible models, and some
16 evening of the Bar would simply say that the
17 Legislature pass that the prosecutor, defense is on
18 parity and that the pay or benefits or mechanisms be
19 equal. One line, two line piece of legislation would
20 set the standard. Thank you.

21 MS. LYON: I think that -- a couple of
22 comments. I think that when we look -- there has been
23 no fix for Michigan that has been really set in stone
24 yet. I think it's still in the discussion forum. A
25 couple of thoughts.

1 I agree with you based on the research that I
2 have seen that a public defenders office will not make
3 sense for all of Michigan. That certainly when we
4 look at the geographic expanse of our state, looking
5 at the U.P. and other things, it doesn't make sense to
6 have staffed public defense offices in all areas of
7 our state. I think when we move forward with the fix
8 it will be with a mixed system. So I think that in
9 larger areas like Detroit where it's shown
10 economically to make sense to have a staffed public
11 defense office that we will consider that an option.
12 I think when we look to other areas of the state where
13 it makes sense to continue with contract public
14 defenders, we need to have something that isn't a low
15 bid contract system so that your contract includes
16 things like the resources that you need, includes
17 caseload standards, includes adequate pay and other
18 things.

19 When people go out and they build a school,
20 they don't decide it solely based on a low bid
21 contract. They look at how the school is going to be
22 built and it is going to be done with standards and
23 it's going to meet code, and it's about time that
24 public defenders had the same type of contracts that
25 other people in our society do. So I think that's

1 important.

2 And one of those ten principles is parity.
3 We look at what prosecutors get, and we look at what
4 defense attorneys get. Investigators, expert
5 witnesses, all of these things, they have to be on
6 par. But I want to say prosecutors have resources
7 that are dwindling too. They also have needs that are
8 not being met in this state. When we look at
9 wholesale reform, we have to make sure that all of the
10 resources that are required to make our criminal
11 justice system work are there.

12 CHAIRPERSON KAKISH: We will take two more
13 questions for persons who are standing here. Ma'am.

14 MS. CLARK-KREUER: Rhonda Clark-Kreuer from
15 the 29th Circuit, and I would just like to touch on
16 the comments of the two other Assembly members.

17 I happen to come from, while I represent both
18 Clinton and Gratiot County, my practice is in Gratiot
19 County, which is one of the smallest counties and
20 number of attorneys in the state. We have a very
21 small number of attorneys who practice. You might say
22 that there are 30 members that are practicing there,
23 but if you look at the attorneys who are doing this
24 work, I can count on my two hands, actually less than
25 two hands, who do the criminal court-appointed work.

1 We are not doing it to make money. We are
2 not doing it out of necessity for our own purse, we
3 are doing it because if we don't do it there is
4 absolutely nobody in our county who is doing it. And
5 we are paying. There are a number of us who do pay
6 the WestLaw and the ICLE partnership to get access to
7 those tools.

8 Unlike the madam from the 6th circuit, we do
9 not have the money and the resource for the extensive
10 training that those people have. We do it on our own.
11 And what I can see from practicing for 15 years ICLE
12 is doing great at coming into other areas. Primarily
13 what I have seen is focused on drunk driving, which
14 is, yes, only a small myriad of what is going on
15 there.

16 I utilize the State Bar now, who is doing
17 more on the children's law, which I find is very much
18 needed, but is more weighted towards the abuse and
19 neglect and not doing that, and I understand in this
20 state of economy and people are asking for some of the
21 monies that are coming to the states, is there going
22 to be any way to fund counties such as ours that do
23 not have those resources to provide even further
24 training?

25 You know, I work extremely hard, and I don't

1 like it when my indigent clients, you know, oh, you
2 are just a court appointed. I go as much and
3 sometimes far above and beyond because I am concerned
4 about representing them and also concerned when you
5 are doing D.O.C. cases that your I's are dotted and
6 your T's crossed.

7 MS. LYON: First let me thank you for your
8 dedication to representing indigent clients. And I
9 think that it's that, you know, dedication for
10 upholding that constitutional right that compels
11 attorneys to take money from their private resources
12 to make sure that they are effectively representing
13 their clients.

14 I think you also demonstrate well that we
15 have no uniformity in the state, and when we can
16 implement standards and accountability, that's when we
17 have more uniformity. That's why part of the
18 standards is having training, so that you have the
19 ability to use those resources, just like the folks in
20 Oakland County do, and take a look at those things.

21 I think we have seen now, you know, Michigan
22 is only one of seven states nationally that does not
23 provide state funding for trial level indigent
24 defense, and certainly we see the national experience
25 compel us to know that there has to be some state

1 level of preparations, because the counties cannot
2 fund it on their own. So we are definitely moving in
3 that direction so that you can have the resources that
4 you need so that you are not paying for WestLaw out of
5 your pocket, those type of things.

6 CHAIRPERSON KAKISH: We will take one last
7 question, and for those who do have any further
8 questions, Elizabeth is attending the Representative
9 Assembly meeting today, and you can ask her questions
10 one-on-one later on. Yes.

11 MR. EVANS: Good morning, Tom Evans from the
12 5th circuit and, alas, I think it's a difficult
13 proposition when we have folks who are providing
14 services for indigent individuals when they also are
15 indigent both psychologically and in real terms of
16 dollars and cents. So my question is this, as far as
17 the John R. Justice bill, you touched on it for just a
18 second there, what would you say are the odds of there
19 being appropriations granted to fund that bill or what
20 sort of take can you give on this?

21 Also, our college from the 6th circuit would
22 like to comment that, just as any other circuit, they
23 pay for many of their training funds and things like
24 that themselves. Thank you.

25 MS. HAITH: All of them. We don't have the

1 funds.

2 MS. LYON: And I think another thing you
3 point out is how do we even define indigency. There
4 is no uniform statewide definition of indigency in our
5 state. So depending on where you are convicted of a
6 crime determines whether or not you meet the
7 definition of indigency in that particular county.

8 I am not a betting person --

9 MR. EVANS: If I may interject, the point end
10 of my question is how do you think the legislation, is
11 it going to be funded or not, what is your take on
12 that?

13 MS. LYON: And I was going to say I am not a
14 betting woman, so I would hesitate to give you odds.
15 I think right now we are seeing that there are so many
16 different options on the table, and a lot of them deal
17 with appropriations from the federal government. Some
18 of it's that matching state dollars that I talked
19 about. Some of it is increasing the grant program,
20 and some folks are pushing for the John R. Justice Act
21 to be funded.

22 I don't have a sense of what the specific
23 thing is at this point that will go forward. I do
24 know that there is an interest to do something. We
25 have already had meetings on the U.S. Senate side as

1 well to make sure that once we have reached that
2 chamber we are in the right direction.

3 I know that there are a lot of folks talking
4 about funding the John R. Justice Act, but I think
5 that we can be hopeful that the, you know, the last
6 congress passed it, and we are hopeful that the
7 current congress will fund it, and I will -- when I
8 know, I will let you know.

9 MR. EVANS: Thank you very much.

10 CHAIRPERSON KAKISH: Thank you. As I
11 indicated, Elizabeth Lyon, she will be available to
12 answer any of your questions.

13 We are running behind schedule, so I would
14 like now to bring up item number nine, which is
15 approval of the 2009 award recipients.
16 Mr. Jeff Nellis.

17 MR. NELLIS: Good morning again. The
18 Nominating and Awards Committee, we have essentially
19 two functions. As you saw earlier, that first
20 function is to fill our vacancies, and the second
21 function is to go through the process of nominating,
22 coming up with candidates for the awards that the
23 Representative Assembly gives out every year, and I
24 would just like to thank so much Kathy Kakish, Liz
25 Johnson, Victoria Radke and also Anne Smith, who has

1 really been a big help to our committee and helping us
2 in fulfilling our functions.

3 Being involved in this is really interesting,
4 because a lot of us we are involved in the day-to-day
5 grind of our jobs and maybe we don't always take the
6 time to think about some of the really outstanding
7 things that attorneys do for other people, not only in
8 the course of their employment, but also with the
9 community and helping the poor, things that we talked
10 about the A Lawyer Helps program, and the nominees
11 that we have put forward, that we are going to put
12 forward today, as I was listening to the presentation,
13 these are kind of poster children for the A Lawyer
14 Helps program. These are people who help others.
15 They are excellent at what they do, but they go out in
16 the community, and they do some really outstanding
17 things, so it's kind of a nice transition and tie-in,
18 so to speak.

19 The first award is the Michael Franck award.
20 It's given annually to an attorney who has made an
21 outstanding contribution to the improvement of the
22 profession. This year's nominee is an attorney, Dan
23 Bonner from Muskegon. If you are not from the west
24 side of Michigan, you may not recognize this
25 individual, but if you look in the materials that we

1 have provided, this is a gentleman who is almost,
2 shall we say, universally recognized, not only for his
3 competence, but also for his civility. He is the
4 managing attorney for the Muskegon office of Legal
5 Aid. He is what we might call a poverty attorney.

6 He not only does his job incredibly well, but
7 with great civility, and maybe more importantly in
8 some respects he is also incredibly involved in
9 various types of community service. He has been a
10 teacher in the past at the community college level,
11 and, again, I was really and the committee was really
12 struck by sort of the wide range of people who
13 commented on this individual, judges, lawyers,
14 referees, and it was a unanimous vote on this, and so
15 Dan Bonner, again, from Muskegon is our award nominee
16 for the Michael Franck Award.

17 With respect to the Unsung Hero Award, and
18 the standards for that are an attorney who exhibits
19 the highest standards of practice and commitment to
20 the benefit of others. And our recipients, we have
21 actually picked two this year, because we really felt
22 that that was appropriate after we looked through the
23 supporting documentation.

24 The first individual is an attorney from
25 Ann Arbor named Kelly Burris. She is an accomplished

1 patent attorney, but she does something very unique
2 and something that very few of us are able to do, and
3 that is she donates her time, her money, and her
4 airplane to be involved in a nonprofit project called
5 Angel Flight, and what they do is they essentially
6 donate air flights to hospitals out of state and that
7 type of thing for people who obviously could not
8 otherwise afford to do that to take them to
9 specialized hospitals, and that's just, you know, a
10 really neat accomplishment and something that very few
11 people are in a position to be able to do.

12 Our second nominee Brian Barkey from Flint,
13 and he, also from the practice side, is a very
14 accomplished mediator and case evaluator, and he has
15 been recognized for his accomplishments in those
16 areas, but he also is very involved with the community
17 service and has essentially been the driving force
18 behind the community holiday dinner, which has served
19 literally thousands of free holiday dinners to
20 underprivileged people. He has also been involved in
21 donating countless hours to the Bobby Crim fitness
22 program, which if any of you live around Flint, the
23 Bobby Crim race is a real big deal, and it has turned
24 into more than just a race now. He mentors people.
25 He provides hours and hours to these folks.

1 So today I am really proud and honored to ask
2 this body, and I am moving that this body accept these
3 individuals for the respective awards. I think when
4 you think about it, these attorneys exemplify the type
5 of attorney that we would all like to be, and I think
6 we all try to hold ourselves to that standard, and
7 they are also, you know, they are the type of people
8 who really make a great impression to the general
9 public. We can always -- our public reception could
10 always use a boost, so to speak, and these people are
11 wonderful ambassadors for our profession. So I make
12 that motion at this time.

13 VOICE: Support.

14 CHAIRPERSON KAKISH: Hearing a second, we
15 will --

16 VOICE: Second.

17 CHAIRPERSON KAKISH: It was seconded,
18 correct?

19 VOICE: Yes.

20 CHAIRPERSON KAKISH: Hearing a second, is
21 there any discussion?

22 Hearing none, all those in favor say aye.

23 All those opposed say no.

24 And any of those abstaining.

25 The ayes have it. The motion carries, and it

1 is adopted.

2 We are running a little bit behind time. If
3 you look at the calendar, and I would like to draw
4 your attention to item number 12. This is an
5 informational report. One of the presenters for item
6 number 12 does have to leave, and they are making a
7 request that their item be moved up to now before the
8 break, and I would entertain a motion if that is
9 acceptable to this group.

10 VOICE: So moved.

11 VOICE: Second.

12 CHAIRPERSON KAKISH: Any discussion? All
13 those in favor say aye.

14 All those against.

15 Hearing none, and so that motion carries,
16 and, therefore, we will now go to item number 12, and
17 that's the informational report on attorney
18 solicitation, and its proponent is Elizabeth Sadowski
19 from the 6th circuit.

20 MS. SADOWSKI: Hello, good morning. I am
21 Elizabeth Sadowski. I am a new member of this body;
22 however, I am an old member of the Family Law Section,
23 and I am old enough to remember Selectric typewriters.
24 I am a past chair of the Family Law Section too.

25 Our family law council members have asked me

1 to come and present to you something of a dilemma that
2 we have. You know, of course, that old story about
3 how a family law attorney, a criminal law attorney has
4 a bad person acting his best and a family law attorney
5 has a good person acting his level worst. It's really
6 true.

7 In our profession we see parents kidnapping
8 their children, we see domestic violence, we see
9 profound financial abuse, and all these people will
10 tell you that they do these things in the best
11 interest of their children and to protect their own
12 rights.

13 Well, right now we have a problem, and it's
14 getting worse because of the financial problems that
15 even lawyers are having in our community. Some
16 lawyers are trolling the filings, court filings, and
17 they are sending out letters to defendants who have
18 not been served yet, and the letters are saying things
19 like, Take warning, you are being sued, your legal
20 rights are in jeopardy, and these go to households
21 where there well may be a domestic violence impact,
22 where there are ex parte orders that are pending and
23 not yet served.

24 We fear that this is going, that this type of
25 conduct is going to promote more violence, more

1 kidnappings, more financial abuse, but we have a
2 dilemma, and in the words of Princess Leia, Help us,
3 Obi-Wan Kenobi.

4 We have this case from the United States
5 Supreme Court, the Shapiro case versus the Kentucky
6 Bar Association, that said, you know, there is a First
7 Amendment protective right for attorney advertising
8 and solicitation.

9 Now, you can't promote false or deceptive
10 practices, but that's not what we have here. It's not
11 false or deceptive to tell someone they are being
12 sued. However, there is a real state interest, we
13 think, in protecting people from having warnings,
14 early warnings, about there being a filing because of
15 the risk of harm that these early warnings can
16 promote.

17 You heard today your State Bar president talk
18 about professionalism and how we are first a
19 profession and then a business later, and you heard
20 Janet Welch's wonderful presentation on the
21 contributions A Lawyer Helps makes. This stuff is not
22 helping. It is not professional, but this practice as
23 we stand here today is probably legal, unless we take
24 steps to do something about it.

25 That is why in the fall you are going to be

1 asked to wrestle with this problem. This is a prelude
2 to what will happen soon.

3 You have a proposal for a possible resolution
4 to the Court Rules. It is proposed that a courtroom,
5 I would say, notwithstanding the provisions of
6 Michigan Rules of Professional Conduct 7.3, no
7 attorney shall contact any person known to the
8 attorney to be a defendant in any action filed in any
9 trial court in the state for the purpose of soliciting
10 that person as a client unless the prospective client
11 has been served with process in that action.

12 Now, there have been commentary to that,
13 saying, well, but how does -- is this really feasible,
14 because such a lawyer who is doing this trolling is
15 not even, has not even filed an appearance in the
16 case. How can the Court Rule control somebody who
17 hasn't even yet filed an appearance?

18 The other solution that this Representative
19 Assembly has considered is a Rule 7.3, which you will
20 find under in your materials, of course. This is all
21 page 12. So you can please read that and say, well,
22 give this your consideration.

23 We know that we need to do something to stop
24 this problem. We are pretty sure it's going to get
25 worse, not better, and once somebody is injured or

1 killed or a child kidnapped because they have been
2 alerted prior to being able to be served with process
3 or restrictive order, when that happens the question
4 is going to be, as our chair of our section Carlo
5 Martina has said, there is going to be a hue and cry,
6 why didn't somebody do something about this? Where
7 was the law? Where was the State Bar? How can people
8 get away with this? What can we do to protect
9 ourselves from this type of misconduct happening
10 again?

11 It's a dilemma, and we need your help. We
12 need to fix this, and we need to do it within the
13 confines of the constitutionally protected rights of
14 speech and advertising that the Shapiro case tells us
15 about. We ask you to give this a lot of
16 consideration. I know there is a lot of people here
17 who practice family law, and you probably have had
18 familiarity with this problem too. If you don't, if
19 it hasn't come to a neighborhood near you, it will,
20 because this is too easy to do. It's just too
21 inviting to be able, with the electronic age in which
22 cases are filed online, it's too easy to troll them,
23 and it's just too easy -- and it's hard to resist the
24 inclination to do more business, to put business above
25 professionalism these days in these hard times.

1 I thank you very much for your time. I hope
2 you will give this matter your profound consideration,
3 and I know, because with all the smart people here, we
4 will figure something out. Thank you.

5 (Applause.)

6 MS. SADOWSKI: William Dunn is our next
7 speaker. Is Mr. Dunn here? Forgive me. I am a
8 little new at this stuff. I will catch on. I am the
9 proponent of this proposal, and you will be asked to
10 come up with a solution next September.

11 Did I do that right?

12 CHAIRPERSON KAKISH: Yeah.

13 MS. SADOWSKI: All right.

14 MR. DUNN: Good morning. I am Bill Dunn.
15 Chair Kakish reached out to me as chair of the
16 Professional Ethics Committee of the State Bar to get
17 the views of the committee on this proposal which came
18 to us in alternatives as Court Rule or as a change of
19 Rule 7.3.

20 I cannot speak for the Ethics Committee,
21 because the Ethics Committee meets on this coming
22 Friday and will consider this for the first time
23 formally at that point, but I can provide a little
24 background from the perspective that I believe is
25 fair.

1 First, this rule comes to you as a Court Rule
2 today in its proposed form. As I have said, I have
3 seen it in alternative forms, Court Rules or a change
4 of Rule of Professional Conduct.

5 I think that the case can be made that
6 because of its broad application as a Court Rule that
7 we should consider it as a change to the Rules of
8 Professional Conduct, and the committee will look at
9 it on that basis.

10 We will, and I assume you would like us to
11 report back to the Assembly on our deliberations and
12 conclusions about this and our recommendations as you
13 will consider this in September.

14 Rule 7.3, as you have heard, allows written
15 solicitation of persons known to meet the services you
16 offer to the extent required by the Shapiro versus
17 Kentucky Bar case, a 1988 case. That case holds that
18 commercial speech is constitutionally protected if it
19 concerns lawful activities and is not misleading, but
20 that could be subject to regulation by laws that
21 directly advance a substantial government interest and
22 are appropriately tailored to that purpose. That's
23 the rule of Shapiro we'll have to live with.

24 This proposal has two purposes. One is to
25 restrain lawyer solicitation, trolling for clients,

1 and the other is to somehow in that manner prevent
2 spousal abuse.

3 You will note that the rule as presented to
4 you does not pertain to any types of cases. It
5 pertains to all litigation in any trial court. So it
6 goes well beyond spousal abuse into matters of every
7 nature that may be before a trial court.

8 If it's regulation that we are concerned
9 about, we have to look to see what Shapiro requires to
10 be allowed and what can be regulated. The proposal
11 does not apply simply to solicitation itself but only
12 solicitation prior to the service of process. And we
13 need to understand how that time issue or that fact of
14 service of process fits within the Shapiro mandates.

15 Unlike Ohio's Rule 7.3, which has a similar
16 waiting period, this proposal does not accept
17 assisting or prior client relationships, personal
18 friendships, business relationships of the past or
19 other persons with whom the lawyer may already have a
20 relationship.

21 If the trolling is the target, why would it
22 be permitted once process is served? What is key in
23 the service of the process that satisfies the
24 substantial state interest that then allows trolling
25 to occur? Those are questions that we will need to

1 look at.

2 If spousal abuse is the target issue, the
3 proposition would be that the lawyer solicitation of
4 business is a likely cause of spousal abuse and, of
5 course, we should inquire as to how that connects.

6 Of course, the proposal does not forbid a
7 lawyer or anyone else passing along the information of
8 the filing of the action unless the lawyer is
9 solicited. So it's really only solicitation that's
10 the focus of the cause of this problem.

11 But, as noted, the information is public, and
12 anyone can convey the information about the existence
13 of the suit. It may appear in the newspapers, friends
14 may pass it along, and it seems in analysis that if
15 there is a substantial governmental interest in not
16 informing a party that's named as a defendant in a
17 lawsuit until there has been service of process, then
18 that should be legislated to prevent anyone from
19 conveying that same information and thus causing the
20 same effect.

21 That to us kind of summarizes the questions
22 that will have to be faced as we look at this proposal
23 and make our recommendation and as you look at it
24 also. Thank you very much.

25 (Applause.)

1 CHAIRPERSON KAKISH: I understand there are
2 two more speakers who are coming to address this
3 informational report. The next one is Kristen
4 Robinson.

5 MS. ROBINSON: I will be brief. I know we
6 are running over. My name is Kristen Robinson. My
7 office is in Troy, and I practice family law. I am a
8 family law council member, and I am the vice chair of
9 the Oakland County Family Court Committee.

10 I am here today because two years ago I was
11 approached by the current chair of the Oakland County
12 Family Court to write an article about this issue
13 because it was such a problem that the Oakland County
14 Bar wanted to make sure that practitioners knew this
15 was going on. So I researched it and found exactly
16 what Mr. Dunn was talking about. We have some
17 constitutional concerns, and, as a family law section,
18 we fully recognize that. And we are here today in an
19 informational presentation to let you know this is a
20 problem, and we are going to construct a rule, whether
21 it's a Court Rule or amendment to the Michigan Rules
22 of Professional Conduct, so that we can prevent this
23 problem from happening, and it is happening, and this
24 is the truth.

25 Yesterday in my office my partner came to my

1 office and said, Kristen, you have to come in my
2 office. She was meeting with a new client, a new
3 divorce client, and she said to her client, tell my
4 partner what you just told me. And she said, well, I
5 was complaining because I received a packet in the
6 mail from an attorney telling me that I had been sued
7 for divorce, and I thought, I mean, I am coming here
8 today to talk about this. So it's happening
9 regularly, and in that particular case no harm done.
10 This woman knew that her husband was filing for
11 divorce.

12 But there are cases, and family law cases are
13 different. I mean, we have children involved, we have
14 domestic violence, we have people trying to hide
15 assets and move funds and irreparable harm can happen.

16 We already have a Court Rule in place, so we
17 know the court and the state recognizes that there is
18 a need for ex parte relief, so if we can show the
19 court that, in fact, we are concerned about
20 irreparable harm being precipitated by the notice
21 itself, then, in fact, we can petition the court and
22 get ex parte orders, and that's what we are trying to
23 prevent here is an end run around getting that
24 ex parte relief. Because the fact of the matter is it
25 sometimes takes days, sometimes weeks to get that

1 ex parte order granted. So in that window of time
2 this defendant is served before we can get our
3 ex parte order entered this irreparable harm that we
4 are trying to prevent is going to happen.

5 So we are asking for you to contemplate this
6 and recognize that we as the Family Law Council are
7 flexible in drafting some kind of rule or amendment to
8 the Michigan Rules of Professional Conduct so that we
9 can prevent the harm that's happening. Thank you for
10 your time.

11 (Applause.)

12 CHAIRPERSON KAKISH: Victoria Kremski from
13 Thomas Cooley Law School.

14 MS. KREMSKI: Thank you. Victoria asked me
15 to keep my remarks as brief as possible. I know we
16 are behind schedule, so let's see how well I can do.

17 First of all, a rule is needed. It's a good
18 idea. There is clearly a significant interest here.

19 Second point, the rule should be a Rule of
20 Professional Conduct. It should be an ethics rule.

21 Third point, the proposal as written is
22 overbroad. It wouldn't withstand constitutional
23 scrutiny. The rule should be narrowly tailored to
24 encompass the specific situations that are of concern,
25 allegations in cases where there are allegations of

1 domestic violence, allegations where perhaps one of
2 the potential defendants is mentally or emotionally
3 unstable and could do harm to themselves or others.

4 Last point, I will be glad to help you draft
5 something that would withstand constitutional muster
6 and meet your needs, offer my services.

7 (Applause.)

8 CHAIRPERSON KAKISH: We do provide a period
9 of questions and answers. I would take one question,
10 because you are already there, but please know that
11 the proponent is available. You have the names and
12 numbers of the people who have spoken today, and you
13 can always contact them from now until the meetings,
14 but if you have a question.

15 MR. HAUGABOOK: Yes, my name is Terrence
16 Haugabook from the 3rd circuit. As a prosecutor at
17 the state level and not the federal level, back at the
18 state level our past president, and I worked under
19 her, Nancy Diehl, handling issues of domestic violence
20 and prosecuting those cases, so I think those concerns
21 are very paramount, because I saw firsthand what would
22 happen to victims of domestic violence under these
23 circumstances.

24 What I am here to say though is, as I read
25 this proposal over, I thought it had some overbreadth

1 to it, and I think domestic violence is a paramount
2 issue that should be addressed. I invite anyone to
3 talk to me, because one of the things I would like to
4 know, has anybody explored the issue of trying to get
5 a way in which you can file a domestic or a divorce
6 action under seal with the court in order to avoid
7 these concerns and then unseal it after the person is
8 served. So some sort of fashion where if there is an
9 issue of you are going to be abused or child is going
10 to be taken or assets are going to be hidden, if there
11 is a way to do this under seal until the person is
12 served to prevent all this harm, and then you don't
13 have to get into the overbreadth that I saw when I
14 read this. So I would like anybody to talk to me
15 about that, and I wonder if anybody has ever explored
16 that.

17 CHAIRPERSON KAKISH: And your name and
18 circuit once again, sir.

19 MR HAUGABOOK: Yes, Terrence Haugabook, 3rd
20 circuit.

21 CHAIRPERSON KAKISH: Thank you. As indicated
22 in the calendar item, the names and the telephone
23 numbers of the people who spoke now are available, and
24 you are most welcome to contact them at any time.

25 We are way behind schedule. It is almost ten

1 minutes past 12, and according to the calendar we
2 should be starting lunch. I would entertain a motion,
3 one, to eliminate our break, ten-minute break that was
4 scheduled previously, and I also would entertain a
5 motion that the presentation by Anne Vrooman be
6 postponed to after lunch and that we do take lunch at
7 this point.

8 VOICE: So moved.

9 VOICE: Support.

10 CHAIRPERSON KAKISH: Motion was made, and I
11 heard support. Is there any discussion?

12 All those in -- no discussion. All those in
13 favor say aye.

14 All those opposed say no.

15 Any abstentions?

16 Hearing none, the motion carries. We will
17 come back. We will now have lunch and return at
18 exactly 1 p.m. Thank you.

19 (Lunch break taken 12:06 p.m. - 1:02 p.m.)

20 CHAIRPERSON KAKISH: Good afternoon. We can
21 now resume the meeting, and the Assembly is back in
22 session.

23 The next item on the calendar is a
24 presentation on the changing face of the State Bar of
25 Michigan, and that is item number 11 on the calendar.

1 This presentation will be given by Anne Vrooman
2 State Bar director of research and development. Anne.

3 MS. VROOMAN: Good afternoon. I can say that
4 this is actually a lot more fun to do on a full
5 stomach I think for all of us. I know that given the
6 agenda and backup, I am going to do my very best to
7 move pretty quickly through this. I don't think I can
8 be quite as boiled down and succinct as Victoria was
9 when she came up and gave it to you in about 30
10 seconds, but I will do my best.

11 The changing face of the State Bar, it's a
12 look at the demographics of the membership of the
13 State Bar and how it's changing in many ways.
14 Dr. David Foote, a renowned demographer from the
15 University of Toronto, said that about two-thirds of
16 everything can be explained in demographics, that when
17 you know salient facts about people, their education
18 and age, and in our case practice areas, occupational
19 areas, you really can tell an awful lot about their
20 interests, and it's from that that we really have
21 built the foundation of information that we have at
22 the State Bar about who our members are, what the
23 demographics look like.

24 It has helped us to take what we learn from
25 this and use that to link it to target strategies for

1 target populations identifying the large number of
2 baby boomers that we have that you will see as they
3 are nearing retirement, as well as what the
4 demographics look like for new lawyers coming in. So
5 with that we can start with the first slide.

6 This is the overall composition of the
7 membership of the State Bar, and sometimes you hear
8 different numbers thrown around about how many members
9 the State Bar has, and probably some of you have heard
10 over 50,000, and sometimes it talks about over 30,000,
11 and I will explain why sometimes that gets a little
12 bit confusing.

13 But this is the overall picture, and once you
14 become a member of the State Bar and are in the
15 system, you are in this pie chart somewhere forever.
16 We will be focusing today mainly on the active
17 membership, but you can see all the other categories.

18 So taking that active piece then, we can boil
19 it down into active Michigan residents and then active
20 non-Michigan residents, and for most of our discussion
21 today we will be talking about the active Michigan
22 resident Bar members, but we need to pay attention to
23 that non-Michigan members, and with a lot of things
24 you heard about in the economy, that's a number that
25 we really want to keep an eye on. Are there members

1 moving out of Michigan for other opportunities, law
2 school graduates, things like that. Actually that is
3 a number that grew this year by about one percent.

4 We ask our members to self identify their
5 occupational area on their dues form each year, and we
6 have had these categories for quite a period of time.
7 From this you can see that about 50 percent, a little
8 better than 50 percent of our active Michigan resident
9 members designate themselves to be in private
10 practice. The other 50 percent are something else.

11 You can see that the nonreported category is
12 a pretty significant number there, and what that is
13 are people that we don't know what they do. What we
14 assume is that they have -- (chuckling) -- that they
15 don't know what they do, that's true. That we don't
16 know what they do. They do not see themselves as
17 being able to fit into any of the categories that we
18 have designated. So we have actually added some
19 categories to the last dues statement, and next year
20 should have at least a little bit more of that
21 picture, and hopefully we will know more about what
22 they do, even if they don't.

23 Focusing in then on that private practice
24 area and what we know about firm size, which again is
25 self-identified and broken into the solo, small,

1 medium, and large in there, it's pretty interesting,
2 because when you look at the solos and the smalls and
3 you add those together, it makes up to pretty close to
4 70 percent of what private practice attorneys are.

5 This is just a picture now of what the
6 non-Michigan resident occupational areas look like,
7 and I showed you this just so you can see a little bit
8 of the difference here. Large number of corp counsel,
9 a higher number, even though the proportions come out
10 the same, the corp counsel is much higher, private
11 practice smaller. But you can see that it's the large
12 firms rather than the small or solos that make up that
13 population at a higher percentage.

14 This is one of the ways that I wanted to show
15 you this data and to look at how it's changing is to
16 take the overall picture and then pull out the new
17 join. So in this case these would be attorneys that
18 joined the Bar in the year of 2007, and show you the
19 difference.

20 This particular slide I would caution about
21 in terms of too much weight, because you can see the
22 no response, again, either not fitting in or people
23 still looking for jobs at the time that this was done.

24 The gender, overall gender composition of the
25 membership of the State Bar is about 70/30, so about

1 70 percent male and 30 percent female, but you can see
2 how this is changing. So when you look at the members
3 that joined in 2007, it's getting much closer to a
4 50/50 split. So, again, you can see that in the
5 coming years the gender, the leadership, what it will
6 look like in law firms and all throughout the
7 professions is getting much closer to that.

8 This is an overall picture of the members
9 just split by generation, and you can see, as I
10 mentioned already, the significant number of baby
11 boomers and traditionalists, and when you look at that
12 portion of the membership, you can understand them,
13 why there is a lot of concern about, you know, what to
14 do in terms of target services for that particular
15 group of members.

16 And this is the picture by generation of who
17 joined the Bar. In 2007, obviously a lot of
18 Gen-X'ers, but milleniums coming into the profession
19 at a pretty good rate.

20 And then this is the gender split by
21 generation that we have, and, again, you can see the
22 progression and the increase in the number of women in
23 the profession. And then this is the gender in terms
24 of actual numbers of the 2007 joins.

25 I am moving through this pretty quickly. I

1 hope you can spend more time later when you have more
2 time to look at this.

3 In terms of gender, this is just a trend
4 line, and you can see, when you go back to the earlier
5 years here, the pretty big gap, but how it's gotten
6 pretty close together. It's almost equal.

7 This is the ethnicity of the active members.
8 I want to do some clarification here. We ask on --
9 there are actually two source documents that drive the
10 underlying data that we keep. The first is when the
11 membership application, when a person joins, and on
12 that we voluntarily ask for race and ethnic
13 information, and people self-identify into those
14 categories. We have that information for about 75
15 percent of our members, and we use that information to
16 produce this data. We make the assumption that what
17 we don't know distributes in about the same way as
18 what we do know.

19 So overall -- actually, maybe, Nancy, back up
20 to that last one -- overall you can see that, you can
21 see that European dissent in the overall composition
22 is about 85 percent with other race and ethnic
23 categories making up the pretty small remainder, but
24 when you move to the joins in 2007 you can see that
25 that number has shifted pretty significantly with

1 European dissent making up only about 61 percent and
2 significant increases in the other racial and ethnic
3 categories, and I might point out that actually the
4 Asian Pacific Islander category has been the category
5 that has grown pretty significantly in the past couple
6 of years, and I think yesterday an action on the Board
7 was to recognize the new local Bar association or
8 special Bar association of South Asian members.

9 This is a comparison then in terms of these
10 ethnic categories of the, stacking the new joins in
11 2007 with the overall composition, again, just so that
12 you can see the trends that are changing in each of
13 those categories.

14 This is the information of race and ethnicity
15 broken down by generations, and, again, generations is
16 an interesting way to split things. It really sort of
17 marks in time, but in big gaps of time, and when you
18 look at it that way, you can see pretty significant
19 trends.

20 And this is really a snapshot in five-year
21 intervals, so what this means when you are looking at
22 it, this would be the number of people who joined in
23 these target years, so 1980, 1985 and so on in each of
24 these ethnic categories and, again, just taking
25 snapshots through those years.

1 This is information that we keep that we know
2 about law schools and where our members went to law
3 school, graduated from law school, and, again, this is
4 the overall picture. You can see that Wayne State
5 actually has the largest number of members, and
6 University of Michigan the smallest number of members
7 as part of our database. You can see that others, so
8 people who didn't go to Michigan law schools, comprise
9 a pretty significant portion of the Bar.

10 And this is the picture of the people by law
11 school of the 2007 joins, so a slightly different
12 picture. This is in real numbers rather than
13 percentages, but you can see significant number of
14 Cooley grads and then other law schools and what you
15 might infer from that perhaps, you know, people coming
16 home after having gone to other law schools.

17 This information is about sections, and
18 overall we wanted to know what percentage of members
19 belong to any section, so this is just a picture of no
20 section versus being in one or more section, and
21 remember that this is the overall active Michigan
22 residents. So thinking back to that pie chart where
23 only 50 percent or about 50 percent are in private
24 practice and the other 50 percent are in other things,
25 so occupations that, you know, sections may not be of

1 interest to them in their professional life. The
2 split for them is a bit -- almost 60 percent, so 58.4
3 percent belong to one or more sections and then 41
4 percent belong to no section.

5 This is broken down by the occupational
6 areas, and, again, I would point here to sort of where
7 we have been zeroing in so that those that identify
8 themselves in private practice, and what you can see
9 is for those in private practice about 68 percent
10 belong to one or more sections, 32 percent, almost 33
11 percent, don't belong to any section, and what becomes
12 interesting though is when you look at the next slide,
13 which is by firm size, and you can see that when you
14 break that down the pretty significant number of solo
15 practitioners that don't belong to any section, and
16 then on the other end of the spectrum those in large
17 firms, about 90 percent, belong to one or more
18 sections.

19 And this is a list of the sections themselves
20 and what their membership is just for your
21 information.

22 I would point you to the black and white
23 handout that you received, and the very last page of
24 that is actually an update for you. It's a snapshot
25 of 2008, again, just boiled down so that you could get

1 a sense of the numbers using the racial and ethnic
2 categories and gender categories for the new joins of
3 2008.

4 We will be doing another snapshot, sort of
5 big pull of this information, beginning in June, so we
6 will update this data, and what we will do, we are a
7 couple years into this project now, so we can begin to
8 do some trending and so what shifts there are on a
9 year-to-year basis.

10 I know that I have been pretty brief, but I
11 will be here, and I am happy to answer any questions
12 that you have either during the breaks, or I invite
13 you to call me at my office, and if I can ever help
14 you in how you connect with your constituents with
15 this information, I am happy to do that as well.
16 Thank you.

17 (Applause.)

18 CHAIRPERSON KAKISH: The next item on the
19 calendar is item number 14, and that is consideration
20 of proposed amendment of MCR 8.115, cell phone usage
21 in court facilities.

22 This is not an action item that we as an
23 Assembly typically see. Here the Civil Procedures and
24 Courts Committee is asking the Assembly for permission
25 to advocate its own position on a proposal that the

1 Assembly voted on last year at last year's April
2 meeting. The proponent is Dan Quick from the 6th
3 circuit.

4 MR. QUICK: Thank you. I am here on behalf
5 of the Civil Procedure Committee. The history of this
6 is pretty straightforward. The Representative
7 Assembly last April passed a proposal which the State
8 Court, or the Supreme Court took -- (Cell phone
9 ringing) -- excuse me, for a moment there. No, the
10 Representative Assembly has no rule, no, no.

11 So last April we passed a rule. The
12 Supreme Court twisted it around a little bit and put
13 out two proposals for consideration. Proposal A
14 closely echoes that of the Representative Assembly but
15 used some different phraseology. When it came back
16 for consideration for the Court's Committee, we
17 suggested two changes be made to this, which we think
18 both make sense.

19 The first is the underlying language in the
20 first sentence which clarifies that phones which
21 include photographic, video, or audio recording
22 capabilities be permitted. That's been included,
23 because in practice sometimes the sheriffs don't
24 understand that all means all, and so making this
25 expressed in our opinion would be helpful.

1 The second substantive change appears near
2 the bottom of the rule, and this is the sentence
3 starting with nothing in the subrule limits the
4 court's authority to impose other reasonable
5 limitations.

6 This really was just to make clear that, of
7 course, if the court decides that 30 people tapping
8 away on their blackberries in court is disruptive, the
9 court retains the ability to impose reasonable
10 restraints upon courtroom decorum. We think that's in
11 keeping of the spirit of the rule, and we think it's a
12 little bit of what may have been behind proposal B,
13 which is a little bit more of a draconian measure in
14 terms of banning use of electronic devices in the
15 courtroom.

16 So with that, happy to field any questions on
17 behalf of the committee. Do we need a motion first?
18 Motion.

19 VOICE: So moved.

20 VOICE: Support.

21 CHAIRPERSON KAKISH: The motion was made and
22 there was support. Now we are open to discussion.
23 Yes.

24 MR. LINDEN: Jeff Linden, 6th circuit. In
25 the proposal, the last substantive comment that you

1 made, the nothing shall limit the court's authority to
2 impose other restrictions, how do you propose that
3 that doesn't necessarily gut the earlier change? For
4 example, if a judge were to say audio, video, or other
5 recording capable cell phones defacto aren't allowed,
6 and you have established that they are, then they
7 basically undo the other portion of the rule. Why do
8 you have what I see as a conflict in there?

9 And this comes out, basically there is one
10 particular court that's a district court where the
11 chief judge, and I am not going to name which one, you
12 know, or which court, but has, contrary to the other,
13 has still maintained that recording capability, even
14 for lawyers who are officers of the court and have
15 other ways of sanctioning them if they disrupt or do
16 things that are inappropriate, wouldn't allow phones
17 that have that in there. And I understand and I
18 appreciate the committee's attempt, because it's
19 difficult to acquire a cell phone these days that
20 doesn't have those capabilities that would be allowed
21 in the court, and I would like to see how you see that
22 as an internal conflict in the proposal.

23 MR. QUICK: In just two comments, briefly.
24 The first is, of course, there are two levels of
25 problem here. One is at the courthouse doors

1 generally, and we think the uniform rule that has
2 these provisions in it will be helpful at that level,
3 but then within specific courtrooms I guess it's my
4 hope that by virtue of the word other reasonable
5 limitations, that that is construed to not permit
6 somebody to completely vitiate the rule by banning
7 everything. At least our sense is that the vast
8 majority of courts recognize the modern technology
9 that the attorneys carry around and access on a
10 regular basis. I am not sure I necessarily see it as
11 an internal conflict.

12 CHAIRPERSON KAKISH: Thank you. Next.

13 MR. BARTON: Bruce Barton, 4th circuit.
14 Knowing how nitpicky some lawyers can be, I move an
15 amendment, and I think it's within our limits, that
16 the underlying language, beginning with including,
17 read as follows: Including, but not limited to, those
18 with photographic, video, or audio recording
19 capabilities. I think the intent is obvious.

20 CHAIRPERSON KAKISH: Do you accept that as a
21 friendly amendment?

22 MR. QUICK: Sure.

23 MR. RAINE: Paul Raine, 6th circuit.

24 CHAIRPERSON KAKISH: Excuse me. It was
25 accepted as a friendly amendment to add the words "but

1 not limited to." Is there a second?

2 VOICE: Second.

3 CHAIRPERSON KAKISH: Thank you. So now the
4 discussion is open for what is on the board here with
5 the addition of those three words, or four words.

6 MR. RAINE: Paul Raine, 6th circuit. I rise
7 in support of this, but I have an issue with the
8 fourth sentence, which starts with "if silenced." It
9 seems to me that it's going to be difficult --

10 MR. KRIEGER: Point of order.

11 CHAIRPERSON KAKISH: Yes.

12 MR. KRIEGER: Isn't the discussion right now
13 on the motion to amend? I am sorry.

14 JUDGE CHMURA: The motion has already been
15 amended by way of a friendly amendment, so the
16 discussion now is on the motion as amended with the
17 extra words added. That's where we are at in the
18 proceeding.

19 MR. RAINE: May I proceed?

20 CHAIRPERSON KAKISH: Yes.

21 MR. RAINE: The sentence that begins with "if
22 silenced," seems to me it's going to be difficult for
23 any counsel to make certain that any transmission do
24 not interfere with any court recordings unless we can
25 encapsulated the phone somehow to prevent any kind of

1 electronic or electromagnetic radiation from
2 interfering with the court recording devices. It
3 seems like you would have to just shut cell phones off
4 completely. I would suggest maybe striking that
5 sentence.

6 MR. QUICK: I think the concern is that in
7 some circumstances, and I am not smart enough to know
8 why or when those would occur, that there could be
9 transmissions which might interfere, but in the normal
10 course they don't, because we all carry our phones
11 around in court.

12 MR. RAINE: I guess the difficulty I am
13 having is with how counsel can make certain that that
14 doesn't happen.

15 MR. QUICK: This is the language under the
16 Supreme Court rule, so I guess you would have to move
17 for an amendment of the language.

18 MR. RAINE: My motion to amend that would
19 then be to strike the sentence.

20 VOICE: Second.

21 CHAIRPERSON KAKISH: This is not accepted as
22 a friendly amendment.

23 VOICE: There is a motion on the floor.

24 CHAIRPERSON KAKISH: There was a second.

25 Now we open the debate to this amendment.

1 JUDGE CHMURA: Just so you understand, the
2 discussion has to be on whether the motion should be
3 amended, not under the underlying merits of the motion
4 as amended and passed, only on whether the motion
5 should be as amended and seconded by this gentleman
6 here. It's a narrow question that you are debating
7 right now.

8 MR. BARTON: Point of parliamentary inquiry.
9 Are we trying to amend something that we passed at the
10 last meeting, in which case it's going to take some
11 sort of motion to -- we can't amend in a subsequent
12 proceeding, I think the parliamentarian will agree,
13 something we passed last time. In other words, we are
14 actually trying to change what happened at a previous
15 meeting without the proper motion.

16 CHAIRPERSON KAKISH: We are not looking at
17 what we voted last year. What we voted stands. What
18 we are doing here is the determination or the decision
19 to grant the committee, which is the Civil Procedure
20 and Courts Committee, permission to advocate its own
21 stances. What we are doing here is just to give them
22 permission for them to go ahead and say that this is
23 their viewpoint, because the cell phone issue was
24 already before the Supreme Court, it was published for
25 a public comment, and the Civil Procedure and Courts

1 Committee now took a look at it and realized that it
2 wanted to expand on it, but in doing so it needs our
3 permission to do that. Does that answer your
4 question?

5 MR. BARTON: Are we changing something not
6 underlined in this proposal which was passed last
7 time?

8 MR. STEMPIEN: Madam Chair, point of order.
9 Eric Stempien, 3rd circuit. If we are only voting as
10 to give permission to a particular committee to take a
11 position, we are not here to amend anything. All we
12 are here is they are to tell what they want to
13 present, and I would think we would take an up or down
14 vote as to what they want to present. We are making
15 amendments to something that's been presented by a
16 committee. It's not our presentment.

17 CHAIRPERSON KAKISH: Correct, but we do have
18 the authority to make sure that we agree with what
19 they are proposing or not, but you are correct.

20 MR. BARTON: May I have a parliamentary
21 ruling by the parliamentarian. Are we talking
22 about -- if we are talking about language in this
23 proposal not underlined, are we talking about a motion
24 to reconsider, because we passed the language that we
25 are now trying to amend at a previous meeting.

1 JUDGE CHMURA: That's right, and,
2 unfortunately, I don't know, because I wasn't at the
3 previous meeting, so I don't really know what was
4 passed. If there was a question that was passed at
5 the previous meeting which you are attempting to do by
6 motion that's in the agenda is to change what was
7 passed at the previous meeting, yes, it's a motion to
8 reconsider, but I don't know that that's the case, not
9 having been here the previous motion. It's not the
10 case. I am told that's not the case. The Chair has
11 to make that ruling since she would be in a better
12 position right now. So it's a main motion
13 essentially, as amended.

14 MR. RAINE: May I suggest that since my
15 amendment proposal to strike that sentence was not
16 taken as a friendly amendment that I withdraw my
17 motion and that the section just simply take that
18 under consideration for what they propose in
19 September.

20 CHAIRPERSON KAKISH: They are not proposing
21 this in September. The comment period -- that's fine
22 with respect to the withdrawal of the motion.

23 VICE CHAIR JOHNSON: Who was the second?

24 VOICE: I withdraw my second.

25 MS. VANHOUTEN: Madam Chair, I just want

1 to -- Margaret VanHouten from the 3rd circuit. The
2 friendly amendment that was accepted too, we can't
3 even offer a friendly amendment, because it's what
4 their committee has already passed, so we are giving
5 up or down approval to what their committee has
6 passed. So I think even that friendly amendment of
7 "but not limited to" needs to be removed, because he
8 is not the committee, and he can't accept on behalf of
9 the committee without the committee voting on that.

10 JUDGE CHMURA: She is speaking against
11 passing the amendment, or the motion.

12 MS. VANHOUTEN: No, I am actually, a point of
13 parliamentary procedure, if we are approving their
14 position or allowing them to state their position or
15 not, how can we amend what their position is? Their
16 committee would be the one that's approving or
17 approved that language. The gentleman can't speak on
18 behalf of his entire committee. That friendly
19 amendment was not approved by his committee. It's a
20 point of parliamentary procedure that I am offering.

21 JUDGE CHMURA: I don't think it's a point of
22 parliamentary procedure. I think you are speaking
23 against passage of the motion. I don't think this is
24 a question of parliamentary procedure at all.

25 MS. VANHOUTEN: I am not against allowing

1 them to state their position. I am just saying I
2 don't think our committee can change what their
3 position is.

4 JUDGE CHMURA: Then vote no.

5 MR. KRIEGER: I have a point of information.
6 Could the clerk restate the main motion. Nick Krieger
7 from the 3rd circuit. I am sorry. Could the clerk
8 restate the main motion. My understanding is that the
9 main motion is to allow this committee to propose this
10 and not for us to amend it, is that correct?

11 CHAIRPERSON KAKISH: What is before the
12 Assembly is the last page of the proposal, page number
13 two of item number 14, and it is the question should
14 the Representative Assembly grant permission to the
15 Civil Procedures and Courts Committee to submit its
16 comments that advocate revisions to the Assembly's
17 position on the usage of electronic devices in
18 courthouses. There has been a friendly amendment that
19 was accepted to add those four words, so the question
20 before us now -- am I correct, Victoria?

21 CLERK RADKE: Yes.

22 CHAIRPERSON KAKISH: The question before us
23 now is do we allow the Civil Procedures and Courts
24 Committee to advocate its position as amended with a
25 friendly amendment, that is the question.

1 VOICE: Call for the question.

2 MR. MEKAS: 49th Circuit, Peter Mekas. When
3 we are talking about its position, are we talking
4 about the position of the Assembly or the Court and
5 Civil Procedures Committee?

6 CHAIRPERSON KAKISH: We are talking about the
7 committee. The committee wants to advocate -- this
8 really is a different proposal than what we are used
9 to seeing, and that's where the confusion is coming.

10 What they have done is they made their
11 changes, and because we already ruled on the matter
12 last year, in order for them to advocate their own
13 position, the committee's position, they need our
14 permission, they need our blessing, and they are
15 asking for our blessing. That's all that they are
16 asking for.

17 MR. MEKAS: However our comments changed the
18 Civil Procedures and Court Committee's position, and
19 are we asking that that committee submit their
20 proposal without additional comments for passage?

21 CHAIRPERSON KAKISH: Dan Quick is the
22 proponent for that committee, and he did have the
23 authority to accept that friendly amendment.

24 MR. MEKAS: And he did accept it?

25 CHAIRPERSON KAKISH: And he did accept it,

1 yes.

2 CLERK RADKE: You had a request to call the
3 question.

4 CHAIRPERSON KAKISH: There was a call to
5 question, and all those in favor say aye.

6 All those opposed.

7 The debate now has ended, and now we move to
8 vote on the issue before us as to whether or not to
9 grant the Civil Court and Procedures Committee
10 permission to advocate its position as you can see on
11 the board.

12 All those in favor say aye.

13 All those opposed say no.

14 Those abstaining say yes.

15 The ayes have it. The motion carries and is
16 adopted.

17 Next item on the calendar is item number 15,
18 which is consideration of MCR 2.516, instructions to
19 the jury. The proponent is John Riser from the 22nd
20 circuit court.

21 MR. REISER: Unfortunately for me this is one
22 you folks do have the authority to amend. Hopefully
23 you will be too tired after lunch to do much of it,
24 but good afternoon, my name is John Reiser. I am an
25 assistant prosecuting attorney in Ann Arbor,

1 22nd circuit, Washtenaw County. Prior to that I was
2 an assistant prosecuting attorney in Oakland County,
3 6th circuit, so hello to many of my friends and hello
4 to Matt Abel as well, who is my good friend. That's
5 why he gets a separate call out.

6 Two and a half years ago we adopted a
7 unanimous proposal which took a position against
8 allowing jurors to discuss the case before the
9 deliberations. Now, I know that there is some
10 movement in courts around this -- courts who do things
11 differently with respect to jury deliberations, but
12 for the good old fashioned, so to speak, jury
13 deliberations, this is what we are talking about.

14 Now, the modifications proposed are a part of
15 the Prosecuting Attorneys Association of Michigan's
16 proposal, and as an assistant prosecutor, I would ask
17 that you keep in mind that my job is on the line were
18 this not to pass. I am only kidding about that,
19 because prosecutors care about justice, about the
20 prosecution's rights, about the defendant's rights as
21 well. We have to. The Court Rules direct to us do
22 that. The Michigan Rules of Professional Conduct
23 direct us to do that, and these modifications are an
24 extension of that policy pronouncement, and it hopes
25 to maintain the integrity of the adversary process.

1 We are talking about the right to confront
2 your witnesses. When a juror is using a blackberry, a
3 trio, an I-phone, a 3G network, when the juror is
4 going to Google, when the juror is looking up stuff
5 online, that's your client's, you defendant attorneys'
6 right to confront the witness. That is your client's
7 right to have 403, you know, whether it's relevant,
8 404(B), 609, improper impeachment. So that's really
9 what we are talking about. Some of these things that
10 they are doing violate the constitution and violate
11 the party's rights.

12 I mentioned some of the things that jurors
13 have. There was a recent article in the New York
14 Times published on March 17th, 2009, after Pam had put
15 this proposal together, and I don't know if you folks
16 get the New York Times either in paper or online and
17 read it. Did anyone here read that article? You
18 folks know a little bit about what I am talking about.

19 They talked about an eight-week federal drug
20 trial in Florida where one of the jurors, it was found
21 out that that juror had gone and looked at something
22 that was specifically excluded by the judge, and one
23 of the other jurors brought it to the court's
24 attention, and when the judge made inquiry, the judge
25 found out that, oh, yeah, eight of us other jurors

1 have been doing that too, and then that eight-week
2 trial, which you can imagine, rightfully so, was
3 mistried, the jurors researched evidence specifically
4 excluded.

5 They did searches on the attorneys. I don't
6 mind me being researched so much. They did searches
7 on the defendant. You might if you are a criminal
8 defendant. They read news articles about the case.
9 Well, hopefully you have a good media that covers both
10 sides, and since the prosecution usually goes first,
11 they might just be covering my side.

12 They went to Wikipedia. You don't need
13 Britannica anymore. They go to Wikipedia for
14 definitions. Can you imagine going to Wikipedia,
15 typing in probable cause, reasonable doubt, things
16 like that. Woe unto us when jurors get to use those
17 outside influences.

18 So what we are trying to do is limit that,
19 and we are trying to tell jurors that they can't do
20 it. I don't think they do it out of malice. They do
21 it because that's what people do.

22 How many people here when you have a case
23 come up where you have got a witness you don't know
24 anything about, what do you do? You Google them. I
25 am not going to ask whether you have Googled yourself,

1 but I know you have Googled witnesses. And now what
2 you are doing is you are going to Facebook to find out
3 who are their friends, what are they saying, is this a
4 person of substance, and now you are going to Linked
5 In, and you are going to names and you are going to
6 My Space, and you are going to -- I don't know who you
7 will go to next year, but you are going somewhere. So
8 what we are trying to do is prevent the juries from
9 doing some of the things they might be doing.

10 This proposal, I read all the comments, and
11 some of them are good. I suspect this will get
12 amended some, because some of the points are good, but
13 I think there is a tension between the judiciary that
14 wants to oversee a trial and have it go smoothly and
15 quickly versus the parties who want to have it fairly
16 and the consequences that the parties suffer when
17 outside influences are there. So one of the things
18 that we will probably talk about is whether this
19 should be mandatory or whether it should be
20 discretionary. I think it should be mandatory so that
21 the judges have to do it and jurors know from the
22 outset that they can't do this kind of stuff.

23 Summarizing some of the comments, Barry Gates
24 who is a practitioner in my county, I have got his
25 notes here, thanks. He is an orange. He is wearing

1 orange today, orange paper. He says that there are
2 useful suggestions. He says we should include other
3 jurors. One of the comments by Allen Lanstra, he says
4 that we should include anyone. So I suspect that that
5 will be subject to some modification or discussion.

6 He also adds, as does one of the other people
7 who commented on it, research on the attorneys. And
8 that's kind of important too, because when I have a
9 case, a jury trial especially, against a defense
10 attorney, I will go to his website or her website and
11 I will find out if that person has a blog and what
12 that person feels about the introduction of gas
13 chromatography or how they suppress traffic stops,
14 stuff like that, and it could be dangerous to a
15 litigant if you are going there and finding out
16 things, because on a lot of your websites you talk
17 about the criminal justice system. So you might not
18 want the jury to know that there was a preliminary
19 examination or there was probable cause to find that
20 your guy probably did it.

21 So going to attorney websites, attorney blogs
22 can be dangerous for the adversary for the sanctity
23 of, the integrity rather, of the system.

24 So with that I don't know if I move or if I
25 ask someone to move for it or is there any discussion

1 first? I am being told -- I am getting a little help
2 here, but on procedure. Is there a -- I guess do we
3 need to have it on the floor, the motion, and then we
4 can ask me questions?

5 VOICE: You make the motion.

6 MR. REISER: I would move that we adopt this.

7 VOICE: Support.

8 CHAIRPERSON KAKISH: The motion was moved and
9 I heard a second.

10 VOICE: Support.

11 CHAIRPERSON KAKISH: And support. Now we are
12 up to discussion.

13 MR. REISER: I don't have any modifications
14 right now myself. I am sure that this august group
15 will come up with some.

16 MR. IDDINGS: Greg Iddings, 39th circuit.
17 Rather than doing this piecemeal, I would just at this
18 point make a motion for a friendly amendment to
19 include the two Barry Gates' amendments both to add
20 the language including others or to make it more clear
21 to refrain from speaking to anyone, and also the
22 language, the section five, research the attorneys
23 involved in the case or access the attorneys'
24 websites.

25 CHAIRPERSON KAKISH: Can you give us a

1 second.

2 MR. REISER: Under B(1)(a) becomes "anyone"
3 rather than "others"?

4 MR. IDDINGS: Others, comma, including other
5 jurors. With others, a comma right there, and then
6 including other jurors.

7 MR. REISER: I would accept that friendly
8 amendment.

9 VOICE: Put a second comma.

10 MR. IDDINGS: Then the second part was
11 B(1)(d).

12 MR. REISER: In the body or the one before
13 it?

14 MR. IDDINGS: To include a (v) after (iv),
15 Roman numeral five, correct, small Roman numeral five,
16 research the attorneys involved in the case or access
17 the attorneys' websites. How about researching.

18 MR. REISER: I would suggest a way we can do
19 that is under d(i) there is a comment that says
20 seeking information about the criminal history of a
21 party or a witness. That suggests that someone has a
22 criminal history. We could say personal history of a
23 party or witness or attorney.

24 We don't want them looking at us, our
25 witnesses or our defendants, our clients, correct, and

1 there might be a way to capture that sentiment in just
2 one of these items.

3 MR. IDDINGS: I think that's correct. I
4 think with Roman numeral I where it says "seeking
5 information about the history or criminal record of a
6 party witness" --

7 MR. REISER: As a prosecutor, I don't think
8 it's fair to a defendant to say a criminal record,
9 because it suggests he has one. I would add the word
10 lengthy in front of it if you are going to do that.

11 (Laughter.)

12 MR. REISER: See, what I would propose is
13 that, I would move then that we say about the personal
14 history of a party, witness, or attorney. Would
15 that --

16 MR. WEINER: Why don't we leave it a little
17 bit more general and say "seeking information about a
18 party, witness, or attorney involved in the case."

19 James T. Weiner from the 6th circuit. I was
20 doodling as we were talking, and I rewrote it to --

21 CHAIRPERSON KAKISH: Excuse me, sir, can you
22 repeat your name.

23 MR. WEINER: James T. Weiner from the 6th
24 circuit. I was doodling as we were talking and
25 MCR 2.516 (B)(1)(d)(i), seeking information about a

1 party, or witness or attorney involved in the case.
2 It's a very general statement, so they just -- and
3 nothing about the personal interests, just seeking
4 information.

5 MR. REISER: I would accept that as a
6 friendly amendment.

7 CHAIRPERSON KAKISH: Has Nancy gotten the
8 language correct, Mr. Reiser?

9 The friendly amendment then to accept the
10 correction, the changes to B(1)(a) and B(1)(d)(i) have
11 been accepted. Is there a second?

12 VOICE: Second.

13 CHAIRPERSON KAKISH: Support?

14 VOICE: Support.

15 CHAIRPERSON KAKISH: Now we are open to
16 discussion to the proposal as it now stands. Judge.

17 JUDGE KENT: Wally Kent, 54th judicial
18 circuit. Allen Lanstra in his letter, quite
19 appropriately I think, commented that (d) as
20 introduced seems to suggest that only electronic
21 research outside court would be prohibited, and I
22 would like to offer a friendly amendment that should
23 not -- I am going to need a little help, because I
24 didn't write it down -- attempt by any means to obtain
25 information about the case.

1 So strike the words use a computer, cellular
2 phone, and so forth, and simply substitute the phrase
3 "attempt by any means to obtain information about the
4 case when they are not in court."

5 MR. REISER: Could we say, rather than get
6 rid of the "or" in front of "other electronic device,"
7 "or any other means"? Can we do that?

8 JUDGE KENT: I would go along with that. I
9 was just trying to keep it as brief and concise as
10 possible.

11 MR. REISER: We want them to know you can't
12 use your blackberries, your cell phones, or things
13 like that, so that's the import.

14 JUDGE KENT: If that would make you friendly
15 to the amendment, I have no problem with that.

16 VOICE: That doesn't do it.

17 MR. REISER: Get rid of the word "any" before
18 "device," and get rid of the "or" right there.

19 JUDGE KENT: Or any other electronic device
20 or any other means.

21 MR. REISER: I think the word capability.

22 JUDGE KENT: Or any other means.

23 MR. REISER: That's right, or any other
24 means.

25 JUDGE KENT: No comma. I don't think we need

1 a comma.

2 MR. REISER: I accept that friendly
3 amendment, and it sounds like the body does too, but
4 do we need it for (c) to be consistent, sir.

5 JUDGE KENT: I did not look at that. I would
6 have to see (c) on the screen again.

7 MR. WEINER: It's not likely that they are
8 going to be able to use any other means in trial, so
9 probably not necessary for (c).

10 JUDGE KENT: That's covered also under (b)
11 and discussion. I don't feel that it's necessary.

12 MR. HAUGABOOK: Terrence Haugabook, 3rd
13 circuit.

14 CHAIRPERSON KAKISH: Excuse me, sir. Another
15 friendly amendment was made to introduce the latest
16 item to subsection (B)(1)(d). Mr. Reiser, it has been
17 accepted?

18 MR. REISER: Yes, ma'am.

19 CHAIRPERSON KAKISH: Is it supported?

20 VOICE: Support.

21 CHAIRPERSON KAKISH: Second, okay. Now the
22 discussion is open for the proposal as it now stands.

23 MR. HAUGABOOK: Terrence Haugabook, 3rd
24 circuit. Looking at B(1)(a), if we could, I agree
25 with everything that's been done thus far, but with

1 B(1)(a), instead of having discussed the case with
2 others, including other jurors, how about just that
3 they shall not discuss the case until deliberation
4 begins? I think that's plain and simple, don't
5 discuss it until deliberation begins. What's not
6 clear about that, that you can't discuss the case
7 before deliberation?

8 MR. REISER: Here is my concern, the New York
9 Times article talked about a Pennsylvania case, about
10 an Arkansas case where jurors were adding this stuff
11 on their Twitter and their Facebook, and people who
12 don't use Twitter and Facebook might not know about
13 it, but it's what are you doing right now. Witness
14 just testified. Didn't seem credible. In the
15 New York Times, here is what it said in the New York
16 Times. Juror just said I am giving away 12.5 million
17 of somebody else's money. Jurors are covering these.
18 So I don't know how we capture --

19 MR. HAUGABOOK: What you are talking about is
20 what's just been done in (d). That's using electronic
21 means to find out things. That part --

22 VOICE: No.

23 MR. HAUGABOOK: What I am hearing, you are
24 saying jurors are going on Facebook, they are going on
25 Twitter, they are getting information from those

1 sources --

2 MR. REISER: No, they are telling. You don't
3 have to read about how a trial is doing in the paper,
4 you can go to a juror's Twitter page or his Facebook.

5 VOICE: The juror is reporting.

6 MR. HAUGABOOK: Oh, I got it. Okay. I
7 understand.

8 MR. REISER: We are trying to let them know
9 you can't -- we can't spell out Facebook, because next
10 year there will be many of us on it and it will be
11 old, and there will be something new.

12 MR. HAUGABOOK: I withdraw that offer for a
13 friendly amendment.

14 CHAIRPERSON KAKISH: Thank you. Is there any
15 further discussion?

16 MR. STEMPIEN: Madam Chair, Eric Stempien,
17 3rd circuit. I would like to offer a friendly
18 amendment with regard to Section (B)(1)(d)(iv), which
19 is the catch-all, but it's not really a catch-all,
20 because it says catch-all, then it has limitations to
21 it. I would suggest to strike the words "such as an
22 aerial map of the scene" for two reasons, one being
23 that I think it's a catch-all and should just be a
24 catch-all. Secondly, I think that actually might
25 suggest something to the jurors.

1 MR. REISER: I would accept that. Helpful,
2 period, strike the balance?

3 MR. STEMPIEN: Correct.

4 MR. REISER: Accepted.

5 CHAIRPERSON KAKISH: There was a friendly
6 amendment to delete from (B)(1)(d)(iv) the words after
7 the comma, "such as an aerial map of the scene." Is
8 it supported?

9 VOICE: Support.

10 CHAIRPERSON KAKISH: Seconded.

11 VOICE: Second.

12 CHAIRPERSON KAKISH: This particular proposal
13 as amended and accepted is now under discussion.

14 Yes, ma'am.

15 MS. WASHINGTON: Good afternoon, everybody.
16 Erane Washington, 22nd circuit. John, this is very
17 friendly. I haven't come up with the language for it
18 yet, but as you were speaking about Facebook and
19 Twitter, you are using the term discuss, and I am
20 trying to remember where that was. When Twitter and
21 Facebook, what they are doing is actually
22 disseminating the information, so I don't know if
23 discuss covers what you are trying to protect against,
24 which is putting a status post that says I am
25 listening to a juror who is not credible. So maybe we

1 need some language in here that deals with the
2 dissemination of information about the case as well.

3 MR. REISER: Discuss or disseminate, is that
4 your proposal?

5 MS. WASHINGTON: If we go to (B)(1)(d), and
6 where we go to, after "capabilities to obtain," we
7 would say "disseminate or obtain."

8 MR. REISER: I would accept that as friendly.
9 It's (B)(1)(d), second line currently, to obtain or
10 disseminate.

11 MS. WASHINGTON: Yes, disseminate or obtain
12 either way. Or any other means to obtain or
13 disseminate, either one works.

14 CHAIRPERSON KAKISH: A friendly amendment was
15 made to add the words "or disseminate" to, as
16 Mr. Reiser indicated, subsection (B)(1)(d).
17 Mr. Reiser accepted it as a friendly amendment. Is
18 there support?

19 VOICE: Support.

20 CHAIRPERSON KAKISH: Second?

21 VOICE: Second.

22 CHAIRPERSON KAKISH: Okay. Now, this
23 proposal as it now stands is open for discussion.
24 Yes, sir.

25 MR. KRIEGER: Thank you, Madam Chair. Nick

1 Krieger from the 3rd circuit. I think I already made
2 some enemies this morning, but I will try not to do
3 anymore. I do have a nitpicky sort of a thing though,
4 and I was wondering if as a friendly amendment in (d),
5 in the body of (d) before we go to the Roman small
6 letters we could add a Harvard comma after
7 "capabilities," because I really think it is a little
8 bit confusing from a rule construction standpoint to
9 say other electronic device with communication
10 capabilities or any other means. I mean, that kind of
11 doesn't make sense, so I think it should be
12 capabilities, comma, or any other means, and I know
13 it's petty, but I think it's important. Thanks.

14 MR. REISER: I don't know if that's a Harvard
15 comma or Strunk and White, but I don't have a problem
16 with it.

17 CHAIRPERSON KAKISH: With respect to that
18 friendly amendment, is that supported, seconded?

19 VOICE: Second.

20 CHAIRPERSON KAKISH: Support, second. I
21 heard that. We are now open to discussion for the
22 amendment as it now stands.

23 JUDGE KENT: Wally Kent, 54th circuit. I
24 share the concerns that the gentleman from the 6th
25 circuit had regarding (B)(1)(a), discuss the case with

1 others. I would like to offer a friendly amendment,
2 with other jurors or any other persons. I think
3 that -- I would like to include the other jurors, just
4 so they know they cannot do it when they, for
5 instance, are waiting in the jury room or something
6 going on during recess, but I would like to have
7 something in there that makes it clear they can't
8 discuss it among themselves or with anyone else. I am
9 open to any suggested language, but I think "with
10 other jurors" is not inclusive enough?

11 MR. REISER: I don't know what color we go to
12 if we go to use red. Other jurors or any other
13 person, is that what you are proposing?

14 VOICE: Discuss the case with anyone.

15 JUDGE KENT: With any persons, including
16 other jurors.

17 CHAIRPERSON KAKISH: Judge, that was
18 already --

19 JUDGE KENT: Was it there?

20 CHAIRPERSON KAKISH: Yes, one of the very
21 first friendly amendments that were taken in this
22 proposal was others, comma.

23 JUDGE KENT: Thank you. I defer to the body.

24 CHAIRPERSON KAKISH: Thank you, Your Honor.

25 MR. PAUL: Rick Paul from the 6th circuit.

1 Could you scroll to (B)(1)(d). I have a proposed
2 friendly amendment to that section. Where it says use
3 a computer or cellular phone, et cetera, to
4 disseminate or obtain information about the case when
5 they are not in court, I would propose deleting the
6 phrase "when they are not in court," because, as I
7 understand it, there are concerns about jurors sitting
8 in a jury room, at lunch, in a courtroom, wherever
9 they may be in court, disseminating that kind of
10 information. Therefore, I would propose that that
11 phrase be stricken.

12 MR. REISER: I would accept, if there is a
13 second.

14 VOICE: I second.

15 CHAIRPERSON KAKISH: There was a friendly
16 amendment to delete from (B)(1)(d), the very first
17 sentence, the words "when they are not in court" so,
18 therefore, there should be a period after the word
19 "case." This friendly amendment was accepted. Is it
20 seconded?

21 VOICE: Second.

22 CHAIRPERSON KAKISH: Support?

23 VOICE: Support.

24 CHAIRPERSON KAKISH: Discussion on the
25 proposal as it now stands?

1 Discussion?

2 MS. POHLY: Linda Pohly from the 7th circuit.
3 I rise to offer a friendly amendment to subparagraph
4 B, which appears to limit the reporting requirement to
5 a case where a juror has observed the use of an
6 electronic device. Since now we are amending this to
7 include other discussions, my amendment would remove
8 the words "has used an electronic device in violation"
9 and insert the words "has violated."

10 VOICE: Support.

11 MS. POHLY: Has violated this rule, correct.
12 I would take out "rule" as well.

13 MR. REISER: I would accept that as a
14 friendly amendment.

15 VOICE: Second.

16 CHAIRPERSON KAKISH: I heard a second.

17 VOICE: Support.

18 CHAIRPERSON KAKISH: Okay. Thank you, Linda.

19 MR. HAUGABOOK: Terrence Haugabook, 3rd
20 circuit. Like my brother here from the 3rd circuit,
21 hope I am not making any enemies here today.

22 If we could just go back to (a). If your
23 concern is that people are going to be blogging,
24 tweeting, or what have you while the case is going on,
25 I am concerned then about the part "until deliberation

1 begins." Because, let's say they are deliberating
2 over three days and one guy wants to go home and reach
3 out every night and talk about the idiot that's
4 holding up, you know, they are holding off 11 to 1 or
5 something like that. So I have a concern right there
6 about the section of "until deliberation begins."
7 Maybe we could come up with something where until the
8 case is over or until you your duties are concluded in
9 this case, or something like that.

10 But I think, you know, until deliberation
11 begins, and I think that that would allow a person to
12 say, now I am deliberating, so I can go home, I can
13 tweet, I can Facebook, I can network, I can whatever.
14 So I think we need to explore that part there and come
15 up with a solution.

16 MR. REISER: Isn't there a standard jury
17 instruction, sir, that tells them they can't do that
18 already?

19 MR. HAUGABOOK: Apparently we don't feel this
20 is enough.

21 VOICE: This is pre.

22 MR. REISER: There is a jury instruction that
23 they get once deliberations start in the state system.

24 MR. HAUGABOOK: What about the person who is
25 sitting there waiting to be impaneled and hasn't been

1 sworn and they start doing these things beforehand
2 because they are sitting there and they don't get
3 picked that day, jury deliberations go over until the
4 next day. You are talking about this rule here that
5 it only comes into effect after the jury is sworn and
6 before evidence.

7 MR. REISER: In a state system, they are not
8 going to know what the case is about or anything like
9 that. I can't speak for all counties, only a couple
10 of them.

11 MR. HAUGABOOK: If it's a murder case, the
12 judge will tell you the charges in this case are
13 murder.

14 MR. REISER: You mean after the impaneling
15 has started but before they are sworn?

16 MR. HAUGABOOK: Well, my concern is you said
17 the jurors were going out and they were tweeting, they
18 were Facebooking, they were doing things. These were
19 the people who were deciding the case, correct?

20 MR. REISER: Yes, sir.

21 MR. HAUGABOOK: I didn't read the article, so
22 I am taking what you read, okay. These are people who
23 have already been impaneled, and they are tweeting and
24 doing whatever while they are serving on the jury, am
25 I correct?

1 MR. REISER: That's correct.

2 MR. HAUGABOOK: My thing is if that's your
3 concern, all right, then even if there is an
4 instruction that's going to tell them that, it's going
5 to tell them that at the end of the case. What I am
6 saying is day one, you have heard three witnesses, you
7 go home. Boy, I am writing to my friends on Facebook.
8 Let me tell you just what went on in court. Okay.
9 Deliberations have not begun. It's day one of trial,
10 the conclusion of day one. You go home, you tweet to
11 everybody, you reaching out to everybody. If this is
12 a rule that you want to tell the jurors about, as long
13 as they are going to be sitting on the case and
14 serving until conclusion of the case, you just told
15 them you can't discuss this until deliberations begin.

16 My thing is how do we know people won't go
17 in, and, like I said, they are getting mad because
18 somebody is holding out. They are ready to convict or
19 they are ready to acquit, somebody is holding out. We
20 need to say something here about -- well, no, this is
21 impaneling. I am sorry. I am mixing apples and
22 oranges.

23 MR. REISER: Are you suggesting we delete the
24 phrase "until deliberations begin"?

25 MR. HAUGABOOK: Delete it, yes.

1 MR. REISER: Is that your friendly amendment?

2 MR. HAUGABOOK: Yes. Except otherwise
3 authorized by the court. Yeah, don't discuss it with
4 others, including other jurors, except as otherwise --
5 here we go, discuss the case with any other juror
6 until deliberation begins or with any other
7 non-juror -- no, I don't like that.

8 I think we got it good right there, discuss
9 the case with others, including other jurors, except
10 as otherwise authorized by the court, and then the
11 court would tell them at that point --

12 MR. REISER: They could deliberate.

13 MR. HAUGABOOK: Right.

14 MR. REISER: Do I need to accept and they
15 support? I accept.

16 CHAIRPERSON KAKISH: Support?

17 VOICE: Support.

18 VOICE: Second.

19 CHAIRPERSON KAKISH: Thank you. Open for
20 discussion. Yes, sir.

21 MR. HILLARD: Martin Hillard, 17th circuit.
22 I was just going to point out, instead of getting rid
23 of "until deliberation begins" you needed to get rid
24 of the comma after "jurors," because the phrase "until
25 deliberation begins" modifies jurors, not others. So

1 it would be discuss the case with others, comma,
2 including other jurors until deliberation begins.
3 Thus implying they can discuss with other jurors after
4 deliberation begins but still they can't discuss it
5 with others at any time during the trial.

6 MR. REISER: But hasn't the previous
7 amendment modified --

8 MR. HILLARD: Well, technically what you are
9 left with then is they can't discuss the case with
10 other jurors.

11 MR. REISER: Sure they can.

12 MR. HILLARD: Well, okay, authorized by the
13 court.

14 MR. REISER: I think that's what this body is
15 thinking.

16 MS. LARSEN: Suzanne Larsen, 25th circuit. I
17 just want to make a comment about what the gentleman
18 over there was taking about a minute ago when he was
19 talking about jurors before they are sworn in or going
20 to jury selection. I mean, anything that goes on in
21 jury selection, I could go in the courtroom and
22 listen, even as someone who is not potentially going
23 to be a juror and I could share that information.
24 That's all public information. It's only when you get
25 into the witnesses that you are concerned with the

1 evidence as to what's going on and what they are
2 finding out on their own. So I guess I wouldn't see
3 that as a concern.

4 MR. REISER: About jurors?

5 MS. LARSEN: During jury selection. What
6 goes on during jury selection is generally open to the
7 public. Someone who is not -- for example, I could go
8 in and listen. I could share what I found during the
9 jury selection process. Anyone could share that.
10 That's public information.

11 MR. REISER: Except this --

12 MS. LARSEN: I would not make changes. He
13 was concerned about that, but, as I am reading this,
14 you know, this is only for a jury who has been sworn.
15 Prior to that time what goes on isn't really part of
16 the deliberation process.

17 So I am in support of this. I just was
18 trying to respond to something he had said.

19 MR. ARD: Josh Ard, 30th circuit. One of the
20 things that is little bit of a problem here, and,
21 John, I don't have a good solution to it, is that if
22 you have a potential juror who is sitting there and
23 doing this, that there ought to be some way of
24 catching that and say, fella, you are not on the jury.
25 And I don't know if anybody is asking, by the way,

1 have you been tweeting about your experience here,
2 have you been researching the people, the attorneys
3 who are involved in this case, because that would seem
4 to contaminate them as jurors, and they haven't gotten
5 any instructions that they are not supposed to do
6 that.

7 MR. REISER: And I would say this kind of
8 stuff comes up. You run into jurors in the hallway,
9 you have a cigarette, and it's inadvertant, with a
10 juror. So I am saying there is a process already in
11 place that deals with intentional or unintentional
12 violations of the privacy.

13 MR. ARD: I am not talking about after they
14 are a juror, but I am in the panel, I hear who the
15 attorneys are, I start looking them up, finding out
16 all this information about the attorneys. You don't
17 want me doing that. How do I know I am not supposed
18 to do that, because I am not told that until I am
19 picked as a juror.

20 VOICE: Voir dire.

21 MR. ARD: Well, I mean, maybe not change the
22 Court Rule, but just give some instruction to, guys,
23 if you are going to be picked, you are not going to be
24 able to do this, and if you do, we find out about it,
25 you are not getting on the jury.

1 MR. REISER: Josh, I think what you are
2 talking about is under (B)(1), the main part. Right?

3 MR. ARD: All of this is talking about after
4 the jury is impaneled.

5 MR. REISER: I think I would direct you to --

6 MR. ARD: After the jury is sworn.

7 MR. REISER: So you have some point, some
8 questions, but nothing specific about how to --

9 MR. ARD: No, I don't have a good solution,
10 but I am just saying it would be nice for people to
11 know that if they are a potential juror, we shouldn't
12 be doing this kind of stuff.

13 VOICE: Call the question.

14 CHAIRPERSON KAKISH: Somebody called the
15 question.

16 VOICE: Support.

17 CHAIRPERSON KAKISH: Question is called,
18 support.

19 Those in favor say aye.

20 Those opposed.

21 Any abstentions?

22 Therefore, the ayes carry. Therefore, the
23 question is called, and now we are to vote on whether
24 or not to adopt this proposal as it now stands with
25 the various friendly amendments.

1 All those in favor say aye.

2 All those opposed say no.

3 Any abstentions.

4 Sorry, the ayes have it, and the motion
5 carries. Thank you.

6 (Applause.)

7 CHAIRPERSON KAKISH: Before we move on to the
8 last item, I would like Judge Chmura to take the
9 microphone and respond to one of the questions that
10 were raised.

11 JUDGE CHMURA: There was a question raised by
12 the gentleman sitting over to my left. I am sorry, I
13 don't know your name, sir, but you wanted a
14 parliamentary ruling on whether the previous item,
15 number 14, was a motion for consideration. The answer
16 is no.

17 The reason why is because that was brought
18 up -- in order to have a motion for reconsideration,
19 it's got to be brought up at the same meeting. So
20 whatever item was passed at the previous meeting, it
21 was obviously not at this meeting. So you can't have
22 a motion to reconsider that's brought up the next
23 time, only during the same meeting or at a different
24 session of the same meeting. That would be a motion
25 to reconsider. So the answer is no, and that's why.

1 It was not a motion to reconsider.

2 I don't know if what we did was undoing what
3 was done at the previous meeting. Kathy said we
4 didn't. It doesn't matter, because even if it is,
5 this body can always undo at a subsequent meeting what
6 it voted previously to do. You are not bound for what
7 you have done previously forever and ever and ever.
8 You can always decide to do something different and
9 undo it by bringing separate agenda items, which is
10 what happened here today. That's just treated as a
11 main motion, not as a motion to reconsider.

12 If you want to change this. I hope not, but
13 if you wanted to, that would be a motion to
14 reconsider. Thank you.

15 CHAIRPERSON KAKISH: Thank you. Our last
16 item on the agenda before adjournment is item number
17 16, consideration of the revised Uniform Arbitration
18 Act, and the proponent is Richard Morley Barron from
19 the 7th circuit.

20 MR. BARRON: Good afternoon. I am last. I
21 intend to be concise, and I hopefully am addressing a
22 non-controversial issue. I am here as a
23 representative of the Alternate Dispute Resolution
24 Section of the State Bar of Michigan and, in
25 particular, on behalf of two lawyers from Oakland

1 County, Bill Weber, who is the chair of the Effective
2 Practices and Procedure Section of the ADR Section,
3 and Marty Weisman, who was the ad hoc chair of the
4 RUAA Evaluation Subcommittee.

5 Both of these bodies reviewed and discussed
6 the document which is before you as the last item, the
7 RUAA, the Revised Uniform Arbitration Act. They
8 recommended its support and adoption to the ADR
9 Section Council. The council recently and unanimously
10 supported and endorsed the proposed act and urged the
11 adoption of the act by our Legislature. They have
12 also asked this body, prior to that happening, to
13 endorse the act and recommend its adoption by the
14 Legislature.

15 The ADR Section did make one small proposed
16 amendment to the act, which begins in your materials,
17 item 16 to Section 21(a) and (e), which made small
18 changes regarding clarifying the limits of arbitral
19 awards of punitive or exemplary damages in Michigan.
20 Those proposed amendments have been acquiesced in by
21 the commission, by the commissioners.

22 So what is the RUAA? Basically it is a
23 successor uniform act to the Uniform Arbitration Act,
24 which is, I think, approximately 50 years old and is
25 essentially the basis for the Michigan arbitration

1 provisions found in the RJA of this state, Judicature
2 Act.

3 Basically the amendment attempts to clarify
4 certain details and to bring the act into conformity
5 with evolving jurisprudence in the field of
6 arbitration. It doesn't force anyone to arbitrate, it
7 doesn't make any radical or substantive changes in the
8 way arbitration is currently practiced in this state.
9 The intent of the act is to clarify some details which
10 were previously not clear or, as I say, conform them
11 with cases that have come down.

12 This is, again, a product of the National
13 Conference of Commissioners on Uniform State Laws. It
14 was adopted after substantial discussion, discussion
15 and debate by people who are knowledgeable in the
16 field of arbitration, and it's been adopted entirely
17 or in substantial part in 13 states, currently pending
18 in two other legislatures around the country, and we
19 are hoping to do it here.

20 Since my knowledge of the act is limited,
21 Attorney Kieran Marion from the commission in Chicago
22 is here today to summarize the changes that are made
23 in the act and answer any questions that the body may
24 have for him. After that I will be moving the
25 endorsement of the act.

1 MR. MARION: Thank you, Richard, and thank
2 you all for the opportunity to be with you this
3 afternoon. I am actually from Michigan, and it's
4 always good to get back and see home.

5 As Richard mentioned, my name is Kieran
6 Marion, legislative counsel on staff with the Uniform
7 Law Commission in Chicago, Illinois, and our role on
8 staff is to assist our commissioners in the various
9 states with passage of uniform laws that are drafted
10 by the Uniform Law Commission as a whole.

11 The ULC promulgated the original arbitration
12 act in 1955. The act, as was mentioned, has been
13 either uniformly or substantially similarly adopted in
14 49 jurisdictions. The only state that has not, I
15 believe, is Alabama.

16 The original act, the intent of it was to
17 revise the common law rule, denying enforcement of
18 contract provisions that require arbitration before
19 disputes arise. It was also to provide the basic
20 procedures for conducting arbitration in the states.
21 It was very much in line with the Federal Arbitration
22 Act. It worked in a very coordinated fashion with
23 federal law in arbitration.

24 As was mentioned, Michigan's version is found
25 at the Revised Judicature Act and that's 600.5001

1 through 5025, if anyone wants to take a look at that.

2 The Uniform Law Commission promulgated the
3 Revised Uniform Arbitration Act in 2000 after nearly
4 five years of extending the dates. For those of you
5 that are unfamiliar with the Uniform Law Commission's
6 drafting process for all of our uniform acts, there is
7 usually a minimum of a year of study before, study of
8 the issue before it's even put into a drafting
9 committee.

10 Once a particular act, such as this one, is
11 put into the drafting stage, then it goes through at
12 least a minimum of two years of drafting, of the
13 drafting process. It has to go through several
14 committee sessions, drafting committee sessions,
15 during the year, and then it has to be placed before
16 the entire body of the Uniform Law Commission from
17 around the country, very similar to this gathering
18 today, to be debated and discussed in front of the
19 entire body at least twice. At the end of that
20 process when it's completed, the Uniform Act is then
21 put by a vote to the states, several commissioners
22 from the various states for approval.

23 This particular act actually took nearly five
24 years for study and drafting to be completed. It was
25 very carefully weighed and deliberated, discussed many

1 of the issues, and to make sure that the product that
2 was produced was a very balanced and well crafted
3 product.

4 Like all of the committees that work on our
5 various acts, the committee consisted of
6 commissioners, as well as an expert, who was appointed
7 as the reporter, which the reporter for the ULC is the
8 person that actually puts pen to paper and drafts the
9 act in conjunction with the committee.

10 We also had advisors appointed by American
11 Bar Association and from the various sections from the
12 ABA, as well as stakeholders who are interested in the
13 act and the operation of the act. So for all of our
14 products, including this one, we try to get a balanced
15 and very thoughtful process with lots of input from
16 those across the board.

17 The goal of this particular product was to,
18 as I mentioned, to develop a balanced update of the
19 older law. It was still going to be faithful to the
20 premises of the old law and faithful to the premises
21 of the federal law and not going to conflict with
22 either of those.

23 The intent, as Richard mentioned, is
24 to clarify the application, to clarify arbitration
25 procedures in light of 50 years of case law and

1 various developments in the field of arbitration that
2 have come up in the intervening years.

3 Following completion of the act by the ULC,
4 it was approved by the American Bar Association's
5 House of Delegates. It's also been endorsed by the
6 American Arbitration Association and the National
7 Academy of Arbitrators. So it's got some fairly
8 strong national support, and a body such as the ADR
9 section here and the various states have been
10 considering the act and reviewing the act. Now we are
11 starting to see more introduction and more active
12 processes beginning in the states, and, as was
13 mentioned, we are currently at 13 enactments with
14 several more pending in the states.

15 Some of the key updates that the act does,
16 and, again, as was mentioned by Richard, it tries to
17 stay within the scope and not expand the scope of what
18 the current act and what the federal law are doing,
19 but it does try to clarify it and provide guidance for
20 folks that are actually engaging in the arbitration
21 process that the old act and federal act didn't
22 necessarily provide.

23 Questions of arbitrability, whether or not a
24 matter is arbitrable, are clarified in the act.
25 Substantive questions as to arbitrability are

1 designated for the courts, while procedural
2 arbitrability is for the arbitrator, such as whether
3 or not a condition for arbitration has been met.
4 Those questions are decided by the arbitrator.

5 Provisional remedies and whether or not the
6 arbitrator has the authority to issue them to make
7 sure that the premise of the arbitration is actually
8 preserved throughout the arbitration process. The act
9 clarifies that the arbitrator can, in fact, take
10 action and issue provisional remedies in those cases,
11 and if the arbitrator hasn't been appointed yet, or it
12 needs to be done in a timely manner, then the court
13 can actually do that as well.

14 Deals with the issue of consolidation,
15 whether or not arbitration is to be consolidated. The
16 answer is yes. However, the arbitration agreement, as
17 the predecessor statute, this one is also a default
18 statute in many respects. If the arbitration
19 agreement prohibits consolidation of claims, then the
20 law is going to honor that agreement and to allow the
21 consolidation to be prohibited.

22 But in its discretion those actions can be
23 consolidated. In the court's discretion, in the
24 arbitrator's discretion the claims can be consolidated
25 if they arise from the same transaction, common

1 issues, create the possibility of conflicting
2 decisions, and if there is a risk -- the risk of undue
3 delay essential for the process doesn't outweigh the
4 prejudice of not actually consolidating those actions.

5 Other updates in the act, the arbitrator must
6 disclose known facts that may actually affect his
7 impartiality. The statute actually expressly requires
8 arbitrators to expose any conflicts that they may
9 have. It provides that the arbitrator themselves enjoys
10 immunity similar to a judge in that particular action
11 for serving in the role of the arbitrator related to
12 the rule there. It gives the arbitrator, it clarifies
13 that the arbitrator has the ability to engage with
14 dispositive motions, prehearing conferences and in
15 general dealings with the conduct of the arbitration.

16 It gives the arbitrator discretion to allow
17 for limited discovery while keeping in mind that the
18 goal of arbitration is to have a faster and more cost
19 effective alternative to litigation. It does allow
20 for limited form of discovery at the discretion of the
21 arbitrators to make sure that all the evidence that
22 needs to be found and discussed is found and
23 discussed.

24 It gives the arbitrator the authority -- it
25 clarifies they have the authority to issue subpoenas

1 for witnesses and production of records if necessary,
2 to issue protective orders of disclosure of
3 confidential information, so it gives them leeway to
4 act to get the necessary information but to also
5 preserve the confidential nature, if necessary.

6 It clarifies, as we mentioned, the statute is
7 a default statute but there are certain things within
8 the arbitration statute that cannot be waived prior to
9 a dispute arising, and also in general it cannot be
10 waived in the statute itself. Before a dispute
11 arises, parties may not waive the arbitrator's ability
12 to grant procedural or provisional remedies. They may
13 not waive the right to counsel that folks enjoy under
14 the act and whatnot, and you can also not waive the
15 right to make a motion to confirm or vacate or modify
16 arbitration awards.

17 So, again, the Uniform Act, it's fairly
18 comprehensive, we feel it's really comprehensive.
19 It's an update that's trying to take into account the
20 50 years of case law and arbitration practice that
21 developed. We feel it's a good product. It's
22 received support nationally, and I would thank folks
23 in the ADR section in Michigan for their work and for
24 their support.

25 If there are questions, we will be happy to

1 do our best to answer.

2 MR. BARRON: I would move the Assembly
3 recommend or adopt the act --

4 VOICE: Second.

5 MR. BARRON: -- as set forth in the last
6 pages of the materials.

7 CHAIRPERSON KAKISH: Thank you very much.
8 It's seconded. Is there any support?

9 VOICE: Support.

10 CHAIRPERSON KAKISH: Good. The matter is now
11 open for discussion. Yes, sir.

12 MR. PHILLO: Yes, John Phillo from the 3rd
13 circuit. I say this with due respect to these people
14 of good faith. I don't see this as noncontroversial,
15 and I oppose it in the strongest possible terms. Most
16 notably, I think we see, and I have just looked this
17 over today, but we take first the punitive damages
18 provision. It reveals a certain bias of the drafters
19 of this where we are asking if punitive damages or
20 exemplary relief are awarded, the arbitrator shall
21 specify the award, the amount of statutory, or the
22 award, the statutory factual basis justifying the
23 authorizing of the award. It states separately.

24 I don't have any problem with stating
25 separately, but if we are going to seek balance in

1 this, then if the arbitrator denies punitive damages
2 or exemplary relief in cases where punitive damages
3 are available under the claims alleged, we should be
4 asking for the same justification.

5 Moving on to the next section, the idea of
6 being able to arbitrate or contractually through a
7 clause agree to waive your right to go into court in
8 advance of the dispute. While that sounds neutral on
9 its face, in practice it has been proven out, at least
10 for the folks that I represent, which is individuals
11 in employment matters or consumer matters or tort
12 matters, that it is not an equal bargaining at the
13 beginning.

14 I have no problem in the commercial context
15 or between individuals on an equal footing, but these
16 are essentially contracts of adhesion. You can get a
17 job and sign that arbitration agreement or not work,
18 and that's not a choice for them. They are
19 automatically put in there, and they have no
20 contemplation, they are not aware of their rights
21 under half the laws until something egregious happens
22 to them. They did not anticipate that at the outset.

23 Next, going down further -- so I don't think
24 they should be allowed, consumer claims, employment
25 claims, tort claims, civil rights claims, in any

1 instance despite it being allowed in 1955.

2 Next, the immunity for the arbitrators, I see
3 no reason whatsoever to give immunity to the
4 arbitrators. That's a change of our common law. The
5 boilerplate in this document suggests that it's for
6 fair and impartial hearings. Liability is not about
7 padding the pocketbooks of the attorney. It is about
8 getting accountability from somebody who has done
9 wrong to the injured person.

10 Here we are saying that these arbitrators,
11 private arbitrators, are the same as judges who are
12 appointed through a democratic process. Judges are
13 susceptible to criminal liability. Arbitrators are
14 not. Myself, I would say judges should be subject to
15 civil liability. Effectively they are not, but they
16 are subject to criminal liability. Here we are not
17 giving that criminal liability, but we are waiving
18 their civil liability.

19 The last thing I would like to ask is if we
20 were seeking balance -- I guess on two levels.
21 Nationally when this model act was developed, you said
22 you sought balance in the drafting, and you said the
23 ABA had commented on it. I have respect for the ABA.
24 I am a member of the ABA, but as a plaintiff's lawyer,
25 it does not represent me. It doesn't. That's just

1 reality from the plaintiff's side of the bench.

2 Did you consult with the American Association
3 of Justice, the National Employment Lawyers
4 Association, or the labor attorneys through the
5 AFL-CIO's LCC, which is the only body that generally
6 represents labor side, labor attorneys?

7 At the state level I know we have the
8 recommendation of the Alternative Dispute Resolution
9 Section, but has it gone before the Negligence
10 Section, the Environment Law Section, or any of
11 those -- or the Labor Employment Section, and what
12 were their -- did they approve it? Did they also
13 recommend it? That's all.

14 MR. MARION: With regard to, I believe the
15 last question was whether or not the other sections
16 actually reviewed it, I believe the text of the act
17 was sent generally to all sections, as were several
18 others. The ADR section was the one that responded.

19 As far whether or not they were specifically
20 at the table for the drafting, I would have to check.
21 I could probably do that for you before I leave today.

22 CHAIRPERSON KAKISH: Mr. Ard.

23 MR. ARD: Yes, Josh Ard of the 30th circuit.
24 I second what the previous speaker said. Arbitration
25 is just fine when both parties give informed consent

1 to it, but what we have now is arbitration, even when
2 one party to a contract had no idea that there was a
3 compulsory arbitration clause buried in the
4 boilerplate, and what happened was the Renquist court
5 for the first time read a 1925 federal statute that
6 mandated that. At the time when the original
7 arbitration act was passed, the assumption was that
8 people actually had to agree to arbitration, and when
9 you look at what's happening now, even the card, the
10 credit card that's offered by the State Bar has a
11 compulsory arbitration provision in it.

12 There is talk on the federal level that the
13 Federal Arbitration Act may be modified during the
14 Obama administration. If so, then what we have here
15 in the state is going to make a difference, and we
16 ought to make sure we get it right. I haven't read
17 this act yet. I apologize for that, but I have had
18 experience with other uniform acts. For example, the
19 probate council spent years and committees literally
20 spent hundreds of hours looking over the Uniform Trust
21 Code, and they proposed numerous modifications for it
22 to make sense in Michigan. Those modifications just
23 passed our State Senate unanimously, but it took some
24 work.

25 I have had the same experience in looking

1 over other uniform laws. It takes a lot of work to
2 look at them and see what makes sense for Michigan.
3 And I certainly want to hear from attorneys whose
4 clients are most harmed by compulsory arbitration,
5 employment law, consumer law, and see what they say
6 before I would agree to supporting this as is.

7 I know that the Consumer Law Section has not
8 discussed this. It was submitted to them, but
9 probably one of the things that happens is they are
10 more likely to discuss something that's actually been
11 introduced than something that's just potential.
12 Nothing has been introduced here.

13 It hardly promotes access to justice to deny
14 people access to courts without their freely informed
15 consent. The changes we heard today seem reasonable,
16 but what about the rest of the language? We just
17 don't know what it says. Voting in favor of a uniform
18 law that makes -- and we are asked to create some kind
19 of policy position for the Bar. If we do that, it's
20 going to be more difficult for a section that may see
21 something in the particulars they want to oppose.

22 I would suggest that we defer voting on this
23 until an actual bill is introduced and more sections
24 have an opportunity to weigh in. If we have to make a
25 vote today, I am not willing to buy a pig in a poke,

1 and I would have to vote no.

2 MR. BARRON: Let me respond to the remarks on
3 both sides at this point with a couple of observations
4 that may be helpful. I think my section is aware of
5 the fact that arbitration, like any other legal
6 procedure, can be abused and sometimes is used in a
7 way that lawyers representing clients don't think is
8 appropriate and maybe is not appropriate.

9 I think the conception that the section has
10 in putting the matter before the Representative
11 Assembly at this time is that this is a final product
12 as far as the Commission of the Uniform State Laws are
13 concerned. They took a long time and cooked it and
14 this is what came out of the oven. This is
15 essentially what's been adopted, but not identical in
16 states that we have talked about so far.

17 If this body is to endorse the Revised
18 Uniform Arbitration Act, what would happen, of course,
19 is someone would introduce this in the Michigan
20 Legislature. Most of you, I think, understand how
21 that works. It goes in the front door and something
22 that looks like it, maybe, comes out the back door.
23 They are not only obligated to adopt it as to the
24 extent that we are asking the Assembly to do it today.

25 I suggest that it's difficult to take a long,

1 involved statute and this afternoon try to work to
2 improve on the product people who have been working on
3 it for five years on the commission have done. We
4 don't maintain, and I don't think the commission
5 maintains, that this is perfect, applies in all
6 situations, or that arbitration ought to apply to
7 lawyers who want a credit card for the State Bar of
8 Michigan or other people necessarily.

9 What I think the section is saying,
10 arbitration is a dispute resolution procedure that a
11 lot of people think works well, they put it in their
12 contracts on both sides, they are represented by
13 counsel, and they feel that this is a substantial
14 enhancement to the practice, and there is nothing in
15 the act suggesting it ought to be shoved on down
16 people's throats. So there are some additional
17 questions.

18 CHAIRPERSON KAKISH: Yes, sir.

19 MR. LARKY: Madam Chair, my name is Sheldon
20 Larky. I am with the 6th circuit. I am going to vote
21 in favor of this resolution. As everyone in this room
22 probably knows, Michigan became a state in 1837, and
23 in 1838 we enacted our first arbitration statute. We
24 have had arbitration in this country well over -- well
25 every since our state has been involved as a state.

1 The reason I am in favor of this is two-fold.
2 I am a full-time ADR provider. I like the idea that
3 there is going to be uniformity in those jurisdictions
4 where I may be arbitrating and have the ability to
5 know that I have the proper authority to do it.

6 In addition to that, from the standpoint of
7 people who may be challenging or trying to affirm an
8 arbitration award, I like the idea of the uniform act,
9 because then Michigan will be able to look at other
10 states' appellate decisions for guidance in making
11 decisions within this state.

12 So for those two main reasons, one, so I know
13 my authority and, two, to gain insight from other
14 states, I am voting yes.

15 CHAIRPERSON KAKISH: Thank you. Yes, sir.

16 MR. ROTENBERG: Hello. My name is Steven
17 Rotenberg with the 6th circuit, and I am generally in
18 favor of ADR, but this slavish adoption of uniform law
19 reminds me of other instances where I have seen the
20 state, let's say, through evidence rules, et cetera,
21 slavishly adopt the rules of other jurisdictions that
22 include terminology or things that just don't exist in
23 Michigan, and I hope I am not wrong on this, but I
24 don't think that punitive damages actually exist here,
25 they are all exemplary damages. So that just makes me

1 wonder if we should adopt it with that or if we should
2 actually see if the punitive damages do exist.

3 MR. BARRON: Let me respond briefly to the
4 question. The RUAA simply provides that where the
5 sub -- by the state is where the substantive law of
6 the jurisdiction provides for this, the arbitrator can
7 set forth and makes the requirements, and that doesn't
8 change the laws of some state by adopting the
9 procedural act.

10 MR. MARION: Let me just add to you. When
11 the actual uniform act is submitted to the Legislative
12 Service Bureau for drafting, they will go through and
13 make sure that the provisions of the act are actually
14 made consistent or tweaked for the local. If there
15 are issues, such as things that are specific to
16 Michigan that are different in the act, that will be
17 changed in the drafting process to conform with
18 Michigan form.

19 CHAIRPERSON KAKISH: Yes, Judge.

20 JUDGE KENT: Wally Kent, 54th circuit. I am
21 not sure I see any merit for being consistent with
22 everybody else. Why should we be the followers? Why
23 can't we be the leaders and table this motion as
24 suggested by Mr. Ard until we have a chance to pick it
25 apart. We can be in the forefront of defending the

1 rights of the people whose rights would be trampled if
2 we were to adopt this resolution.

3 CHAIRPERSON KAKISH: Is that a motion, Judge?

4 JUDGE KENT: I will state it as a motion to
5 table, yes, ma'am.

6 VOICE: Second.

7 VOICE: Support.

8 JUDGE CHMURA: Let me make a point of
9 clarification.

10 MR. KRIEGER: Point of order, Madam Chair.

11 JUDGE CHMURA: No, wait.

12 MR. KRIEGER: A motion to table is only in
13 order if there is an urgent necessity of setting the
14 matter aside momentarily.

15 JUDGE CHMURA: I am going to say that. I
16 know that. I am going do make that point.

17 Motion to table, as the gentlemen correctly
18 said, is only made when there is another motion or
19 there is some matter of urgent necessity that has to
20 take precedence over the matter at hand. You don't
21 have that here.

22 What you can do, if you want to put this off
23 to another time, is to make a motion to table to a
24 definite time. But there is a problem with that,
25 because under Robert's Rules of Order, you can only do

1 that if we meet quarterly. We don't meet quarterly.
2 We only meet twice a year.

3 So the only other way to get around that
4 under Robert's Rules is to make a motion to refer to a
5 committee, then have the committee discharge it
6 possibly at the next meeting.

7 That motion would be in order if you want to
8 do, which I think you want to do, at least what the
9 judge wants to do, which is to put this off. It can't
10 be a motion to lay on the table, because that's not in
11 order. It would have to be a motion to refer to
12 committee, which is debatable, requires a second,
13 requires a simple majority to pass, and is open to
14 amendment as well.

15 JUDGE KENT: I will move that we refer to the
16 appropriate committee.

17 VOICE: Support.

18 CHAIRPERSON KAKISH: May I suggest the
19 Special Issues Committee of the Representative
20 Assembly, and they will assign it to the proper
21 sections and/or committees.

22 JUDGE KENT: Thank you. I accept that
23 suggestion.

24 CHAIRPERSON KAKISH: The motion has been made
25 to defer it to the Special Issues Committee.

1 VOICE: Second.

2 CHAIRPERSON KAKISH: Support?

3 VOICE: Support.

4 CHAIRPERSON KAKISH: Any discussion?

5 MR. BARRON: Obviously what the will of the
6 Assembly is is what's going to happen here, but I want
7 to make sure that the members understand we have got a
8 uniform statute, it's 103 pages long with comments.
9 It's a fairly complex and comprehensive thing which
10 will, if adopted in Michigan, will look somewhat
11 different than the version being submitted here today,
12 I think there was general consensus. So it's my
13 judgment that or my recommendation that the body adopt
14 the thing as presented today. If the majority of the
15 Assembly feels differently, that will not happen.

16 CHAIRPERSON KAKISH: The motion before you is
17 to refer the matter to the Special Issues Committee of
18 the Representative Assembly. Is there a discussion?

19 VOICE: Call the question.

20 CHAIRPERSON KAKISH: Pardon?

21 VOICE: Question is called.

22 VOICE: Question.

23 CHAIRPERSON KAKISH: Question, you may.

24 VOICE: The question has been called.

25 VOICE: Is there a second?

1 VOICE: Second.

2 CHAIRPERSON KAKISH: Okay. I am sorry. I
3 cannot hear. I didn't hear the question being called.
4 There was a question called?

5 VOICE: Yes.

6 CHAIRPERSON KAKISH: I need a second for
7 that.

8 VOICES: Second.

9 CHAIRPERSON KAKISH: That's calling the
10 question. Any discussion with respect to calling the
11 question?

12 All those in favor say aye.

13 All those opposed.

14 The ayes have it. Therefore, the question is
15 called, and now we are going to vote on the matter of
16 whether to refer this issue to the Special Issues
17 Committee of the Representative Assembly.

18 All those in favor say aye.

19 All those opposed.

20 Any abstentions?

21 And the ayes have it. Therefore, it will be
22 referred to the Special Issues Committee. Thank you
23 very much.

24 The last item on the agenda is the
25 adjournment, but before we go, there are three

1 housekeeping matters. One, the attendance slips that
2 you need to sign in should be distributed to you, and
3 a reminder for those who need to fill out their
4 expense vouchers as well. Anne Smith will be
5 providing that for you.

6 A reminder to all those who need to fill out
7 their petitions to run for election and those who
8 concluding their first term and would like to run for
9 re-election.

10 The third housekeeping matter is to enjoy the
11 day and drive safely back home. The Representative
12 Assembly meeting is now adjourned.

13 (Proceedings concluded at 2:45 p.m.)

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1 STATE OF MICHIGAN)

2)

3 COUNTY OF CLINTON)

4 I certify that this transcript, consisting
5 of 177 pages, is a complete, true, and correct transcript
6 of the proceedings had of the Representative Assembly on
7 Saturday, April 18, 2009.

8
9 May 12, 2009

10 Connie S. Coon, CSR-2709
831 North Washington Avenue
Lansing, Michigan 48906

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