

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 Hyatt Regency Dearborn,
Marquis Ballroom - Second Floor, 600 Town Center Drive,
Dearborn, Michigan, on Thursday, September 17, 2009, at the
hour of 9:00 a.m.

AT HEADTABLE:

KATHERINE KAKISH, Chairperson
ELIZABETH M. JOHNSON, Vice-Chairperson
VICTORIA A. RADKE, Clerk
JANET WELCH, Executive Director
HON. JOHN M. CHMURA, Parliamentarian
ANNE SMITH, Staff Member

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Dearborn, Michigan
Thursday, September 17, 2009
9:08 a.m.

CHAIRPERSON KAKISH: Well, members of the Representative Assembly, good morning. I am Kathy Kakish, Chair of the Representative Assembly, the final policy-making body of the State Bar of Michigan, and I call this meeting to order.

I would like to now recognize Clerk Radke.

CLERK RADKE: Good morning, Madam Chairman. I would like to certify that we do have a quorum present.

CHAIRPERSON KAKISH: Thank you. I would also like to recognize Michael Pope, Chair of the Rules and Calendar Committee.

MR. POPE: Michael Pope, 32nd circuit. At this time I'd move that the proposed calendar be adopted.

CHAIRPERSON HAROUTUNIAN: I will entertain a second.

VOICE: Support.

CHAIRPERSON KAKISH: Any discussion? Hearing none, all in favor say aye.

Those opposed say no.

Any abstentions say yes.

1 Okay, the ayes have it. It's been
2 unanimously approved that the motion carries and the
3 calendar is approved.

4 And now I will entertain a motion to approve
5 the Assembly's April 18, 2009 summary of proceedings.
6 Is there any support? Was there a motion? Nice way
7 to begin the day.

8 VOICE: So moved.

9 CHAIRPERSON KAKISH: So moved, I heard the
10 motion. Support?

11 VOICE: Support.

12 CHAIRPERSON KAKISH: Any discussion?

13 Hearing none, all those in favor say aye.

14 All those opposed say no.

15 Any abstentions say yes.

16 The ayes have it, and the motion carries
17 unanimously that the summary of proceedings for the
18 Assembly's April 18, 2009 meeting is adopted.

19 It is with great honor that I introduce to
20 you our keynote speaker, Michigan's 52nd Attorney
21 General, Michael A. Cox.

22 Michael Cox is the top law enforcement
23 official in the state of Michigan, and he is the CEO
24 of Michigan's largest law firm.

25 He began his career serving his nation as a

1 corporal with the Unites States Marines. After that,
2 he obtained his law degree from the University of
3 Michigan, and he then continued his career in public
4 service, this time serving the people of the state of
5 Michigan. He joined the Oakland County Prosecutor's
6 Office and then moved on to the Wayne County
7 Prosecutor's Office.

8 In 2003 Mike Cox took office as Attorney
9 General and is now nationally recognized for taking on
10 Blue Cross/Blue Shield of Michigan. He opposed Blue
11 Cross supported bills and challenged Blue Cross in
12 court for the alleged transfer of nonprofit funds to
13 buy a for-profit company. That's on the national
14 scene or the national recognition that Mr. Cox has
15 had.

16 Locally he is known for serving consumers,
17 seniors, and children. Among the programs he created
18 are, and I would like to list them to you, a child
19 support unit, which has helped over 60,000 children to
20 date receive child support that they deserve.

21 An award winning internet safety program.
22 It's called the Cyber Safety Initiative, and this has
23 been taught to nearly half a million K through 8
24 students.

25 A prescription drug website called

1 MichiganDrugPrices.com helping consumers and seniors
2 save money by comparing prices on medications.

3 Four, forums to help people avoid mortgage
4 foreclosure by bringing together the nation's largest
5 mortgage lenders, HUD-approved nonprofit counselors,
6 and state officials, and he brings them together to
7 cities all across Michigan to help consumers keep
8 their homes.

9 Five, fighting utility rate increases.

10 Six, drafting legislation requiring criminal
11 background checks for those who care for Michigan's
12 vulnerable adults and his team has recovered more than
13 \$140 million in Medicaid fraud.

14 Seven, a cold case unit to investigate and
15 prosecute cold cases. Among the convictions, as we
16 all know from our daily viewing of the media and
17 newspapers, these convictions include Coral Watts,
18 John Rodney McRae, two brothers who killed two Oakland
19 County hunters, two people who killed Christopher
20 Brown, six people who murdered Janet Chandler back in
21 1979, and most recently Timothy Dawson, who was
22 convicted of killing his wife.

23 Eight, the first online account of State
24 Government spending where taxpayers can look at the
25 financial information about the AG's office, including

1 spending on salaries and wages, information
2 technology, rent, and travel costs.

3 Nine, Attorney General Cox also went to court
4 and testified before congress to defend the auto
5 industry and those whose jobs depend on the auto
6 industry here in Michigan.

7 Last but not least, and most recently, the
8 senior brigade website designed as a one stop website
9 for seniors to deliver information about health care,
10 financial matters, consumer protection issues, and
11 veteran affairs.

12 Now, what I listed were among the many
13 accomplishments that Attorney General Cox is locally
14 known for and is locally known for having achieved as
15 the top law enforcement official in Michigan, but
16 within the Department of Attorney General itself
17 Mike Cox is known for the tremendous courtesy and
18 respect he extends to all employees. He is known for
19 the dedication, his strong dedication to the legal
20 profession. He is known for his commitment to ensure
21 that all assistants attorney general become
22 outstanding leaders in their fields of expertise, and
23 he is known for his mission to ensure that the State
24 of Michigan receives the highest quality of legal
25 representation.

1 Personally he is the father of four, and he
2 is a little league coach and is married to Laura Cox.

3 I now ask that members of the Assembly join
4 me in welcoming Michigan Attorney General Michael A.
5 Cox, who I am very, very proud to call my boss.

6 (Applause.)

7 MR. COX: Thank you very much, Kathy, for
8 that warm introduction. It's been a while since I
9 have been in a room where I had a court reporter
10 transcribing what I am saying, so it feels a little
11 bit like being home again. Thank you, Ms. Coon.

12 And some things apparently never change. You
13 know, we start off here, the court reporter was here,
14 the lawyers were sitting down ready to go, and the
15 judge was a little bit late.

16 Again, I want to thank you all for inviting
17 me here to the Representative Assembly, and I want to
18 say congratulations to all those who have been either
19 elected for the first time or reelected to your
20 positions. Obviously within our profession it's a
21 sign of the respect and esteem that your peers back in
22 your home towns and in your home circuits have for you
23 and your expertise and your dedication to the Bar.

24 Someone told me, Kathy told me a little
25 earlier, maybe it was Liz told me a little bit earlier

1 that about 46 of the Assembly members didn't have any
2 opponents at all. So I have a little thing I am doing
3 next year, so maybe I should talk to you afterwards in
4 the lobby about how you figured that out.

5 I feel obliged to do the obligatory lawyer
6 joke, and so I went on Google last night and I typed
7 in and put in little quotation marks lawyer jokes, and
8 within point 6 seconds there were 1,670,000 jokes at
9 my fingertips, and it was astounding. You know, I
10 still consider myself a lawyer, but most people view
11 me as just a politician, so I thought I would type in
12 politician jokes, and so I typed in politician jokes,
13 and it didn't have 1.6. It was slightly over a
14 million politician jokes on Google. So I don't know
15 if it's good news or bad news, but lawyer jokes, in
16 the humor world lawyer jokes beat politician jokes by
17 a three to two margin. So, again, I don't know if
18 that's good or bad, but if you want to check it out
19 tonight, please do.

20 You know, and I say that simply because I,
21 like you, enjoy a good joke, and I enjoy jokes that
22 are self-deprecating, and I enjoy jokes that sometimes
23 poke fun at our profession. But there is a piece of
24 me that always cringes a little bit, because it kind
25 of plays into the stereotype that too many people have

1 out in greater society about us, and those are those
2 jokes that portray lawyers, attorneys as uncaring
3 rapacious, callous, money grubbing, and the reason it
4 bugs me, it's so counter to my experience of the past
5 20 years as a lawyer.

6 When I would go to court, either in the
7 prosecutor's office -- well, I haven't gone to court
8 as an A.G. When I went to court in the prosecutor's
9 office, I was always so proud of the people that I
10 worked with, the people I went up against, the people
11 I fought with, whatever the case was. I was proud to
12 know the judges that I appeared in front of. Now, it
13 might be aggravating at times, and might be annoying
14 at times, but I always felt lucky to be part of our
15 great profession, and it's because there are so many
16 unsung heros in our profession.

17 We are going to honor, you are going to honor
18 some of the heros whose praises ought to be sung and
19 are being sung publicly, but as I look around and see
20 a number of people I know either personally or by
21 reputation, I know just in this room alone there is a
22 number of unsung heros, people who do so much, answer
23 the call to service, are selfless with their private
24 time to use their professional skills to help out
25 their communities, help out their local city, to help

1 out their local county and to make their communities
2 better, one case at a time, one person at a time.
3 And, you know, for hundreds of years since our
4 profession really started to become a profession in
5 England under the common law in the middle ages, that
6 has been one of our hallmarks. Maybe it's the 24/7
7 nature of cable news or whatever it is or now with the
8 internet that sometimes we get pillory probably more
9 than we deserve to.

10 I think I am probably like a lot of you, that
11 I am awfully busy. You know, because I love the law
12 and I love my job, not only, you know, the external
13 parts of it, being able to pontificate without a judge
14 gaveling me down, but also the internal parts, you
15 know, the challenging parts. The great thing about
16 being attorney general is there are five different
17 legal issues that confront me most every single day,
18 and it's stunning the breadth. And, you know, I have
19 the distinct privilege of working with, I have 470
20 colleagues, about 268 of them are attorneys, and so I
21 work with a great group of men and women.

22 Because I love the law and running an office
23 that large, oftentimes I don't get the opportunity, I
24 expect like you, I don't get the opportunity to read
25 as much as I would like, and when I do read, I like to

1 read biographies and history. And so I was thinking
2 of that today because, not just today but yesterday
3 and the day before when I was preparing for the
4 speech, one of the lessons of history, and I don't
5 care whether you read European history, Latin American
6 history, the history of East Africa or the history of
7 the United States, one of the lessons that we see any
8 time we read anything about history is that a society,
9 any society that wants to be called civilized or
10 aspires to be called civilized by definition has to
11 have a system of laws to guide itself, its governance,
12 and its people.

13 And I think intuitively you know this, but
14 also we learn when we pick up a history book, or
15 forget the history book, pick up the paper this
16 morning, or go online this morning and read the paper,
17 is that no matter how well your system of laws is
18 crafted, people are going to break those laws. That
19 is, you know, oftentimes there is an exception to
20 every law, but the one unerring law of human nature is
21 that if there is a law, people are going to break it.

22 I think that has been my experience as a
23 lawyer. I am sure that's been your experience as a
24 lawyer as well. And, you know, and I take heart from
25 the fact that if you pick up the Bible, if you pick up

1 the Bible, I think in the very beginning, the first
2 book is Genesis, in Chapter 2 God lays down, for
3 anyone who follows the Bible, God lays down the system
4 of laws, and in Chapter 3, the next chapter, they are
5 broken. You know, it's just part of the human
6 condition. It's part of who we are as beings. Adam
7 and Eve ate the apple, next chapter Cain killed Abel.

8 And so while we aspire to the rule of law,
9 and we ought to aspire to the rule of law, because law
10 is, if you boil it down, any law is an aspiration.
11 It's what we seek to do at our best. And we have to
12 recognize, you know, it's important to have
13 aspirations and goals to guide our behavior, but as
14 human beings we also have to recognize that sometimes
15 ourselves, but certainly the human condition dictates
16 that oftentimes we are going to fall short of that
17 aspiration. And part of what we do is that we try to
18 find and define justice when human beings fall short
19 of that aspiration, fall short of what the law
20 requires.

21 And no society can function without the rule
22 of law, but equally as important, or more importantly,
23 no society can function without the ministers of law,
24 and that's what we are, we are the ministers of law.
25 We give the law spirit, and we give the law emotion,

1 and we give the law vitality and life. I don't want
2 to get into any fight about the constitution, whether
3 it's a living constitution or not, but we breathe the
4 human experience into the rule of law. And so it's so
5 important for any society that people not only have
6 faith in the rule of law, what's written in their
7 constitutions, whether it's a state constitution,
8 whether it's a U.S. constitution, but also have faith
9 in the ministers of justice, that they have faith in
10 us.

11 And that's why sometimes, while I like to
12 think I can find humor in most situations, there is
13 sometimes the occasion I probably expect, like you, I
14 get a little ticked about some lawyer jokes for that
15 reason, because it's important for any great society
16 that people have faith in us, and part of that is we
17 also have to recognize that people rely on us, and
18 they are entrusting their faith in us, and we have to
19 act up, we have to aspire to be what they want from
20 us, what they need from us.

21 Like I said, any constitutional republic, no
22 matter how well designed, needs more than the actual
23 parchment that the constitution was written on. It
24 needs people who believe in it, who practice it, who
25 live it, and that's what we do. That's what we do as

1 lawyers. That's what we do as members of the Michigan
2 State Bar.

3 You know, the story of mankind really is a
4 struggle to discern what's right, what's wrong, and
5 the struggle of any system of justice, our rule of law
6 is to figure out how to uphold the, one, how to uphold
7 the rule of law, but also how to punish those
8 transgressions, whether criminal or civil, and then
9 how to heal, not to sound too touchy feely, but how to
10 heal afterwards, and that's really how we define the
11 quality of justice in any society. The great thing,
12 like I say, about us as lawyers is we are the
13 ministers. We are the physicians, we are the actual
14 practitioners that heal the patient and heal our
15 society.

16 And we ought to take pride in that, and I
17 hope you take pride in that, and I certainly hope that
18 you as Assembly members, representatives of your local
19 legal community, remind the folks that elected you
20 about that. And while you are figuring out what rules
21 ought to be put in the model rules of professional
22 behavior or what you want to petition the
23 Supreme Court about what particular court rule there
24 ought to be, step back occasionally and remind
25 yourself that we are the ministers of the law and

1 without us it doesn't work.

2 I am reminded of a story, and some of you
3 probably heard it before, I am reminded of a story of
4 a middle-aged man, I will say a guy my age, who was
5 walking down the street one day and he runs into his
6 rabbi who taught him in school, taught him in day
7 school in the synagogue, and the rabbi is bent over
8 and aged, and so he goes up to the rabbi and he says,
9 Rebbi, how you doing, and they start talking back and
10 forth, and the rabbi is a very old man, kind of a weak
11 voice, he says to this middle-aged man who he taught
12 as a young man, he says to him, What have you done
13 with your life? And the man thinks about it for a
14 second says, Well, Rebbi, you know, I have a lovely
15 wife, I have two beautiful children, I have a great,
16 excellent job.

17 And the rabbi pauses for a second and sort of
18 in a weak, older voice once again says, What is it
19 that you have done with your life? And so thinking
20 that the rabbi hadn't heard him the first time, he
21 repeats himself. He says, You know, Rabbi, I have a
22 great wife, a beautiful wife. I have two beautiful
23 children, you know. I have a great job, important
24 job.

25 And his rabbi says to him in a slow sort of

1 voice, he says, You know, I heard you the first time.
2 I asked you again because you did not answer my
3 question. You told me what God had done with your
4 life. Now tell me what you have done with your life.
5 Because the man, and I will say the person like me,
6 had listed off the things that he had been given but
7 not what he had done with those things or what he had
8 done with his life.

9 And I was thinking about that recently,
10 because a guy that I respected a great deal died
11 recently, and you might have read his obituary, and
12 some of you may have known him. He was a guy by the
13 name of Myzell Sowell who practiced right here in
14 Wayne County in the 3rd circuit.

15 Myzell was about 84 years old. He died maybe
16 about a month ago, and if you drive around town, you
17 are not going to see a statute to Myzell Sowell
18 downtown. There is no building that bears his name.
19 There is no award that honors his memory that I am
20 aware of. He wasn't particularly famous. He wasn't
21 notorious. He made a good living, but he wasn't
22 especially wealthy. But he proved this point, that as
23 a lawyer you can have a huge impact, a great impact,
24 and that you can be a great lawyer even if you are not
25 notorious or wealthy.

1 I knew Myzell fairly well. Myzell had
2 practiced for 50-plus years. He was one of the early
3 architects of the Legal Aid and Defender Society here
4 in Detroit, which became a model for a lot of indigent
5 public defense around the state and really across the
6 country, and the Legal Aid and Defenders Association
7 was created shortly after 1967 after the riots here in
8 Detroit. And Myzell was one of the very early
9 architects and leaders of the legal aid and the
10 defenders office.

11 As one of his later partners who trained
12 under him there as a young lawyer, Gerald Eveland once
13 said Myzell, He wanted to give a voice to people who
14 didn't have one. He wanted to empower the powerless.
15 And I can't think of a higher accolade for a lawyer.
16 And really, that's no small legacy to have, that he
17 wanted to give a voice to those who did not have one
18 and empower those who didn't have power.

19 But Myzell really did much more than that.
20 He was a mentor to so many lawyers, so many young
21 defense lawyers he showed the ropes to. He showed
22 them how to be great advocates on behalf of their
23 client, and so many of the folks he trained are now
24 judges in Wayne County, Oakland County, Macomb County
25 and on the federal bench, and for me personally, when

1 I met him, Myzell was probably 65, his professional
2 career had slowed down, but he still worked it very
3 hard. I met him as a young prosecutor, and he was on
4 the other side of the courtroom, on the other side the
5 table, and he taught me so many things about the
6 practice of law and how to be a good lawyer, how to be
7 a professional, and even though we went head to head,
8 he was a teacher and a mentor to me, and he was a
9 great influence on me, even though we had different
10 clients.

11 And I mentioned earlier that I like to read
12 history. I read a history recently, and it was an
13 obituary that stood in great contrast of Myzell's, and
14 this is an obituary of a very famous man who was born
15 about 200 years ago in Sweden. He came to the United
16 States -- his family was wealthy -- he came to United
17 States to be educated in American schools, and he
18 studied chemistry, and his family business went
19 bankrupt while he was over here studying chemistry, so
20 he went home, and his father died, and he had to
21 rebuild the family wealth. So he applied his
22 chemistry training to manufacture explosives, and
23 eventually he created some of the best explosives in
24 Europe in the 1800s, and he became very, very wealthy
25 and became very, very powerful.

1 But one day his brother died, and he picked
2 up the obituary about his brother in the paper to read
3 the obituary, but they didn't write about his brother,
4 they made a mistake, they wrote an obituary about him,
5 and so you can imagine the shock. You know, he is
6 reading this. His brother died. He wanted to pick up
7 the paper to see if they said good things about him,
8 but they wrote the obituary about him, and they titled
9 it The Merchant of Death is Dead. True story. The
10 Merchant of Death is Dead. And he read it, and he
11 read some of the things, quote, he was a man who
12 became rich by finding ways to kill more people faster
13 than ever before died yesterday.

14 Now, as you can imagine, he was already upset
15 by his brother's death, but this obituary shocked him.
16 It really shook him to his very core, so he vowed to
17 change his life, to not have that as his epithet, to
18 not have that as his final obituary. So he devoted
19 himself to creating a new legacy, and he made a
20 conscious decision to change what he was about, what
21 his cause in life was and to make life better around
22 him, to have greater meaning, to have his life have
23 greater meaning.

24 Now, some of you may have already guessed who
25 this is. His name was Alfred Nobel, and he created

1 the Nobel Peace Prize, Nobel Prize for Literature and
2 Medicine, to create a different legacy to use the
3 wealth he obtained through explosives to create a
4 different sort of legacy, and he certainly did. And I
5 didn't mean to be Paul Harvey on you, but that was the
6 rest of the story.

7 My point about talking about Myzell and
8 Alfred Nobel is this, is that you don't need to be
9 rich to have an impact. Myzell won't be in the
10 Fortune 400. There won't be a huge fight probating
11 his estate, but he had something very much in common
12 with Alfred Nobel, and that was each made a conscious
13 decision to do something with their skills and their
14 talents, and each made a conscious decision to make
15 life better for the people around them.

16 And the great thing about our profession is
17 that by the very nature of our profession, that's what
18 we do. Even on our worst days, we impact people
19 around us. And even though it's to and fro and even
20 though we may fight like dogs in a courtroom or on
21 behalf of our client in negotiating a deal, we do make
22 life better for those around us by and large. What's
23 even better about our profession is that we can make
24 the conscious choice, even outside of our professional
25 lives and what we do in pro bono and other ways, to

1 make a real difference.

2 And that's the great thing I love about our
3 profession. That's really the hallmark of our
4 profession, and I hope that occasionally you pinch
5 yourselves and remind yourselves that you joined a
6 great profession and that this profession has given
7 you each the ability to do great things, not just
8 professionally, but also to impact your community,
9 your local community, your city, your county, your
10 state.

11 I want to say thank you, Kathy and Liz and
12 all of you, for inviting me here today. I truly am
13 both honored and humbled to be here.

14 Now, I am honored to be part of this great
15 profession, and I am humbled that you brought me here
16 on a day when you are honoring some great heros of our
17 profession who have done great things. And I want to
18 say congratulations to them, but as we honor the heros
19 of our profession, as you honor them with the awards
20 today and as you perhaps maybe think about your heros
21 or your mentors, like my Myzell Sowell, and hopefully
22 you are reflecting on them a little bit or you will
23 reflect on them a little bit later today, I hope that
24 you also remind yourself that we all have it within
25 us, like Myzell Sowell and Alfred Nobel, to make the

1 world a better place and we have the ability every
2 time we go to work. We have the ability to make the
3 world a better place one client at a time, one case at
4 a time, one mentee at a time, one life at a time.

5 Honor that, be humbled by it, celebrate it,
6 and live it. I know you do, just keep at it. Thank
7 you very, very much.

8 (Applause.)

9 CHAIRPERSON KAKISH: Thank you very much,
10 Attorney General Mike Cox.

11 Now you got a glimpse of what we assistants
12 attorney general experience within the Department of
13 Attorney General. Very inspiring, very uplifting, and
14 a constant reminder of the pride that we take in the
15 profession that we have chosen and the pride we take
16 in representing the clients we do represent. Thank
17 you so very much, Attorney General.

18 The next item on the calendar is filling of
19 vacancies for today's meeting. Jeff Nellis, chair of
20 the Assembly's Nominating and Awards Committee, is
21 recognized.

22 MR. NELLIS: Good morning, everyone. Before
23 I get started, I just want to thank our Attorney
24 General for his comments. I think you are going to
25 see as we go through the program this morning, he kind

1 of hit on a theme, and I think it's going to be really
2 enjoyable for all of us to get the opportunity to
3 recognize some folks who maybe during the courses of
4 your practice are names that you might not be
5 necessarily familiar with, but as we on the Nominating
6 and Awards Committee went through this process it was
7 just a real joy to have the opportunity to recognize
8 some people who do, quite frankly, some very
9 monumental things that others of us don't always hear
10 about, so I want you to really enjoy what we are doing
11 this morning and just really take it all in.

12 Relative to the vacancy, our goal on the
13 Representative Assembly is always to have a hundred
14 percent participation from all of the circuits. I am
15 pleased to say that once again this year we have met
16 that goal. We have one vacancy to fill from the 56th
17 circuit, which is Eaton County. We have, through our
18 committee, and I would like to make this in the form
19 of a motion, that Tracie Dinehart of Charlotte be
20 appointed as the new Rep Assembly member for the 56th
21 circuit. Do I hear support for that?

22 VOICE: Support.

23 CHAIRPERSON KAKISH: Is Tracie Dinehart here?
24 If she is, can you please stand. She isn't here
25 today. Well, it's my understanding she is not here

1 today. However, the motion is to fill the vacancy at
2 the 56th circuit in Eaton County, and we did hear a
3 support for that. Is there any discussion?

4 Hearing none, all those in favor say aye.

5 All those opposed say no.

6 Those abstaining say yes.

7 And the ayes have it. It is unanimous that
8 the motion to fill the vacancy carries and is adopted,
9 and we do welcome Ms. Dinehart to the Representative
10 Assembly.

11 Moving on to calendar item number 5. This is
12 where the Assembly recognizes lawyers who have made
13 substantial contributions to the legal profession and
14 to their local communities. The first award is the
15 Assembly's Michael Franck Award. Michael Franck
16 himself was a long-time executive director of the
17 State Bar of Michigan, and the State Bar building in
18 Lansing is named after him. The criteria for the
19 Michael Franck award is that it is presented to a
20 lawyer who has made an outstanding contribution to the
21 improvement of the legal profession.

22 This year's recipient is Daniel F. Bonner
23 from the Legal Aid of Western Michigan in Muskegon.
24 To present the award on behalf of the Assembly is
25 David Korterling from the 14th circuit, Muskegon.

1 MR. KORTERING: Thank you, Kathy. Good
2 morning. Your 2009 Michael Franck Award winner has
3 dedicated his 26-year career to providing high quality
4 legal service to the needy and indigent in west
5 Michigan. He is currently the managing attorney for
6 Legal Aid of Western Michigan, which services
7 Muskegon, Oceana, and Mason County out of 17 counties
8 they handle entirely.

9 He was nominated by Mason County Family Court
10 Referee Jack Bulger. Your packet of information that
11 you have that was sent to you includes letters of
12 support from four probate family court judges, two
13 district court judges, a senior prosecuting attorney,
14 as well as the former Muskegon County Bar Association
15 president, who all have acknowledged his cumulative
16 efforts, service, and ability to treat his clients,
17 opposing counsel, the bench and bar with integrity,
18 dignity, and respect.

19 Judge Wadel in Mason County wrote that he
20 brings a special style to the practice of law with
21 politeness, civility, and humor that disarms
22 contentious situations and resolves them with great
23 speed.

24 Judge Lambrich in Oceana County noted that his
25 dedication, commitment, and passion for his work are

1 matched only by his unique gift and ability to resolve
2 conflicts in a civil, dignified, and professional
3 manner.

4 Consistent with the tradition of the Michael
5 Franck Award in making an outstanding contribution to
6 the improvement of the profession, your award
7 recipient has served as an inspiration and mentor to
8 numerous attorneys in west Michigan including our
9 former Muskegon County Bar Association President Jenny
10 McNeill who wrote, He is a highly skilled, zealous
11 advocate and a model of how attorneys should treat
12 each other and their clients.

13 As if running a multi-county legal aid office
14 isn't enough, your award recipient also works
15 tirelessly to maintain and recruit attorneys for the
16 pro bono program in our community.

17 I have known him since I was in high school
18 when he left legal aid for one year to work in private
19 practice with my father. To the betterment of our
20 community in western Michigan, it was a godsend that
21 that arrangement didn't quite work out.

22 I agree with Judge Maria Ladas Hoopes who
23 wrote in your materials that when best describing him,
24 whether you just have met him or known him for 20
25 years, you are proud to call him a friend, a

1 colleague, and a fellow member of the Bar association.

2 When this was proposed in the April meeting,
3 there was kind of a coup. After we awarded him in
4 April Shon Cook from our district, myself,
5 Jeff Nellis, who is the chair of the Assembly
6 Nominating and Awards Committee, as well as Jenny
7 McNeill, the current Muskegon County Bar Association
8 president, we kind of talked to or -- we tried to keep
9 it under wraps, because we wanted it to be a surprise.
10 I don't know if anybody knows Dan Bonner's sense of
11 humor, we wanted to surprise him. We called Kathy and
12 said, Don't send him anything yet, keep it under
13 wraps. We want to surprise him at our Law Day awards
14 assembly on May 1st.

15 So it was really hard to keep it a secret,
16 because I know everybody wanted to rush out, send
17 letters notifying him officially, congratulating him,
18 but we successfully pulled off the coup, and at our
19 law day meeting when Jenny McNeill from the Bar
20 Association was reciting all these good things about
21 this person who was recognized by the State Bar as the
22 Michael Franck Award winner, I glanced over at
23 Dan Bonner, and he was just perplexed, and later he
24 told me, jeez, I got to meet that guy, I got to find
25 out who that is. That sounds like a great guy and a

1 great attorney.

2 Well, today I want to proudly congratulate
3 you and introduce you to this year's Michael Franck
4 Award recipient and the happiest attorney you will
5 ever meet, Daniel F. Bonner.

6 (Applause.)

7 MR. BONNER: Thank you, David. I don't know
8 how many of you are aware of this, I don't easily get
9 nervous, but I am nervous now. This is the largest
10 and most esteemed group I have spoken to today, so I
11 am working to get over this overwhelming feeling I am
12 having.

13 Last night my wife and I were walking around
14 this hotel on a beautiful September evening, and
15 Dolores asked me, Have you thought about what you are
16 going to say tomorrow? And I said, Yes. And she
17 said, Well, what is it? And I said, The only thing
18 that I can come up with to say are words, and there
19 are absolutely no words that can match the gratitude
20 that I feel at this moment for this award.

21 I thought I could get through this without
22 being either nervous or touched, but I can't. I have
23 been deeply touched since May 1st that you would
24 select me, not only because of me but because I am a
25 legal aid lawyer. It's a tribute, I think, to legal

1 aid lawyers throughout our state that this wonderful
2 Assembly has chosen a legal aid lawyer for this year's
3 Michael Franck Award, and I would like to recognize
4 some other legal aid lawyers who are in the room, all
5 of whom are from Legal Aid of Western Michigan, some
6 of whom are members of your body.

7 I see Kathleen Allen out there and Donald
8 Roberts from Kalamazoo. By the way, Donald, the
9 Kalamazoo office of our program sent me a card,
10 wonderful card I just received a couple days ago, and
11 in it Donald wrote, I voted against it.

12 I would also like to recognize David and Shon
13 Cook, my dear friends from Muskegon, who were part of
14 that marvelous Law Day ceremony. Jeff Nellis, he was
15 basically the match to the fuse that started this
16 whole process going of which I was not even aware, and
17 my two supervisors who are in the room today, Mike
18 Chielens, way in the back, is my executive director,
19 and Mike runs a 17-county program. It makes it easy
20 for us in the field to do the work to serve the people
21 that we serve with the team that he has put together
22 in Grand Rapids, and I am grateful for his support
23 over the many years we have worked together.

24 And my other supervisor is my wife,
25 Dolores Trese. Dolores is the managing attorney of

1 the Holland office of legal aid, and, in fact, I
2 mentioned to Mike years ago that the reason that
3 Dolores and I got married was, it was a fiscal move on
4 our part to save our program room fees because now the
5 program doesn't have to buy two hotel rooms for us, so
6 we can save our program money by getting married, and
7 that fiscal decision turned out to be just a
8 wonderful, romantic decision as well over the years.

9 I would like to close with just two quick
10 stories. Being a legal aid attorney has it's
11 wonderful and profound moments, and I recall not long
12 ago, this is several months ago, it was an elderly
13 woman for whom I had gotten a good result in court
14 for. She was a victim of vulnerable financial abuse,
15 and we did something to correct that, and she was
16 leaving my office and in front of my secretary's desk
17 and she came up to me and gave me this big hug and
18 said to me, Thank you, Mr. Bonner, for all that you
19 did for me, because I can't afford a real lawyer.

20 My secretary afterward said, Aren't you
21 offended? And I said, Are you kidding? Did you see
22 the look in her eye. There is not a billable hour in
23 the world that would replace that.

24 Other story is I met an attorney in legal
25 aid, a director of program from the Four Corners area

1 of the United States, and the legal aid program down
2 there is called, first by three letters, DNA -- not
3 for deoxyribonucleic acid -- but DNA-People's Legal
4 Aid Society, and I asked this gentleman who was a
5 Navajo, I said, What's the DNA stand for at the
6 beginning of the name of your program? I had seen
7 that often in our national catalogs and directories.
8 And he said, Dan, it stands for the first three
9 letters of a Navajo phrase, and he pronounced it, and
10 it was poetic, and it was musical, the Navajo phrase.

11 And I said, What does that mean? And he
12 said, That is what the Navajo use to refer to us as
13 legal aid attorneys, and it's a magnificent phrase
14 that I could not possibly replicate here today. But
15 what it translates as is the most magnificent, I
16 think, description of what legal aid attorneys do, and
17 the Navajo refer to us as people who talk fast and
18 help the people out. And I thought is there any
19 better description for what we do than what the Navajo
20 have blessed us with.

21 And I just have two more words. I know all
22 of you think those two words should be in conclusion,
23 and it is, but I do just want to tell you just how
24 deeply touched and profoundly grateful I am that you
25 have created for me a moment that I will never ever

1 forget, and those two words are thank you.

2 (Applause.)

3 CHAIRPERSON KAKISH: Thank you, Mr. Bonner,
4 very much. Those were very beautiful remarks.

5 Our next award is the Assembly's Unsung Hero
6 Award. It is given to a lawyer who has exhibited the
7 highest standards of practice and commitment for the
8 benefit of others. This year we have two recipients.
9 The first is Brian M. Barkey from Flint, and
10 presenting the Unsung Hero Award is Bernhardt, better
11 known as Chris, Christenson, who is a member of the
12 Board of Commissioners and chair of the Young Lawyer's
13 Section.

14 MR. CHRISTENSON: Good Morning. It's my
15 honor and privilege to present the 2009 State Bar of
16 Michigan Unsung Hero Award to an outstanding recipient
17 this year. It is Brian Barkey from the Flint and
18 Genesee County area, and some of the photos of Brian
19 in action are going to flash while we talk about
20 Brian.

21 Brian participates in many events, and here
22 are some highlights. Brian is on the executive board
23 of our local chapter of the Inns of Court. He, along
24 with Linda Pohly, Don Rockwell, Dick Barron, and
25 several others are the glue that helps keep our inn

1 thriving. Brian is active in our local Bar
2 association, participating in many local events and
3 having served on our executive board and eventually as
4 our president.

5 Brian is also active in our community. He
6 helped launch and continues to help organize the Flint
7 holiday dinner. And, ladies and gentlemen, this is
8 something you need to see to appreciate the size and
9 scope of this task.

10 Our area has always been and continues to be
11 an area that has more than its share of less
12 fortunate, and in the most recent year that category
13 has seriously expanded, but through Brian's efforts,
14 and you really cannot overstate them, he does
15 everything. We feed over a thousand people in one
16 night. During our holiday dinner in December, the
17 children get to sit on Santa's lap, they get a photo
18 with Santa and get a gift. In fact, we have been told
19 that many of those children, that's the only gift they
20 may receive that year.

21 As you see the photos, you will see that
22 Brian helps do everything, including help pick up the
23 trash at the holiday dinner.

24 But when I say that Brian is active, I really
25 mean that Brian is active in our community. Brian and

1 his wife, Dorie, have helped create and grow the Crim
2 Training Program, and for those of you who don't know,
3 the Crim is a 10-mile road race in our area. The
4 program that they helped create and help flourish is
5 one that has folks with varying levels of training and
6 athletic background prepare for and complete the
7 10-mile road race.

8 The program started out with just a few
9 hundred people, and has grown to over 1200
10 participants this year. It includes walkers,
11 beginning runners, advanced runners, and it is truly
12 amazing to see how these folks gain confidence and
13 promote a healthy lifestyle and as they complete the
14 10-mile program.

15 You should hear life changing stories from
16 past participants. As a matter of fact, we have heard
17 them year in and year out. We could fill this entire
18 day with their stories, and you would not hear them
19 all, and Brian helped make that happen.

20 On a personal note, 10 years or so ago I
21 participated in the Crim Training Program when I was
22 still in law school, and Brian and Judge Ransom were
23 my group leaders, and thanks to them I was able to
24 complete the 10-mile program, come back and do it a
25 few years in a row and then eventually became a group

1 leader myself.

2 It's also thanks to Brian, he is the first
3 person that invited me to the Inns of Court, so I
4 joined the Inns of Court, been participating ever
5 since.

6 Brian encouraged me to get involved in our
7 local Bar association. Participated ever since. The
8 holiday dinner. So Brian not only is an organizer,
9 innovator, he is also a cheerleader and recruiter,
10 someone that it's an honor to emulate.

11 Our local prosecutor, Dave Leyton said that
12 an unsung hero is implicitly someone who does not seek
13 honors, awards, or publicity. He or she is someone
14 who works behind the scenes to make things happen. He
15 or she is someone who. If they knew their name was
16 being submitted for consideration of an award, would
17 plead that it not be done because they think that what
18 they do is not so special.

19 Brian Barkey is absolutely that kind of
20 unsung hero. A man of outstanding kindness and
21 generosity who is oftentimes referred to as the saint
22 of our Bar. To be honest, Brian really is the saint
23 of our Bar. His sister, Judge Jennie Barkey, is in
24 the back of the courtroom, and just on Tuesday she
25 referred to him as a saint of the Bar from the bench.

1 So thank you, Brian, for being a mentor and a
2 role model to me, but not just inspiring to me or a
3 handful of other people. We are not alone in thinking
4 that Brian is special. Shayla Blankenship, who is a
5 lawyer from Flint and also a Representative Assembly
6 member, first suggested that Brian would be a great
7 recipient of this award. She was absolutely correct.
8 In fact over 112 local lawyers signed the petition
9 that was attached to Brian's application that was
10 submitted on his behalf.

11 The Genesee County Bar Association sends
12 their wishes and congratulations. Brian, you truly
13 have made a difference, and that is why you are the
14 2009 State Bar of Michigan Unsung Hero. You are an
15 inspiration, and thank you.

16 (Applause.)

17 MR. BARKEY: The print on this is going to be
18 blurry in the award because I am shaking. I am not
19 going to cry, I am not going to cry, I am not going to
20 cry. Okay.

21 I can't describe how grateful I am to get
22 this award. And there are lots of people to thank.
23 First there is you, members of the Representative
24 Assembly, who feel that public service is an important
25 attribute in this profession and you recognize it and

1 you emulate it and you embody it. Thank you.

2 Also want to acknowledge and thank my family.
3 They are my first volunteers. I can hear mumbling in
4 the background how hard it's going to be to live with
5 me from now on.

6 And I want to thank the co-conspirators in
7 the Genesee County Bar Association who circulated this
8 petition -- to show you how oblivious I am, I had no
9 idea -- circulated this petition, submitted very many
10 nice letters, and, again, small Bar association, I was
11 completely oblivious to it, but the truth is, as I
12 think you could sense from Mr. Bonner, it's a little
13 embarrassing to get this award knowing that you, more
14 so than anyone else, know who the real unsung heros of
15 this profession are. It's the legal aid attorneys.
16 It's the people doing appointed criminal work. It's
17 the special fiduciaries. It's the people on guardians
18 ad litem who do work for disabled people and children.
19 They don't make speeches. They put their head down
20 and frequently with very poor compensation do the
21 unpopular work required by our constitution. They are
22 the unsung heros.

23 There are unsung heros also to me among the
24 Genesee County Bar Association, and if I could give
25 anything to you today that you can take back to your

1 circuits, it's something a little bit about this
2 dinner. Pardon the advertisement here. Seventeen
3 years ago a family court judge who sees plenty of
4 hardships said, We ought to do something for families
5 over Christmas. He saw lots of disrupted families,
6 and he was absolutely right, the best idea guy in our
7 Bar association is Duncan Beagle.

8 So we decided -- I happened to be in charge
9 of programs that year for the Bar association. We
10 decided what every good bureaucrat does when they are
11 faced with a good idea, you form a committee, right?
12 That usually takes care of the idea. Well, we formed
13 a committee, told them what we had in mind, and one by
14 one they started reaching for their checkbooks. This
15 is a true story, the first meeting. People started
16 ripping off checks and handing money to me. By the
17 time we left that meeting, we had enough money to pay
18 for that first dinner in 1992.

19 Bar association committee meeting had almost
20 perfect attendance for every meeting. How many times
21 has that happened in committees you have served on,
22 perfect attendance. People grabbed parts of the
23 project -- first year through we didn't know what we
24 were doing -- grabbed parts of the project and did it,
25 did the work they promised they would do in committee

1 meetings. Does that happen to you in committees?

2 Got to the actual dinner. See a line of
3 people out the door and down the road, 250, 300
4 people, we couldn't even count them. We didn't think
5 to count them. I thought, How are we going to serve
6 all these people, and you turn around and see my
7 friends on the Genesee County Bar Association, 75 of
8 them showed up, served food to these people, had
9 bought them presents, had wrapped the presents.

10 We got a defense lawyer to be Santa Claus,
11 did civil defense work. What a great stroke.
12 Somebody's great idea, not mine. He had to sit there
13 and hear the wishes of these children, and because he
14 represents Allstate, he knew that they weren't all
15 good. He had to give them presents anyway. Can you
16 imagine the effect. It took him months to get over
17 that. That should have pointed out to me the effect
18 of this on the people of the Bar association.

19 We served them food, and to my amazement
20 these lawyers came out among poor people, destitute
21 people, and they helped them with their kids. They
22 sat with them and kept them company. More than one
23 took them home, the ones that had homes, and we left
24 that night, well, we didn't leave that night, we
25 cleaned up, we polished up, everything got put away,

1 and we didn't want to leave, and we didn't leave until
2 we planned the next holiday dinner.

3 Seventeen years later now, every single dime
4 provided for this dinner, none of it comes out of the
5 dues for the county Bar. It's contributed by
6 contributions from Genesee County lawyers. I have
7 never been without enough money to have this dinner,
8 and frequently lawyers will call and say, you know, do
9 you have enough? I heard you were running short. We
10 are going to get a big load this year, do you have
11 enough? They have already written me one check. We
12 never have not had enough volunteers to do the dinner,
13 and at the end of the dinner we don't want to go home.

14 This could happen in your Bar association.
15 If you want to take anything from this, please
16 understand you could have this dinner in your Bar
17 association. It will energize your Bar association.
18 It shouldn't be a surprise, because we all are in this
19 profession, we were all attracted to this profession
20 because we wanted to help people. This is our chance
21 to do that, and the little thing you do for community,
22 and it's appreciated, the little thing you do for your
23 community ends up being the best Christmas present you
24 could have possibly given yourself.

25 Please call the Genesee County Bar

1 Association -- I told her I would do this -- executive
2 director would be happy to give you the benefit of all
3 we have learned in 17 years. Call me. We will get
4 you started on this dinner. You will not be sorry you
5 did it. I thank you for this award. Thank you.

6 (Applause.).

7 CHAIRPERSON KAKISH: The next recipient of
8 the Unsung Hero Award is Kelly Kathleen Burris from
9 Ann Arbor. Presenting the award is Elizabeth Jolliffe
10 from the 21st Circuit Court, and that's in Washtenaw
11 County.

12 MS. JOLLIFFE: Good morning. Kelly Burris is
13 one of those people that you come across every so
14 often that just inspires you. I met Kelly several
15 weeks ago, and I wanted to get to know who is she.
16 She is going to get this Unsung Hero Award. I knew
17 she was a patent lawyer, I knew she was an engineer,
18 and I know that she does volunteer flights for people
19 with specialized medical needs. She is a pilot. That
20 sounds so cool, but I thought who is she really beyond
21 those titles.

22 She is a partner at Brinks, Hofer, Gilson &
23 Lione in Ann Arbor. She is an aeronautical engineer
24 by training. She worked at McDonnell Douglas, now
25 Boeing in St. Louis. She has taken a passion for

1 flying and used it to serve other people. She has
2 taken a passion for flying, turned it into a degree,
3 and uses it now in her service for her clients. She
4 is the kind of person that you meet and you realize I
5 want to be like her. I want everyone I know to be
6 like her. I want every lawyer that I know to be like
7 her. She has so much energy and passion and
8 competence. She is the kind of person who just exudes
9 competence. You meet her and you think, boy, if I was
10 on a plane, I would want her to be my pilot. If I was
11 in a crisis, I would want her to be the one that's in
12 charge.

13 After I met Kelly, I went back and I looked
14 at the Brinks Hofer website, and it has flashing in
15 the home page certain terms, and I thought, wow, did
16 they design this website around Kelly Burris. The
17 terms that flash are confidence, and there is a
18 definition, energy, there is a definition, passion,
19 spark, intensity, detail. Kelly is a perfectionist
20 but you have to be if you are going to be an engineer
21 and a patent lawyer and you are going to prosecute
22 patents, you have to be a perfectionist and know about
23 the details and pay attention to the details.

24 Kelly said that by training as an engineer
25 and then working at McDonnell Douglas she had to make

1 sure that those jets were maintainable, that they were
2 operational, that they were reliable. You can't make
3 a mistake, and Kelly has taken that training as an
4 engineer in her work experience for something like 11
5 years as an engineer and taken it into the legal
6 profession, and she uses it in service of her clients.

7 Now, specifically the main, the main thing
8 that Kelly has been nominated for with the Unsung Hero
9 is this fascinating and wonderful work that she does
10 for the Angel Flight network. It's a nonprofit
11 organization where Kelly flies people with specialized
12 medical needs around the country, mostly in the
13 central part of the United States. She does this at
14 least once a month. Sometimes she takes people who
15 are on their final flights who are going to hospice,
16 and I know from talking to her how hard that is for
17 her. Some of these patients she has flown them a
18 couple times a year for regular appointments, so she
19 gets to know them.

20 She has to be ready and on call. She doesn't
21 know when she might get the call to make a flight like
22 that. What does she do? She donates her time. She
23 might leave the office, drive back to Detroit airport,
24 fly to pick up these people, take them where they need
25 to go, and then come back. She donates her time, her

1 plane, and her fuel. This is no cheap donation.

2 She also volunteers for Girls in Aviation.

3 She has worked with girls in this program most
4 recently in Kalamazoo working with girls who are
5 interested in being pilots who come up with flight
6 plans, has flown them in her plane. She has entered
7 twice and, not surprising, won the second time that
8 she entered a 90-year old air race. It's an all women
9 air race that's a cross country race for 2400 miles.
10 The second year, which was this year that she entered,
11 she and her copilot won. That didn't surprise me at
12 all, now knowing her, that she would just go and win
13 it the second year.

14 The first year, in fact, she was disqualified
15 because she and her copilot got into the clouds. You
16 have to fly below the clouds, but they had to go into
17 the clouds because of some storm systems. So they
18 said, well, we are going -- I don't know if they said
19 this, but I am thinking she said, we are going to win
20 this next year, and they figured out how to do that.
21 Sometimes they win by just like one one thousandth of
22 a knot. I think they won by maybe a third of a knot,
23 I am not sure what a knot is. I know what certain
24 knots are. Now I am all tied up in knots, I guess.

25 Kelly is just, she is truly amazing. We

1 talked about her client service, the way she believes
2 in her clients. She flies around the country,
3 sometimes she flies herself and sometimes she flies
4 commercially to see her clients as part of their team.
5 Being an engineer, she can roll up her sleeves and
6 work with them.

7 I know from having worked almost 20 years as
8 a lawyer what it means when people say I am a member
9 of my client's team and when the client thinks you
10 really are a member of their team, and Kelly Burris is
11 that.

12 Kelly is an amazing person. As Attorney
13 General Mike Cox said, she is someone who does make a
14 difference in people's lives. She does live and
15 breathe what she believes in every single day, and I
16 am so proud that we have her as a member of our
17 profession, that she works and lives in Washtenaw
18 County, and I am so proud that I got to meet her and
19 to present her as the recipient of the 2009 Unsung
20 Hero Award.

21 (Applause.)

22 MS. BURRIS: You like me. Seriously, all
23 kidding aside, I would like to first of all
24 congratulate Daniel and Brian and all the great work
25 that you have done and that you are doing and for the

1 Representative Assembly for considering me for this
2 award.

3 I've got to be honest with you, I stand up
4 here feeling kind of guilty. I was thinking about
5 this, and I thought, well, I am getting an award for
6 flying my airplane, this thing that I love to do that
7 I am passionate about. I love aviation. I love
8 airplanes. People who know me know that, and I am
9 getting an award for that? It feels guilty.

10 And so as I thought about the award a little
11 more, I was reminded of a conversation I had with a
12 patent attorney over in Germany. We were talking
13 about Hurricane Katrina, I think, at the time, and he
14 said, Your country is very different than many
15 countries around the world in that respect, that no
16 matter what the disaster, what the human need is,
17 there is always someone to step in, there is a
18 nonprofit organization or a charity or someone that
19 comes in to help people out. He says that's very
20 unique in the United States, you don't see that in a
21 lot of countries around the world.

22 And I have been fortunate enough to match up
23 something I am passionate about with this charity
24 Angel Flight that has this need to get people and
25 supplies -- as a matter of fact I am transporting baby

1 milk next month, to provide that need for those
2 people, and then as I thought about it a little more,
3 I thought he is right. There really is, there is a
4 charity out there for everybody. No matter what it is
5 that you are passionate about. If you are a gourmet
6 chef, I am sure Brian could use some of your services.
7 If you love animals, there is the local shelter that
8 could use your help. If you like to work on cars,
9 local charities that fix up cars and donate them to
10 individuals and organizations.

11 The message I want to convey is that there is
12 something for everyone, no matter what your passion
13 is, and I would encourage you to try to find that if
14 you haven't already.

15 For me personally the rewards from this work
16 with Angel Flight are immeasurable, and it's something
17 that helps with that balance that I look for, I think
18 we all look for in our lives with the work, the play,
19 and the love. You seek out that balance in your life,
20 and this type of activity with Angel Flight helps me
21 with that balance, and this award will help me, remind
22 me to have that balance in my life, and I thank you
23 from the bottom of my heart. Thank you very much.

24 (Applause.)

25 CHAIRPERSON KAKISH: Well, I do believe that

1 we are doing very well on the calendar time. At this
2 point I would like to inform you that our three award
3 recipients will attend today's inaugural luncheon, and
4 their names will be mentioned during the program, and
5 we are very much proud to have their names known. It
6 is very clear that the Assembly's Awards and
7 Nominating Committee did a great job this year in
8 selecting the award recipients. I would like us to
9 extend a round of applause for our three recipients
10 and for you for selecting these three wonderful
11 people.

12 (Applause.)

13 CHAIRPERSON KAKISH: We will take a 10-minute
14 break. It is 10:20, so, therefore, we will resume
15 promptly at 10:30, and as for the awardees and the
16 presenters, if you would like to approach the podium
17 area so we can take a couple more pictures. Thank
18 you.

19 (Break was taken from 10:20 - 10:30 a.m.)

20 CHAIRPERSON KAKISH: If you will take your
21 seats. After these great presentations by the
22 Attorney General and then the award recipients, it's
23 kind of hard to take the microphone and address you
24 now and be compared to all of them, but my job is just
25 to be professional, and that's what I will try to do.

1 Next on the agenda is item number 9, which is
2 remarks from the Chair. I have 50 things to report to
3 you, but I decided that I will only cover five. So
4 the five matters that I will report to you today, the
5 first one relates to the policy actions adopted by the
6 Board of Commissioners since our last meeting in
7 April.

8 In her address to the Assembly at the April
9 meeting you may remember that Chief Justice Marilyn
10 Kelly spoke about one particular proposal. She was
11 speaking about the, at the time, then upcoming
12 proposed amendments to the judicial recusal that the
13 Supreme Court was planning to issue for public
14 comment, and if you remember from her speech she
15 informed this Assembly that the time period for the
16 public comment and the following Supreme Court hearing
17 would not allow this Assembly, would not actually
18 allow this Assembly to debate the judicial recusal
19 proposals, and that's exactly what happened since
20 April.

21 The proposed amendments were issued with
22 three different options, with a comment period
23 expiring on August 1st. The hearing itself took place
24 the first week of this month, September, and State Bar
25 was present at the hearing through its staff. But

1 once the proposed amendments were actually released
2 for public comment, this is what the State Bar did.
3 The State Bar circulated it to all Bar sections and
4 committees for their own input, and several of these
5 committees and sections responded, and the input, for
6 those of you who read the proposal for judicial
7 recusal, it was very complex, very intense, and so the
8 input that the State Bar received from these sections
9 and committees varied and actually conflicted on
10 certain points.

11 The Board of Commissioners then reviewed the
12 input and conducted its own deliberations at its
13 regular meeting on July 24th, and then it had to
14 convene a second meeting, a special meeting, on
15 August 21st to continue reviewing the material.

16 Now, in your Assembly booklet, tab 1(D), the
17 last two pages, Exhibit B, that are labeled Exhibit B,
18 that's a copy of the July 28th letter submitted to the
19 Supreme Court, and that letter reflects the Board of
20 Commissioners' views on the proposed amendments that
21 were taken at the July 24th meeting.

22 Now, at your tables you will find a copy of
23 the August 26 letter, and that's in the attachments
24 that are cream colored, I believe, and so this is the
25 August 26 letter that was addressed to the

1 Supreme Court reflecting the views taken at this
2 special meeting that the commissioners held on
3 August the 21st. And, of course, that document should
4 be marked as tab 1(D) Exhibit C.

5 Later this morning Executive Director Janet
6 Welsh will tell you more about how the Board of
7 Commissioners handled these proposed amendments and
8 the communications that were made to the
9 Supreme Court. In addition to that, Janet will give
10 you an update on a recent development that occurred to
11 one of another -- well, actually one proposal that the
12 Assembly voted on back in September 2006, so that was
13 a proposal of three years ago, we have some new
14 developments on it, and that proposal is the trust
15 account overdraft.

16 Now, also included in the Assembly booklet
17 under tab 1(D) is a copy of the minutes from the Board
18 of Commissioners meeting on June 12th, and then as
19 Exhibit C would be the cream colored attachment that
20 you found on your tables this morning, those are
21 copies of two more meeting minutes by the Board of
22 Commissioners. The minutes from the July 24th meeting
23 and the minutes from the special meeting on
24 August 21st, and of course they give more detail about
25 the proposed judicial recusal amendments.

1 Now, these three sets of Board of
2 Commissioner meeting minutes reflect, and I am not
3 going to list them all, I am not even going to list
4 them, but they do reflect an additional six or so
5 other actions that the commissioners took on behalf of
6 the State Bar, and this leads me to the second point
7 that I would like to address. We are seeing more and
8 more shorter comment periods from the Supreme Court
9 for proposed amendments, and of course we know that
10 the Assembly meets only twice a year, and with these
11 short comment periods, it's becoming more and more
12 difficult to bring them before the Assembly.

13 To make sure that the State Bar's voice is
14 heard on these proposals, the Bar is now working very,
15 very closely with committees and sections, and they
16 are circulating these proposed amendments to them for
17 their input.

18 A week or so ago, I believe that you received
19 requests from Vice Chair Elizabeth Johnson to submit
20 your interest in serving as Assembly liaisons for
21 these committees and sections. Your working closely
22 with these groups is even more critical now for the
23 Assembly than it ever was in the past, so I understand
24 that the assignments will occur very soon, and we look
25 forward to your coordination and cooperation with the

1 officers and your coordination and cooperation with
2 the sections and committees so that we can benefit the
3 work of the Representative Assembly.

4 My third point relates to the pictorial
5 display of past Assembly chairs. Now that was
6 officially opened on Friday July the 24th with a
7 reception held at the State Bar building in Lansing.
8 Now, if you may remember, this project was the brain
9 child of past chair, Ed Haroutunian, I believe he is
10 in the room now, or at least he was, and that was
11 three years ago when he was chair during 2006/2007,
12 and the project continued under the chairmanship of
13 Bob Gardella 2007 and 2008, and then it came to
14 realization early this year, but I personally take no
15 credit for its realization. Anne Smith, our
16 assistant, who is actually seated to my furthest
17 right, deserves all credit for finishing this project.
18 I wish all of you could have been there, and I thank
19 those of you who actually were able to attend the
20 reception.

21 In its 37-year history, 35 hard working,
22 dedicated attorneys served the Assembly as chairs, and
23 it was indeed a great honor to meet many of these
24 giants in the legal profession who attended the
25 reception.

1 The history of the Assembly's service of the
2 legal profession was given prominence at this
3 reception. A Power Point presentation was given with
4 a recital of the major action that each Assembly chair
5 took while that person led the Assembly. And a review
6 of the Assembly's work since it was established
7 actually brought home the point that we today stand on
8 the shoulders of past Assembly members and now take
9 for granted many of the policies that the Assembly
10 adopted.

11 If you are ever in Lansing during business
12 hours, please make it a point to visit the Michael
13 Franck building and view the pictorial display.

14 And speaking of pictures, some of you have
15 not provided us with your own picture for the
16 Assembly's website pictorial directory. I can't
17 emphasis enough the importance of having these
18 pictures for the day-to-day functioning of the
19 Assembly throughout the year, so please, if you
20 haven't done so, please provide Anne Smith with a
21 picture so we can post it on the website.

22 My fourth point, I would like to extend a
23 heartfelt thank you to the staff of the State Bar.
24 They have shown over and over again their commitment
25 in helping the Assembly in its mission. I remember

1 many, many years ago when I was sitting among my
2 colleagues on the third circuit how every year the
3 staff would be thanked, and to be quite honest I never
4 really understood the implications of that until I
5 became an officer and realized all the hard work that
6 the staff does in helping the Assembly, in helping the
7 State Bar. It really is remarkable. It's tremendous.

8 I brought with me a copy of the August
9 edition of the Michigan State Bar, but any edition
10 would work. We are so familiar with the State Bar
11 Journals, but always at the back of every edition
12 there is a listing of the entire Bar staff. That's
13 how accessible they are. Their names, their titles,
14 their telephone numbers, their e-mail addresses, and I
15 strongly encourage each and every one of you to get to
16 know the staff of the State Bar. Don't hesitate to
17 give them a call for any questions or any help that
18 you may need as an Assembly member or as a general
19 member of the State Bar.

20 I would like to take a moment here to read
21 out the names of some, and only some, of those who
22 have been extremely helpful, not only to the Assembly,
23 but each and every Assembly member. And if they are
24 here in the room, I really would appreciate them
25 standing.

1 Candace Crowley, external development
2 director. Is Candace here? No. She was earlier.

3 Margaret Bossenbery, she is actually the
4 executive coordinator.

5 Elizabeth Lyon whom you have met at the last
6 couple of meetings and whom you will meet today as she
7 gives a presentation on indigent criminal defense.
8 She is the governmental relations director.

9 Anne Vrooman, research and development
10 director. There she is in the back. Thanks, Anne.

11 James Horsch, the division director, and
12 basically he is responsible for the finances, to make
13 sure that the finances of the State Bar are well
14 intact, and certainly they are, even in spite of the
15 difficult economic times that Michigan is going
16 through, Jim has been doing a great job.

17 Greg Conyers, he is the division director of
18 justice initiatives, and he plays a very prominent
19 role within the State Bar of Michigan in coordinating
20 such programs.

21 Member services and communications division,
22 we have Nancy Brown, and Nancy is with us at every
23 single meeting making sure that all the equipment is
24 running properly and making us look very good with the
25 Power Point presentations.

1 Also Michael Eidel-- I rehearsed his name,
2 trust me -- Eidelbes. My apologies.

3 Mike Smith, graphic director. I know he is
4 around somewhere.

5 Naseem Stecker. Naseem has been here earlier.
6 There she is. Naseem is a very important person,
7 especially for all those local Bar associations,
8 committees, groups who would like, you know,
9 information, help in publicizing their events, what
10 they need to do.

11 Kari Thrush, she is the manager of membership
12 services and events, and she is probably walking
13 around very busy trying to make sure that this annual
14 meeting is going very well.

15 Dawn Evans from the professional standards
16 division. She is the division director, and she is
17 standing up right in the back. Dawn is very capable
18 in what she does.

19 Those are just some of the people that I
20 listed whose names you will find at the back of the
21 Michigan Bar Journal.

22 But I would like to turn to one particular
23 staff member, and I have mentioned her name earlier
24 this morning, and that's Anne Smith. She is the
25 Assembly's administrative assistant. I am sure many

1 of you have spoken with her over the phone. We
2 wouldn't be able to operate day to day the functions
3 of the Assembly or even put together the Assembly
4 meetings without Anne, and the Assembly is indebted to
5 you for everything that you do. Thank you.

6 Other people who deserve thanks are our
7 volunteers. Our parliamentarian, Judge John Chmura of
8 the 37th District Court in Warren. The April meeting
9 was actually his very first meeting, and I must say
10 that he took the time out this summer to meet with the
11 officers and to help us -- the officers, particularly
12 Elizabeth Johnson and Victoria Radke and me -- in
13 preparing for today's meeting, and we are very much
14 honored, Judge Chmura, you are here at the
15 Representative Assembly as parliamentarian.

16 The commissioners, the Board of Commissioner
17 members who sit on the Assembly, you have done a very
18 good job for the State Bar this year, and you do
19 deserve to be well recognized. I please ask you to
20 stand up so other members will know who you are.
21 Don't be shy.

22 (Applause.)

23 CHAIRPERSON KAKISH: There are more than
24 that. We have more members, I know, who are sitting
25 here being a little bit shy.

1 Now, also President Ed Pappas and Executive
2 Director Janet Welch. Ed and Janet, there is a lot of
3 great things to say about you, and, with all due
4 respect, I am saving those remarks for my
5 introductions just before you come up to speak.

6 And finally, which is my fifth point, a
7 housekeeping matter. The next April meeting will be
8 held in March, so I guess that we should call it the
9 March meeting. Unfortunately what happened is that
10 the Lansing Community College forgot to pencil us in
11 for April, and Anne shopped around for places in
12 Lansing, but she was unable to find another reasonably
13 priced location.

14 The rules concerning the State Bar do allow
15 for the meeting to take place either in March or
16 April, so we are having the Assembly meeting at the
17 Lansing Community College, we decided to stay there,
18 but, however, it's going to be on the last Saturday of
19 March, and with that I conclude my address. Are there
20 any questions?

21 We move to the next item on the calendar,
22 which is item number 10, remarks from the State Bar
23 President, Ed Pappas.

24 Now, a lot goes on in terms of running the
25 Assembly between the meetings. The three officers --

1 Liz, Victoria and I -- attend the monthly meetings of
2 the Board of Commissioners, and Liz and I, as vice
3 chair and chair respectively, serve on the Executive
4 Committee. That teleconferences every two weeks. Of
5 course both of the Board of Commissioners and the
6 Executive Committee are chaired and led by Ed Pappas,
7 which means that Liz, Victoria and I have had a great
8 opportunity to work closely with Ed. Ed has, indeed,
9 led the State Bar with commendable leadership skill,
10 treating everyone he meets with great courtesy and
11 respect. He is quick to identify and assess issues,
12 quick to provide sound decisions and suggestions. He
13 is an excellent communicator. It has been a pleasure
14 working with him, because you can always trust that he
15 will always take the exceptional path of excellence,
16 and his great sense of humor is always a great added
17 bonus.

18 With respect to the Assembly, Ed has been
19 quite responsive to the Assembly's needs and to any of
20 the concerns that the three officers have had. Ed, on
21 behalf of the Assembly, I thank you very much for
22 that. It has been a great honor working with you this
23 year, and thank you so much.

24 (Applause.)

25 PRESIDENT PAPPAS: Thank you, Kathy. Those

1 were wonderful words you said about me, and they all
2 sounded really true.

3 I am going to speak about one initiative that
4 the State Bar is involved in now. Last time I was
5 here I talked about many accomplishments that we have
6 all together done at the State Bar, and I am going to
7 mention some of those at the luncheon, but before I do
8 that I want to thank all of you for your service to
9 our profession, because each and every one of you are
10 leaders here in the Representative Assembly.

11 I have had an opportunity to sit in the
12 Representative Assembly for approximately six or seven
13 years now since I have been on the Executive Committee
14 of the Board, and what you accomplish in such a large
15 group is truly amazing. And I also want to
16 congratulate your leaders. Kathy Kakish, Liz Johnson,
17 and Victoria Radke are tremendous leaders. They have
18 done a great job this year.

19 As you heard, they all serve on the Board of
20 Commissioners, two of them serve on our Executive
21 Committee. On each of our agendas, both for the Board
22 of Commissioners and the Executive Committee, there is
23 a spot for the Representative Assembly. We have tried
24 to coordinate this year, and, again, this is just my
25 opinion, for which I have great respect, but the

1 leadership of the Representative Assembly has done a
2 great job this year.

3 What I would like to talk about, the one
4 initiative that is continuing now is the Judicial
5 Crossroads Task Force. I am going to give you a
6 little background on how this task force was formed,
7 tell you what the mission of the task force is and its
8 structure and where it's going and how you can have
9 input into this task force.

10 About a year and a half ago I met with a few
11 judges and a few lawyers, and we decided to just talk
12 about what we should do, if anything, dealing with
13 judicial compensation, because state court judges have
14 not had even a cost of living increase in compensation
15 since 2001. We decided to wait, because it was an
16 election year in 2008, wait until after the election.
17 We did have one meeting after the election, but then
18 the governor in her state of the state address
19 recommended a ten percent decrease in the compensation
20 of all elected officials, including judges.

21 So we refocused our attention and decided to
22 fight against the decrease in judicial compensation
23 based on constitutional issues, and we asked Barry
24 Howard to represent the lawyers and judges in front of
25 the SOC Commission. The SOC Commission agreed that

1 judges' compensation should not be decreased because
2 of constitutional issues. The governor herself
3 agreed. The recommendation to the legislature was to
4 cut the compensation of all elected officials except
5 judges, and the legislature adopted that position.

6 After that occurred, we had a larger meeting,
7 a meeting with more judges and more lawyers, and we
8 decided that because of the budget crisis and the
9 economic crisis that we face that there was much more
10 to deal with than just judicial compensation. We had
11 to look at how we were going to have sufficient
12 judicial resources to provide access to justice to
13 everybody in light of the huge budget cuts, and this
14 is a national issue.

15 I was at the ABA meeting in Chicago, and this
16 was a big issue at the ABA meeting, and one of the
17 judges at the ABA meeting said if you are not at the
18 table you will be on the menu, and that is very
19 apropos to us here. And we thought, if there is going
20 to be change in our court system, then the change
21 should come from judges and lawyers, not from the
22 legislative branch, not from the executive branch, not
23 from the public in a piecemeal fashion through
24 initiatives.

25 So the judicial conference asked the

1 State Bar to form this judicial task force, and I want
2 to read the mission of the Judicial Task Force. The
3 mission is to identify how Michigan's justice system
4 can meet the needs of the public in the face of
5 transformational changes underway in the state's
6 economy.

7 This is a huge undertaking, a very important
8 project. We have four committees. We have a
9 committee on court structure and resources, a
10 committee on access to justice, a committee on
11 technology, and a committee on business impact.

12 The first meeting of the task force is going
13 to occur in late October. These meetings will be
14 online. Information will be online. We are seeking
15 input from lawyers, judges, and the public on what
16 your ideas are, how you think we ought to be changing
17 how we provide justice in the state of Michigan. So I
18 encourage all of you to look online, watch what's
19 going on with the task force, and give us your input,
20 because we will be looking for input. This is an
21 extremely important project, and I encourage all of
22 you to get involved.

23 And I thank all of you and all the lawyers in
24 the state of Michigan and the judges in the state of
25 Michigan for giving me the privilege to serve as

1 President of the State Bar of Michigan. Thank you
2 very much.

3 (Applause.)

4 CHAIRPERSON KAKISH: Thank you, Ed. Any
5 questions?

6 All right. Next is calendar item number 11,
7 remarks from the Executive Director, Janet Welch.

8 Janet, as you know, oversees the day-to-day
9 operations of the State Bar. She implements the
10 State Bar policies and directs the staff. This past
11 year the Assembly officers have also worked very
12 closely with Janet. She has been quite accessible to
13 the needs and concerns of the Assembly. She was
14 immediately available when needed, especially for a
15 couple of last minute emergencies that erupted this
16 year, and she was very quick to provide solutions and
17 the necessary staff to help us get through.

18 Janet is a very fine person with a keen
19 intellect. Her good judgement and trustworthiness
20 have been proven over and over again, and it has been
21 indeed a pleasure working with you, Janet.

22 Janet's background in state government,
23 particularly with the Supreme Court, has proven time
24 and again how extremely valuable she is to both the
25 Assembly and to the State Bar, and I am sure one of

1 the most difficult tasks she recently had to do was to
2 assist the Board of Commissioners through the complex
3 Supreme Court judicial recusal amendments. Janet.

4 (Applause.)

5 MS. WELSH: Thank you very much, Kathy. I do
6 have prepared remarks, but I want to deviate from the
7 prepared remarks for a moment by way of rebuttal to
8 Kathy's kind comments.

9 Those of you who are veterans here have heard
10 me praise the extraordinary leadership and diligence
11 of the Representative Assembly, and it would not have
12 been possible for Kathy to exceed the diligence and
13 conscientiousness of her predecessors, but she has
14 certainly matched them, but there is a way in which
15 Kathy has really smoked the competition, and I have to
16 say that she is a world class worrier, and I think
17 Kathy has logged more sleepless nights than any other
18 past chair of the Representative Assembly. Unlike,
19 many worriers, she managed to worry in a way that was
20 unflinching polite and gracious, and she has been
21 wonderful to work with, and I want to thank her, and I
22 think all of you owe her a special debt for those
23 sleepless nights that she has logged on your behalf.

24 (Applause.)

25 MS. WELSH: I want to start by talking a

1 little bit about what Ed has alluded to, which is what
2 an extraordinary year this has been in the history of
3 the state and indeed in the history of the world. The
4 dimensions of economic crisis that the world was
5 facing really began to reveal itself exactly a year
6 ago as we were meeting, so I want to start by saying
7 that at the end of this terrible, very bad, no good
8 year in the economic well-being of the world that the
9 State Bar has happily ended the fiscal year in very,
10 very sound fiscal shape and at the same time we have
11 been able to maintain the high quality of our core
12 programs and, in fact, have even delivered new
13 programs designed to help Michigan lawyers and the
14 public in these tough times.

15 One of them that we are launching today in
16 fact at this meeting is a new high powered legal
17 research tool called Casemaker that holds the
18 potential, we think, to save our members hundreds of
19 dollars in legal fees this year.

20 The work of the Representative Assembly, of
21 course, is a key component and the value that we
22 provide to our members and to the public, and although
23 it is very tempting to ask in relation to public
24 policy initiatives of the State Bar, what the heck is
25 taking so long, the R.A.'s proposals do make a real

1 difference, and, as Kathy has said, she has asked me
2 to speak in detail about two proposals. The old
3 initiative from 2006 that she has asked me to speak in
4 detail about is the R.A.'s endorsement of a trust
5 account overdraft notification program in Michigan.
6 Because I only had ten minutes, I am going to refer to
7 that as TAON instead of talking about trust account
8 overdraft notification.

9 That proposal was brought to the Assembly by
10 the standing committee on the client protection fund
11 after consultation with the Michigan State Bar
12 Foundation, the Attorney Discipline Board, and the
13 Attorney Grievance Commission. The gist of the TAON
14 program, which those of you who were here at the time
15 will remember, is that lawyers may only have trust
16 accounts in financial institutions that agree to
17 notify the discipline system if there is an overdraft
18 from the trust account.

19 You were persuaded, you, the institution of
20 the Representative Assembly, not necessarily each of
21 you, since some of you are new, but you were
22 persuaded, as was the Client Protection Fund
23 Committee, that the vast majority of lawyers get into
24 trouble not because they intend to steel client monies
25 but because they go down a path that starts with

1 inappropriately using a trust account to cover
2 operating expenses and then failing to replenish those
3 funds, resulting in a bounced trust account check.
4 Michigan's experience, in fact, validates this view.
5 Many of the largest aggregate client protection fund
6 claims we have found start with a single lawyer having
7 overdrafts over a period of time.

8 A mechanism that identifies these problems
9 early, you decided, gives us a better chance of
10 stemming the tide before more clients are impacted.
11 The experience of the 39 other states that already
12 have a TAON rule, some for many years, supports this
13 conclusion and supports the efficacy of a TAON rule.
14 Although most overdrafts turn out to be harmless
15 errors and the discipline system takes no action in
16 relation to them, there is strong evidence that the
17 program itself catches a number of significant
18 problems and deters the escalation of some lawyer
19 behavior from simple negligence to outright
20 misconduct.

21 In the light of this evidence, you adopted
22 the TAON resolution in 2006, and you authorized staff
23 to develop any appropriate modifications to the ABA
24 Model Rule that would be appropriate for Michigan,
25 which we did. We met over a period of several months

1 with representatives of the banking industry and the
2 regulatory community, and we submitted a draft rule to
3 the court for its consideration.

4 As Kathy has said, in May of this year the
5 court published that rule for comment, and we have
6 been in active communication with the court answering
7 questions since then that individual justices have
8 about the implementation of the program in Michigan.

9 On September 2nd the rule was on the court's
10 administrative public hearing agenda, and at that time
11 they sought additional input from the Attorney
12 Grievance Commission, and we have just learned that we
13 will be meeting with the Attorney Grievance Commission
14 answering their questions about the TAON program in
15 advance of the court's next consideration of that,
16 which we think will be next month.

17 So we are hopeful that we are close to
18 implementing the rule that you authorized in 2006.
19 Once it is adopted, we are hopeful that it will be --
20 we have asked for a delayed effective date of six
21 months to allow us to gear up.

22 Now to the second issue that is developing as
23 an area that will almost certainly call for R.A.
24 attention in the coming year or years, and that is, as
25 Kathy has said, the question of under what conditions

1 and using what procedures judges should recuse
2 themselves from hearing a case. The issue is referred
3 to interchangeably as judicial disqualification and
4 recusal.

5 On March 18, of course, the court published
6 its three alternative rules for comment, and, as Kathy
7 has said, we distributed those proposals to all
8 committees and sections for their comment.

9 In the meantime, this is the big in the
10 meantime, the U.S. Supreme Court was considering the
11 Caperton case, which you will remember was a challenge
12 on due process grounds of a West Virginia
13 Supreme Court justice's decision not to disqualify
14 himself from the appeal of a \$50 million jury verdict
15 when the CEO of the lead defendant in that case had
16 spent \$3 million in independent expenditures in
17 support of the justice's campaign, which was more than
18 60 percent of the total amount spent in support of his
19 campaign. After winning election to the court, the
20 justice cast the deciding vote in the court's
21 decision, overturning the verdict. On June 8th the
22 Supreme Court decided that given the, quote, serious
23 risk of bias, actual bias, the due process clause
24 required the justice's recusal.

25 Here is in detail what the State Bar has done

1 so far on the recusal issue and what's still left on
2 the table. As Kathy has said, the Board met in July
3 and, rather than voting support for one of the three
4 proposals adopted, the Board adopted 12 positions
5 which were communicated to the court by the August 1st
6 deadline, and I will quickly go through them.

7 Number one was the Board said that the
8 primary obligation to recognize the reason for
9 disqualification should rest with the judge or
10 justice.

11 Two, disqualification decisions should be in
12 writing.

13 Three, dissents to a justice's recusal
14 decision should be allowed.

15 Four, only a justice or a party should be
16 able to raise the issue of a justice's
17 disqualification.

18 Five, a justice's recusal decision should be
19 reviewable.

20 Six, the standard for bias should be actual.

21 Seven, the criteria for disqualification
22 should not be limited to enumerated criteria.

23 Eight, the rule should clearly state the
24 disqualification is required if the judge or justice
25 cannot impartially decide a case.

1 Nine, the disqualification rule should
2 encompass the appearance of bias based on an objective
3 standard. That, by the way, turns out to be
4 consistent with the Caperton majority.

5 10, bias concerning an attorney should be a
6 grounds for disqualification. Bias concerning an
7 attorney should be a ground for disqualification.

8 A justice's previously presiding over the
9 same case in another court should be a ground for
10 disqualification.

11 12, and last, the two-year limitation on
12 disqualification based on a former professional
13 association with the party's lawyer should continue to
14 be a part of Michigan's rule for trial and Court of
15 Appeals judges and should be extended to justices.

16 All of these were open questions raised by
17 the differences between the proposals that had been
18 published for comment.

19 In July the board also agreed to reconvene in
20 August for a special session to address additional
21 recusal questions and to provide further input to the
22 court in time for the court's September 2nd
23 administrative public hearing on the issue.

24 At that meeting the board adopted five
25 additional positions which were immediately

1 communicated to the court, and they are the grounds
2 for disqualification of justices and judges should be
3 the same. That doesn't address the question of
4 whether the procedure should be the same. It
5 addresses the question of what the grounds for
6 disqualification should be.

7 Two, a justice's recusal decision should be
8 reviewable, not only in federal court, which Caperton
9 facilitates under the Caperton due process standard,
10 but there should also be the availability of review by
11 an independent panel at the state level. The board
12 took no position on whether such a panel would require
13 constitutional amendment but said that if a
14 constitutional amendment were necessary, that they
15 endorsed that action.

16 Number three, the court should adopt the ABA
17 Model Rule provision that a judge should hear or
18 decide matters assigned to the judge except when
19 disqualification is required by disqualification
20 rules. That is a short and simple statement that
21 addresses the issue of duty to sit and rule of
22 necessity.

23 Number four, that the grounds for
24 disqualification should include when a judge, while a
25 judge or judicial candidate, has made a public

1 statement other than in a court proceeding, judicial
2 decision, or opinion that commits the judge to reach a
3 particular result or rule in a particular way in a
4 proceeding or controversy.

5 Number five, that the grounds for
6 disqualification in a particular proceeding should
7 include when a judge or justice has served in
8 government employment and in such capacity
9 participated personally and substantially as a lawyer
10 or public official concerning the proceeding.

11 Two important comments. The majority of
12 these recommendations would bring Michigan more in
13 line with the ABA Model Rules on disqualification and
14 none would move Michigan away from the Model Rules.

15 Second, a number of the recommendations were
16 adopted unanimously, but there were several on which
17 the board was closely divided.

18 So here is the important point for you, the
19 Representative Assembly. What's left on the table,
20 really the most difficult questions. The most
21 consequential question still unaddressed by the
22 State Bar on recusal is the Caperton issue, under what
23 circumstances do campaign contributions trigger a
24 recusal requirement. I cannot overstate how big and
25 complicated and consequential a question that is, and

1 I urge each of you who have not already done so to
2 read the Caperton decision carefully to appreciate the
3 complexities involved. The Caperton decision was a
4 five/four decision, and the lines of disagreement on
5 that court look similar to the lines of disagreement
6 on our court.

7 The Representative Assembly has already
8 staked the State Bar to a position in support of
9 public funding of judicial elections. Caperton, it
10 seems to me, points right at the heart of the
11 considerations that lead the Assembly to endorse
12 public funding, so that is a big assignment for you as
13 Assembly members, but there is hardly an issue more
14 important.

15 I look forward to working with the
16 Representative Assembly on this issue should your
17 leadership choose to address it, and of course on
18 other issues of consequence to the profession in the
19 months and years ahead. Thank you.

20 (Applause.)

21 CHAIRPERSON KAKISH: Any questions? Okay.

22 MR. LARKY: I have a question.

23 CHAIRPERSON KAKISH: Yes.

24 MR. LARKY: Sheldon Larky, 6th circuit.

25 Mrs. Welsh, I notice that ICLE has put on its website

1 that it no longer is going to be working on cases with
2 the State Bar. Can you describe Casemaker for us,
3 please.

4 MS. WELSH: First of all, let me clarify that
5 we continue to have a strong partnership with ICLE,
6 and, in fact, I want to give credit to ICLE and the
7 partnership we had with them in developing Michigan
8 Law Online for setting the stage for us to be able to
9 negotiate the agreement that we have with Casemaker.

10 Casemaker really expands the legal, the free
11 legal research that's available to State Bar of
12 Michigan members to include all states and federal
13 cases. In addition to that, it has a case citator.
14 It is not Lexis-Nexis, West Law, but it is a very,
15 very fine product, and I can tell you that one of the
16 reasons that we were very excited about being able to
17 negotiate an agreement with Casemaker that, frankly,
18 we could afford on your behalf was that in the 27
19 other states that are part of the Casemaker
20 consortium, Casemaker is the number one cited,
21 enthusiastically and without exception is the number
22 one member benefit. It really does save members a
23 great deal of money in terms of legal research.

24 So I hope that's sufficient. If you want
25 more detail and you want to hear from Casemaker

1 itself, they do have a booth in the exhibitors hall.

2 MR. LARKY: Just a follow-up question. Will
3 Casemaker include Shepard's citations and parallel
4 citations?

5 MS. WELSH: They have a case citator. What I
6 have heard is that it is not as extensive as Shepard,
7 but it is -- the people who use it like it, and I have
8 not done my own legal research extensively for a long
9 time, so I can't say that I have tested this out, but
10 I have talked to a lot of my counterparts, ED's of
11 other state bars, and they really say that their
12 members are really enthusiastic and happy with it.

13 CHAIRPERSON KAKISH: All right. Next is
14 calendar item number 12, an update regarding the
15 indigent criminal defense crisis in Michigan. At the
16 April meeting State Bar's director of government
17 relationships, Elizabeth Lyon, gave us an update on
18 the developments that are happening at the Michigan
19 legislature and throughout the nation. Since then it
20 seems that more developments have occurred, and they
21 are developing even more rapidly, and one example is
22 that in August you received an e-mail blast inviting
23 you to attend an educational forum that the State Bar
24 of Michigan cosponsored at three different locations
25 across Michigan, and the topic of that forum was

1 Improving Public Defense, the Future of Michigan's
2 Defense Attorneys.

3 I want to say that the Bar is very fortunate
4 to have Elizabeth. She is really gifted in dealing
5 with the legislature and handling all these bills.
6 Thank you.

7 MS. LYON: Thank you, Kathy, and good
8 afternoon. It's a pleasure to be with you all again
9 today to talk about, again, the state of public
10 defense delivery in Michigan and how we are going
11 about reforming that system.

12 It's always a pleasure to come before you and
13 be able to say we have made progress since we have
14 last talked in April. Certainly we know that our
15 state legislature is a little preoccupied with
16 something called the budget these days, but we are
17 still able to make some steps forward in how we go
18 about introducing legislation for public defense
19 reform in Michigan.

20 First I want to start with a quick update on
21 the national level. I also reported to you in March
22 that we were starting to see a greater level of
23 interest from the federal government in providing
24 assistance to states and how they need this very
25 important constitutional need. We let you know that

1 Michigan was the subject of a congressional hearing
2 back in March. There has now been a second
3 congressional hearing that was held in June. The
4 title of that hearing was Indigent Representation, A
5 Glowing National Crisis. The members of that panel
6 spoke a little bit outside of the scope of Michigan.
7 They had representatives from Minnesota, Florida,
8 Virginia, North Carolina, and Arkansas.

9 That group continues to meet to put forward
10 recommendations on how it might assist the state, and
11 now we are further sort of encouraged by remarks that
12 our U.S. Attorney General Eric Holder has made to the
13 American Bar Association, the National Association of
14 Criminal Defense Lawyers and other groups
15 demonstrating his very strong support for doing
16 something in his capacities to provide assistance.

17 In April we also talked about an announcement
18 that was made from our House Judiciary Chair in the
19 state. Representative Mark Meadows had appointed two
20 of his judiciary committee members to spearhead an
21 effort of a subcommittee on indigent defense. So
22 Representative Bob Constan and Representative Justin
23 Amash. They had their first hearing in June, in the
24 middle of June, and that hearing focused on two draft
25 bills. One bill was to provide for a statewide reform

1 effort of a public defense system. The second bill
2 was to provide funding through an indigent defense
3 fund that would be created.

4 Those two bills received comments in that
5 hearing process from the State Bar of Michigan, the
6 Campaign for Justice, State Appellate Defenders
7 Office, Detroit Legal Aid and Defenders Association,
8 and the NAACP. Comments have been continued to be
9 worked on those draft bills. Those bills have not
10 been formally introduced, so you cannot go online to
11 the Michigan legislature website and find them, but I
12 am pleased to report we are working very closely with
13 both Representative Constan and Representative Amash
14 to get the bills introduced very soon.

15 Representative Constan had intended to have
16 those bills introduced before today, before the
17 State Bar's annual meeting, so they would be available
18 on the web for all of you, and so far we have not been
19 able to have that happen, but please expect to see
20 them very soon. When we do have them, you will
21 receive another e-mail blast.

22 Kathy and I have already talked about it, to
23 make sure you guys all have that in your hands. You
24 should know that as the State Bar looks at the bill
25 and looks at amendments, we are looking at it from the

1 perspective of how do we provide a model to the
2 legislature that incorporates the 11 principles that
3 this Representative Assembly adopted back in 2002.

4 So I hope you agree with me that that is a
5 really positive step forward and we are working on
6 that.

7 This afternoon, and I apologize that it
8 overlaps with the conclusion of your meeting, but from
9 3 to 5 we are having a panel discussion on the bills,
10 and we are hopeful that Representative Constan will be
11 here. Depending on whether or not he has some votes
12 to do in session today in Lansing, he will be with us
13 this afternoon, and, unfortunately, while
14 Representative Amash was invited, he was not able to
15 attend.

16 I want to spend a few moments talking about
17 what's in the bills, because, as you know, we all
18 agree on those 11 principles, but, as they say, the
19 devil is in the details. And I think that with the
20 change comes some feelings of uncertainty. We know
21 that we are united in wanting to do this well in
22 Michigan, but certainly it is a moment of change, and
23 with change comes some uncertainty, so folks want to
24 know how are we going to make it better and how are we
25 going to fund it.

1 I want to go through a few of the things,
2 since it's just in draft form, to let you know what's
3 being discussed. Certainly it's a system, it's a
4 model that reflects and meets minimum national
5 standards, so to this end we have looked to other
6 state systems that are working effectively. We have
7 worked with national consultants. I hope you will all
8 remember David Carroll who was before you all a year
9 ago. He has been intimately involved still. We also
10 have other folks working with us and also a system
11 that has adequate state funding.

12 So how are we going to meet and enforce these
13 essential components? There will be a system of
14 delivering constitutionally adequate public defense
15 services constantly throughout the state for all
16 individuals eligible for court-appointed counsel at
17 trial and appellate level, as well as in delinquency
18 proceedings. They were including juveniles in. And
19 there will be, it's contemplated that there will be a
20 commission to oversee an office of public defense, and
21 that commission will be appointed by governor.

22 It is envisioned that there would be an
23 office of public defense staffed by trained
24 professionals and headed by a chief public defender.
25 There will also be an appellate bureau headed by a

1 chief appellate defender to oversee appellate defense
2 functions. It's also being suggested and discussed
3 that there will be regional offices to oversee the
4 local delivery of public defense services.

5 So, as you recall, one of the principles is
6 that the judiciary not be appointing defense attorneys
7 in their courtrooms, so we need to obviously have
8 another model for which attorneys are appointed, which
9 is where we look at doing a regional delivery system,
10 that that regional delivery system really incorporates
11 a hybrid model of providing these services day-to-day
12 in the courts. There will be perhaps, if the
13 commission decides, public defender offices that would
14 be State employees or nonprofits, so this is based on
15 information we have that it is economical in very
16 large urban areas for there to be public defender
17 offices.

18 Also contract defense offices that would
19 include private defense attorneys and perhaps county
20 offices and also assigned counsel required to be part
21 of each region's delivery system.

22 So we will be making sure that there is
23 compliance to the 11 principles that will be required
24 by statute. This office of public defense would
25 establish procedures to implement the commission plan

1 and policies, including oversight mechanisms,
2 provision of training and resources to attorneys
3 providing public defense services, collecting data
4 other than reporting the commission and the
5 legislature. The office of public defense and its
6 appellate bureau would appoint the counsel based on
7 the plan established by the commission.

8 The statute also would establish standards
9 for eligibility determinations and contribution fees
10 that would be paid by the defendant.

11 The public defense fund that's being
12 contemplated would be funded by the legislature.
13 Funding sources, this is obviously really still a big
14 point of debate, because it's difficult to come up
15 with funding sources, but would include the
16 contribution fees I just mentioned and other sources,
17 including general fund monies.

18 You know, I want to say that I think we are
19 in a place where the details are starting to emerge,
20 and this is where a lot of the debate is going to
21 start happening, but it's just the beginning of this
22 process. You still have a long opportunity to provide
23 comment and feedback on what it is that this looks
24 like. Obviously we don't even have bills introduced
25 yet, but we will soon, so we have a long time to go, I

1 think, before we actually are asking the governor to
2 sign the bills into law, but certainly I look forward
3 to your feedback and answering your questions and to
4 regularly speak with you about how this reform is
5 moving forward.

6 If you have questions now, I would be happy
7 to take them.

8 CHAIRPERSON KAKISH: Any questions? Okay.

9 Next is calendar item 13, the State Bar is
10 represented at the American Bar Association House of
11 Delegates with a number of delegates, and one of those
12 delegates is actually one of our own, a member of the
13 Assembly from the 6th circuit, and that's Vanessa
14 Williams. She has been given some time on today's
15 calendar so you can meet her and know who to go to for
16 any questions or comments related to the ABA House of
17 Delegates and its work for the next couple of years,
18 and Vanessa will give us a brief overview of the most
19 recent meeting that occurred, I believe, over the
20 summer.

21 MS. WILLIAMS: Good morning, just to provide
22 a brief report of actions that were taken at the
23 August annual meeting of the ABA, there were a number
24 of different proposals that were up and a number that
25 were passed, so I tried to look to see what would be

1 most important to us. And I know in April we had
2 quite a lengthy debate about public defense, and so I
3 will address one proposal regarding public defense,
4 and then there were two others that I thought were
5 related but on the civil side, and one was 102(A), and
6 that was a proposal that was adopted, and what it does
7 is to urge the private sector to waive positional
8 conflicts, especially in the cases of bankruptcy, and
9 it would allow more persons in large law firms or
10 corporate attorneys to take pro bono work, especially
11 in the current economic environment where there is
12 just a positional conflict and not a true ethical
13 conflict where there could be some pro bono services
14 provided.

15 102 was also adopted, and, again, it's
16 related to pro bono services, and it was just to urge
17 state and local governments to provide funding for
18 pro bono services and to seek opportunities to fund
19 those different things.

20 The larger one was 119, and that's related to
21 public defense. The concern with that bill was that
22 there was an excessive workload of public defenders
23 that was interfering with ethical responsibilities to
24 provide quality services, and so there were eight
25 guidelines that were passed that would be urged to

1 different public defenders offices in states to govern
2 excessive work loads.

3 The first guideline would be to avoid
4 excessive work loads and the adverse impact that it
5 would have on providing quality work. That guideline
6 basically outlined what different things would be the
7 benchmark for when the work was of quality work, and
8 it talked about sufficient time to interview clients,
9 being able to provide pre-trial services for clients
10 who have been released or those detained. Also
11 whether attorneys are able to continuously represent
12 indigent clients, and what that means is rather than
13 people having a different attorney at every different
14 phase, you would have the same attorney from pre-trial
15 throughout the trial period. Whether there is a
16 formal discovery period with the prosecution,
17 sufficient legal research, and a number of other
18 things.

19 The second guideline was that the public
20 defense office should have sufficient supervision to
21 monitor those work loads and to assure that the
22 attorneys in those offices are able to meet the things
23 that are set forth in guideline number one as being
24 proper and sufficient services.

25 Number three was to provide training within

1 public defense offices to teach attorneys that ethical
2 responsibilities go beyond what we traditionally think
3 of conflicts of interest, but ethical responsibility
4 also means zealously representing your client and
5 being able to recognize when your work loads are
6 excessive and going to your supervisor and saying I
7 have an excessive workload, I need to get rid of some
8 of my cases.

9 Number four was to have adequate management
10 in those offices where management can sit back and
11 say, that attorney hasn't come to me but I recognize
12 that the attorneys in my office have an excessive
13 workload, and we need to do something about either
14 reassigning cases, not taking on additional cases, and
15 that led into guideline five, which was to take prompt
16 action to avoid excessive workload by trying to secure
17 additional resources, curtailing new cases,
18 reassigning cases, seeking services from private law
19 firms, because not every office is going to be able to
20 take on every case.

21 And then also one that I thought was
22 important was to in cases where the civil, the civil
23 remedies would be adequate, working with the
24 prosecutor to, encouraging that the prosecutor not
25 seek criminal charges in those cases, because that

1 would also reduce excessive work loads.

2 Number six was to ask the court not to assign
3 new cases to your office or allow attorneys to
4 withdraw. Six led into guideline seven and eight,
5 because seven wants the offices to resist court
6 interference, and the comments on that particular
7 guideline was that the proposers thought once
8 attorneys started going to court and saying we have an
9 excessive workload, we need to reassign cases or we
10 need to withdraw, some judges may decide to try to
11 offer too much input in terms of how the offices
12 should be run and where that input would start to
13 create a conflict in terms of professional and ethical
14 responsibilities. Public defense offices should
15 resist taking on those recommendations of the judges.

16 And number eight, the final guideline, was
17 just to require offices to appeal those decisions
18 where courts decide we are not going to reassign
19 cases, we are not going to allow you to withdraw, but
20 you understand that your office has an excessive
21 workload, your attorneys are overworked and unable to
22 provide sufficient representation, that you will
23 appeal those cases and let the court system know as
24 well as the public that we have to make sure that the
25 public defense offices are able to provide adequate

1 representation and that it's important to the clients
2 they serve and also to our profession.

3 Like I said, there were a number of different
4 other proposals. I thought those three were probably
5 most important to our body. You will see in the
6 agenda my name and address. If you are ever
7 interested in what's going on with the House of
8 Delegates or if you are interested in receiving, I
9 guess, about a month to a month and a half prior to
10 the annual or mid year meeting, which would be August
11 for the annual, February for mid year, we receive
12 actually a summary of all proposals, and I would be
13 very willing to share that with anyone if you wanted
14 to give me a call or shoot me an e-mail and ask for
15 that, and then there is always on the House of
16 Delegates website a summary of the proceedings and a
17 recap or even the full text of all of the proposals
18 that were adopted and those that were not. So thank
19 you again for allowing me to share today.

20 (Applause.)

21 CHAIRPERSON KAKISH: Next is calendar item
22 number 14, consideration of Canon 2, the hiring of
23 court employees. As you may see from the material
24 attached in the agenda under, the agenda booklet under
25 tab number 14, this is an issue or a proposal that was

1 considered by the Assembly last year at the last
2 September meeting. Now, what happened was that it was
3 moved, seconded, and it was under discussion, and then
4 the Assembly voted to refer it back to the Special
5 Issues Committee to seek input from the State Bar
6 sections and committees, and the Special Issues
7 Committee has actually done that, and under tab 14 are
8 the written responses from a dozen or so committees
9 and sections in response to this proposed court rule.

10 Steve Gobbo from the 30th circuit chairs the
11 Special Issues Committee, and he is going to address
12 to you what the responses were.

13 MR. GOBBO: Thank you, Kathy. Good morning
14 to everyone. I guess I have the distinction of being
15 the hold-up before lunch, not a good position to be
16 in, but I promise to make the remarks relatively
17 short.

18 As Kathy had outlined already, this matter
19 was referred to the Special Issues Committee, which
20 had taken up the matter at two meetings. During the
21 first meeting it was coordinating the referral of the
22 matter out to the various committees and sections of
23 the Bar. We then received the comments, and the
24 committee met again to decide what the committee's
25 position would be on a recommendation to this body.

1 The recommendation was not to move forward
2 with the proposal as written. As you can see from
3 some of the comments, the proposal amends the judicial
4 cannon, and it was felt that this was not an
5 appropriate thing to do. Though the committee wanted
6 to make note that it recognizes, along with some of
7 the other areas that had commented, that it doesn't
8 mean that there aren't issues.

9 I think the Bar at this point, as was
10 discussed earlier dealing with the recusal issue and
11 this conflict of interest policy as proposed, perhaps
12 there may be some way to look at addressing it before,
13 but the committee, Special Issues Committee, did not
14 feel that it would be appropriate for the committee
15 itself to go ahead and try to redraft another proposal
16 to the extent that it might have to be redrafted.

17 So I leave you with that report of the
18 Special Issues Committee, and I don't know if Kathy is
19 going to want to do something else with it at this
20 point.

21 CHAIRPERSON KAKISH: Thanks, Steve. The
22 initial motion now is the one that is on the screen
23 and the one printed on your booklets, and that's the
24 motion that was before you back in September, and, as
25 Steve indicated, the overwhelming responses from the

1 various committees did not like this proposal. And
2 that's what we will open the floor up for discussion
3 at this point.

4 JUDGE CHMURA: The question is whether or not
5 that, whether or not the Assembly should adopt that
6 resolution, in other words, whether or not the
7 Assembly should endorse the change of that canon, yes
8 or no, with the report from the committee being that
9 it shouldn't be rejected, but the question is still
10 the same, because that's what was referred to the
11 committee a year ago. Shall the Representative
12 Assembly support and endorse a resolution to amend the
13 Michigan Code of Judicial Conduct to add Section F to
14 Cannon 2 as follows, with the understanding that the
15 committee has recommended the rejection of that, but
16 it's up to the Assembly to decide what to do.

17 CHAIRPERSON KAKISH: So we open the floor for
18 discussion. Any discussion on this? I want to ask if
19 Matt Abel is here. Matt Abel was actually the
20 proponent for this bill. He is not here.

21 JUDGE KENT: Wally Kent, 54th judicial
22 circuit. I have got about four pages of handwritten
23 notes of what I want to say. I will not say it all.
24 I am as hungry as the rest of you. I suggest, as
25 drafted, that we should vote in opposition to this

1 resolution.

2 To some degree it may be a solution without a
3 problem. With due respect to Matt, and I have a lot
4 of respect for Matt, I think that this is the wrong
5 way to approach the situation. There is now a new
6 committee of the State Bar entitled the Judicial
7 Ethics Committee. This is not a substitute motion,
8 but I suggest to you that perhaps it would be best if
9 this were to be referred to that committee for
10 consideration and investigation. What I have a sense
11 is that this is going to turn out to be a little like
12 Potter Stewart's definition of -- I can't define it,
13 but I know it when I see it.

14 I can say that with regard to judicial ethics
15 as well. I can't necessarily give you a bright line
16 in all cases. What we have to do is rely on the
17 courts, I believe, to be sensitive to judicial ethics
18 and the need to be very careful not to cross the line,
19 but it all too often is a case-by-case situation, and
20 so with that said, I ask you to vote in opposition to
21 this. It may come up in the future, in which case we
22 can address it when it's better drafted.

23 CHAIRPERSON KAKISH: Any further discussion?

24 Hearing none, we will now vote on the motion,
25 and the motion is as listed, should the Representative

1 Assembly support and endorse a resolution to amend the
2 Michigan Code of Judicial Conduct to add Section F to
3 Canon 2 as proposed.

4 All those in favor of this motion say aye.

5 All those opposed say no.

6 Those abstaining say yes.

7 All righty, this is an unanimous vote that
8 opposes -- this is an unanimous vote that actually
9 opposes the rule.

10 The last item on the agenda before lunch is
11 calendar item number 15, an update on consideration of
12 the revised Uniform Arbitration Act. One of the
13 proposals before the Assembly at the April meeting was
14 related to the revised Uniform Arbitration Act. This
15 Assembly voted to refer it to Special Issues and for
16 further review. Steve Gobbo, again chair of the
17 committee, provides an update on that.

18 MR. GOBBO: I again stand before you as the
19 block to lunch. This matter, as Kathy pointed out,
20 was referred to the Special Issues Committee, and the
21 Special Issues Committee voted to recommend deferral
22 of the proposal until the spring meeting, and the
23 reason for that is that this proposal had been put
24 forth by the Alternative Dispute Resolution Section in
25 response to the work of NCCUSL to come up with

1 standard model language regarding the arbitration
2 provisions that many see, many don't like, depending
3 on what side of the fence you are on, and many like,
4 because it's part of the business of practicing law in
5 terms of trying to keep things out of the court
6 system.

7 What you have with the administrative -- I am
8 sorry, the Alternative Dispute Resolution Section,
9 they appointed a subcommittee that is in the works
10 right now of, I guess they are preparing a white paper
11 to present to the Special Issues Committee sometime in
12 September for distribution to all sections and
13 committees so that the issue can be more broadly
14 debated in terms of why they feel this proposal should
15 go forward.

16 Now, they did have the option of withdrawing
17 the proposal at one point. They did have the option
18 of moving forward on their own as a section to
19 advocate the adoption of this proposal and then go
20 down into the legislature and argue it from the
21 position of the section which may be contrary to the
22 position adopted by this body or the Bar itself.

23 They chose not to do that. They chose to
24 work with the Assembly in terms of providing more
25 information and then to have informed debate on this

1 matter at the next Assembly meeting.

2 So that's really the plan in terms of this,
3 and that's why I and the committee would encourage
4 this body to basically defer this matter until the
5 next meeting so that an informed decision can be made
6 and the debate, I am sure there will be debate, can
7 take place, but with more information. Thank you.

8 CHAIRPERSON KAKISH: Now, the next item on
9 the agenda is lunch and the swearing in of the new Bar
10 president and recognizing our Assembly award
11 recipients. The inaugural luncheon will be held at
12 the Grand Ballroom. That's downstairs. The luncheon
13 begins at noon and it ends at 2:00 in the afternoon.
14 Please keep in mind that our meeting here begins at
15 2:00 in the afternoon, and we will try to begin it
16 promptly. Actually it's my hope that everybody could
17 show up a couple of minutes early so that we do start
18 the afternoon session at 2:00 in the afternoon. Thank
19 you.

20 (Lunch break taken from 11:41 a.m.-1:59 p.m.)

21 CHAIRPERSON KAKISH: The Assembly is now back
22 into session. Next is calendar item number 17,
23 consideration of proposed amendment to MCR 6.302,
24 pleas of guilty and nolo contendere. This is a
25 proposed Court Rule change that the Supreme Court has

1 published for comment. A copy of this proposal has
2 been printed in the agenda booklet as Exhibit
3 Number 1. That's the copy of the proposal as
4 submitted by the Supreme Court.

5 Now, one comment from the public is attached
6 in your booklet as Exhibit Number 2. Since the time
7 the booklet was printed, however, many more comments
8 from the public were published on the Supreme Court
9 website, and copies of those are at your tables as
10 exhibits. Actually if you look for the blue packet on
11 your table, and the last page of that blue packet
12 should be a green sheet of paper, those are the public
13 comments that were made in response to the
14 Supreme Court proposal, and these would be considered
15 as Exhibits Number 3 through 11 to our tab number 17.

16 Now, this proposal coming from the
17 Supreme Court is very timely for the Assembly's
18 meeting because the comment period expires on
19 October 1st, so the Assembly will be responding, and
20 hopefully you will be seeing our response on the web
21 page before October 1st.

22 The proponent who is bringing this before the
23 Assembly for the Assembly's consideration is Richard
24 Cunningham. He had served as an Assembly member for
25 many, many years, and he is currently serving on the

1 State Bar as a commissioner, so I recognize Richard
2 Cunningham, if you can come to the podium, please.

3 MR. CUNNINGHAM: You see before you the
4 language of the proposed court rule. I speak as a
5 proponent for a strong voice against that language.
6 Make it clear, I am not a proponent in favor of that
7 language. I am a proponent in favor of opposition.

8 Now, one of the basics tenets of our
9 profession of the criminal justice system is that any
10 plea must be freely, knowingly, and voluntarily made.
11 Certainly we encourage people who are in fact guilty
12 to begin that rehabilitation process by acknowledging
13 their guilt, but we want to make sure that when they
14 do so it is a voluntary plea.

15 The Court Rules now deal with that, deal with
16 the ways to determine, for the courts to determine,
17 for the courts to show that that plea is truly freely,
18 knowingly, and voluntarily made. And one of the
19 current rules says that in order to ensure that its
20 freely, knowingly, and voluntarily made we are going
21 to make the prosecutor and the defendant tell us what
22 agreements were made. The defense attorney and the
23 prosecutor will tell the court at the time of the plea
24 do you have any agreements, what are they, let's put
25 them out there. What this language adds is that any

1 discussions regarding that plea have to be done on the
2 record in open court.

3 I have been practicing criminal law for about
4 30 years as a prosecutor, as a defense attorney, and
5 as an a trial judge in a court with criminal
6 jurisdiction. I can't think of a rule that less
7 appreciates what we really do as criminal justice
8 practitioners. This rule would require all
9 discussions between a prosecutor and a defense
10 attorney to be done in open court. This rule would
11 require at a minimum for a Cobbs evaluation to be done
12 on the record. This rule fails to recognize how we
13 practice on a day-to-day basis.

14 The rule has language that is so broad that
15 we can't really ensure that it doesn't mean that you
16 can't even talk to your client as a defense attorney
17 telling them what the offer could be, the benefits of
18 making that offer, the benefits of taking that offer.
19 We don't know. The rule is too broad.

20 But even looking at the rule very narrow, all
21 discussion regarding a defendant's plea must take
22 place in open court on placed on the record. Can you
23 imagine the outcry if that was required in a civil
24 case. You are going to negotiate on behalf of your
25 client. You are going to negotiate out in the open.

1 Certainly we can all appreciate the need to
2 be open, but we also have to recognize how the world
3 really works, how we reach agreements between
4 prosecutors and defense attorneys and say things we
5 wouldn't want said in open court and deal with things
6 when we know that that's the nature of the negotiation
7 process.

8 So I believe that this language is not only
9 overbroad but it's ill advised. It doesn't recognize
10 what we do, and I urge you to show the opposition.
11 Thank you.

12 CHAIRPERSON KAKISH: Rick, if you may --
13 (Applause.)

14 CHAIRPERSON KAKISH: Rick, if you may, the
15 motion, the issue, or the position as stated -- Nancy,
16 if you could go to the end -- is should
17 MCR 6.302(C)(1), pleas of guilty and nolo contendere,
18 be amended to mandate that all discussions regarding a
19 defendant's plea take place in open court and be
20 placed on the record, as proposed in ADM No. 2009-11.
21 Your motion is?

22 MR. CUNNINGHAM: A resounding no. The answer
23 should be a resounding no.

24 CHAIRPERSON KAKISH: You are opposing this
25 language, very clearly.

1 MR. CUNNINGHAM: I am sorry, I was a little
2 subtle on it. I think this is probably the worst
3 Court Rule that I have seen in years.

4 CHAIRPERSON KAKISH: Thank you. Is there a
5 second for this motion?

6 VOICE: Support.

7 CHAIRPERSON KAKISH: Any discussion?

8 Hearing none, all those in favor --

9 VOICE: Stop.

10 CHAIRPERSON KAKISH: Can you come to the
11 microphone, announce your name and your circuit,
12 please.

13 MR. ROTENBERG: Steven Rotenberg, 6th
14 circuit, and Mr. Cunningham mentioned about the thing
15 of pleas occurring in civil court. I oppose the
16 amendment to the language because of the unfair effect
17 on noncitizens, people who are lawful permanent
18 residents or other people lawfully here who are
19 subject to immigration proceedings, because DHS uses a
20 very low standard for what constitutes a plea, and all
21 you need to do is give a fact pattern that could have
22 resulted in a guilty plea, even if it's, let's say,
23 taken under advisement and later withdrawn.

24 If we were to force these things to be on the
25 record, that could inadvertently cause all sorts of

1 problems for noncitizens who might be subject to
2 removal. I am thinking typically low level domestic
3 violence situations, which are particularly dangerous
4 for noncitizens to plead out to, but there are other
5 ones as well, and that would turn it into a trap for
6 the unwary.

7 Sometimes it's good to be able to tell the
8 prosecutor why there is no way you are going to plead
9 something, that you might have a very good reason for
10 doing that, and I wouldn't want to see that put on the
11 record that could ultimately be used by DHS in a
12 deportation or removal proceeding. So, again, I would
13 amplify voting against doing things like this in open
14 court.

15 CHAIRPERSON KAKISH: Thank you. Any other
16 comments? Okay.

17 The motion now on the floor is to oppose the
18 passing of the question that is up on the screen now.
19 We will now vote on the motion.

20 All those in favor to oppose say aye.

21 All those opposed say no.

22 Any abstention say yes.

23 Okay. The result is that this is an
24 unanimous position in favor to oppose --

25 (Applause.)

1 CHAIRPERSON KAKISH: -- this proposed
2 amendment.

3 Next is calendar item 18, consideration of a
4 proposed amendment on attorney solicitation. Now, at
5 the April meeting the Family Law Council and the
6 Family Law Section gave an informational report, and
7 that was an informational report. There was no
8 proposal submitted to this Assembly to determine at
9 the April meeting. And this informational report was
10 designed to give the reasons for the proposal that is
11 now submitted to you today under tab number 18.

12 At the time the Family Law Council was quite
13 well aware of certain constitutional concerns. Those
14 concerns were discussed at the April meeting. One of
15 the people who addressed the Assembly at the April
16 meeting about these concerns was William Dunn, chair
17 of the Professional Ethics Committee.

18 After the April meeting, that committee, the
19 Professional Ethics Committee, reviewed and analyzed
20 the concerns that Mr. Dunn had already addressed to
21 this Assembly in the April meeting, and that committee
22 provided us with the written analysis of their
23 concerns, and that also is printed in your agenda
24 booklets.

25 Now, meanwhile, over the course of the summer

1 the Family Law Council took into consideration all
2 that was discussed here at the April meeting, and they
3 went to the drawing board. They now submit to you
4 their proposal.

5 The proponent -- and, as you are aware, there
6 is a revised proposal that was submitted to you via
7 e-mail just the day after the booklet was mailed out,
8 day or two. My understanding that the proposal may
9 not be before you at this moment, but the proponent is
10 Elizabeth Sadowski from the 6th circuit, and she will
11 come to address the matter.

12 Elizabeth, if you can come to the podium.

13 MS. SADOWSKI: Ladies and gentlemen of the
14 Representative Assembly, the Family Law Section, I
15 should say your Family Law Section, remains vitally
16 concerned with this issue. We believe there are
17 profound problems with which this Assembly needs to be
18 made aware.

19 We are also very aware of the First Amendment
20 implications that have been raised in this matter. We
21 respectfully would like to proceed with this matter at
22 a later date, and, if it is appropriate, to be able to
23 bring this to the attention of this Representative
24 Assembly with further detail at the April meeting.
25 However, we do wish to thank you for your concern. We

1 do wish you to be sure to keep this in your attention,
2 because it is too important to simply forget about.
3 We would like to be back to you and speak with you at
4 a later time. Thank you.

5 CHAIRPERSON KAKISH: If I may add, when the
6 Drafting Committee reviewed the proposal, the Drafting
7 Committee had recommended to the Family Law Council
8 and the Family Law Section that samples of the type of
9 problems that are arising in this issue would be very
10 helpful for the Assembly to review.

11 You do have one sample attached to that tab.
12 That is just one sample, but the recommendation was
13 for more attorneys perhaps to submit their statements
14 to this Assembly as to what type of problems they are
15 encountering because of attorney solicitation, and
16 it's my understanding that the proponents of the
17 proposal want to have a little bit more time in which
18 to do that.

19 Next is calendar item number 18 -- actually
20 we just did that.

21 Now we are in order, it's 19, and that's the
22 nomination and election of clerk. We have a contested
23 election this year, and the Permanent Rules of
24 Procedure of the Representative Assembly provide how
25 it will be handled.

1 Before we begin opening the floor for
2 nominations, an overall view of what we are going to
3 do today is worth going over. The rules allow each
4 candidate to have two minutes to address the Assembly.
5 Both candidates, and I name them in alphabetical
6 order, Stephen Gobbo and Krista Haroutunian, it's my
7 understanding, and please correct me if I am wrong,
8 but it's my understanding that both candidates have
9 decided to forego speeches, and they are relying on
10 the biographical information that they have submitted
11 for your review and which are found in your booklets.

12 Am I correct, both candidates, just what I
13 said? I guess so.

14 Voting will be by written ballot. The rules
15 provide that the chair must appoint five tellers from
16 the Assembly who will, and I quote, distribute,
17 collect, and count, unquote, the votes. Now, as
18 chair, I have appointed the following five members to
19 serve as tellers. John Blakeslee 13th circuit,
20 Julia Close 42nd circuit, Jeff Nellis 51st circuit,
21 Michael Pope 32nd circuit, and Clerk Victoria Radke
22 47th circuit.

23 So the tellers will distribute the ballots.
24 Each ballot is in an envelope with your name on it.
25 After you cast your vote, please fold the ballot and

1 raise your hand so that the teller assigned to your
2 aisle can come and pick it up. Please do not, do not
3 return the envelope with your name on it. These votes
4 are anonymous.

5 Now, after the tellers collect the votes,
6 they will leave the room and start counting, and so at
7 this moment we will start by opening the nominations.
8 Are we a little bit early on the program?
9 Alphabetically, Stephen Gobbo.

10 MR. ADELE: Good afternoon, Goldie Adele,
11 30th circuit. I am here to move the nomination of
12 Stephen Gobbo to be clerk of the Representative
13 Assembly.

14 Mr. Gobbo has been active in policy-making
15 decisions with organizations right from law school.
16 While he was in law school he was a member of the
17 ABLSD policy-making body. And he joined the
18 Representative Assembly. When he joined in 2004, he
19 was actually appointed, he became chair of the Special
20 Issues Committee. He was also involved in several
21 other committees in the Representative Assembly, and
22 has been very active with the State Bar. He used to
23 be chair of the Prisons and Corrections Section, and
24 there is nobody else that I can see as a perfect
25 candidate for the position of clerk for the

1 Representative Assembly, so I hereby move his
2 nomination to be elected as clerk of this Assembly.
3 Thank you.

4 VOICE: Second.

5 CHAIRPERSON KAKISH: Now Krista Haroutunian.

6 MR. LARKY: Ladies and gentlemen, my name is
7 Sheldon Larky from the 6th circuit. It's my pleasure
8 to nominate Krista as clerk for the Assembly. I have
9 known Krista for so many years as she has been an
10 attorney. Forget being an attorney, she is just a
11 nice, kind person, a person each of us would want as
12 your best friend, but beyond that, beyond that, Krista
13 has been active in our association. She follows in
14 her father's footsteps. Her mother is a member of the
15 third circuit on the Representative Assembly and comes
16 from a family who has been involved with the State Bar
17 in a long period of time.

18 Ever since she has been an attorney in
19 1988 -- '98, she is not that old -- 1998, Krista has
20 always been involved either in local State Bar
21 activities or in the Armenian Bar Association. You
22 have her resume as part of the docket here today, and
23 I would urge you to vote for her. Thank you.

24 MS. VANHOUTEN: Margaret VanHouten from the
25 3rd circuit. I am pleased to second the nomination of

1 Krista Licata Haroutunian. I have known Krista
2 Haroutunian for at least 15 years. I have known her
3 as a legal professional. I have often bounced cases
4 and legal ideas from her and value her keen legal
5 mind. She has been active in the State Bar
6 Representative Assembly and has chaired the Hearings
7 Committee. I have known her in several leadership
8 roles, have served on many committees in which she has
9 served as chair, and I can attest to her ability to
10 run a meeting and, as she works her way through the
11 leadership roles, would one day make a fine chair of
12 this Assembly as well, and I have also known her as a
13 good friend for many years, and I would like to second
14 her nomination.

15 CHAIRPERSON KAKISH: Thank you.

16 Seconding for Steve Gobbo.

17 MR. ARD: Thank you. I am Josh Ard from the
18 30th circuit. I have worked with Steve where I have
19 seen his abilities both as a leader and as a follower.
20 I was chair of the Unauthorized Practice of Law
21 Committee. He served on that with distinction. I
22 served with him on the Administrative Law Council
23 where he was the chair and I was an officer, and I
24 have been greatly impressed with his work, his
25 diligence, his dedication. He would be a very worthy

1 person for us to consider.

2 I had a really nice humorous statement to
3 make, and I don't really want to try to compete with
4 Jay Leno, since this is his first week on the job, and
5 in the interest of time I would just encourage you to
6 vote for Steve. Thank you.

7 CHAIRPERSON KAKISH: Are there any other
8 nominations?

9 Well, hearing none, I will entertain a motion
10 to close the nominations.

11 VOICE: So moved.

12 CHAIRPERSON KAKISH: Any second?

13 VOICE: Second.

14 CHAIRPERSON KAKISH: Support. Any
15 discussion?

16 Hearing none, all those in favor to close the
17 nomination say aye.

18 All those opposed say no.

19 Those abstaining say yes.

20 And, therefore, the motion to close the
21 nominations is now carried.

22 Now, if the tellers would please start
23 distributing the ballots. Remember the ballots will
24 have an envelope and your name. After you vote,
25 please do not return the envelope.

1 (Ballots handed out and then collected.)

2 CHAIRPERSON KAKISH: Are there any remaining
3 ballots that have not been collected? What's going to
4 happen now is that the tellers will actually go
5 outside and start counting the ballots. Had not the
6 previous proposal not been submitted, had it actually
7 been submitted to the Representative Assembly for
8 consideration, what would have happened was that we
9 would have continued with our program with the
10 swearing in of Elizabeth Johnson as the next chair.

11 The swearing in is scheduled to occur at
12 3:00, and Justice Kelly would be officiating the oath.
13 We do have half an hour before that time, and
14 Justice Kelly, we have not asked her to come in a
15 little bit earlier, so we do expect Justice Kelly to
16 show up at around five minutes to 3, so I would like
17 to entertain a motion to recess until 2:55.

18 VOICE: So moved.

19 CHAIRPERSON KAKISH: Seconded?

20 VOICE: Support.

21 CHAIRPERSON KAKISH: So we have a motion to
22 recess until 2:55. It has been supported. Any
23 discussion?

24 VOICE: Can Bob just get up and do jokes for
25 25 minutes?

1 CHAIRPERSON KAKISH: I don't know if that was
2 a friendly amendment, but for those who did not hear,
3 the recommendation was for Bob Buchanan to come up and
4 say jokes in the interim.

5 However, I think the motion now is to recess
6 until 2:55. Any further discussion?

7 Hearing none, all those in favor say aye.

8 Any opposed say no.

9 Any abstentions say yes.

10 Okay. The ayes have it, even though there
11 were a couple people who did say no, but the ayes have
12 it, and we will recess until 2:55.

13 I do recommend that you use this time to
14 visit the exhibits.

15 MR. EVANS: Can we move to reconsider? We
16 have the certificates and stuff to hand out. It would
17 keep the flow going. I'd move to reconsider.

18 CHAIRPERSON KAKISH: Can you please announce
19 your name.

20 MR. EVANS: I am sorry, Tom Evans,
21 5th circuit.

22 CHAIRPERSON KAKISH: During the vote here,
23 did you vote for it or against it?

24 MR. EVANS: Against.

25 CHAIRPERSON KAKISH: Okay. Is there a second

1 for the motion to reconsider?

2 VOICE: Second.

3 CHAIRPERSON KAKISH: Any discussion?

4 Hearing none, those in favor for us to
5 continue the program -- is that what the motion is?

6 MR. EVANS: Yes. In fact, by way of
7 discussion, if I can, to hand out the awards that were
8 going to be given out after the swearing in.

9 CHAIRPERSON KAKISH: So that's the motion.

10 All those in favor say aye.

11 All those opposed say no.

12 Any abstentions.

13 Hearing none, the motion carries, and we will
14 continue with the agenda.

15 Now with the distribution of the awards. If
16 everybody can return to their seats.

17 (Applause.)

18 CHAIRPERSON KAKISH: Justice Kelly, thank you
19 for showing up a little bit earlier. We actually
20 finished the agenda a little bit earlier, and we were
21 debating what to do next before you came, and of
22 course now, calendar item number 19, nomination --

23 VOICE: 20.

24 CHAIRPERSON KAKISH: Let me backtrack a
25 little bit. The tellers are outside counting the

1 votes. What will happen is once they finish counting
2 the votes, at some point after Liz Johnson is sworn in
3 as chair, she will announce the winner with respect to
4 the clerk's nominations.

5 And now, at the April meeting Michigan
6 Supreme Court Chief Justice Marilyn Kelly addressed
7 the Assembly on the state of the judiciary.
8 Immediately after her address Vice Chair Elizabeth
9 Johnson asked her if she would kindly administer
10 Elizabeth's oath of office at this meeting, and
11 Chief Justice Kelly's response was immediate, and you
12 know the answer, it was yes.

13 The Assembly here is very, very proud to
14 claim Chief Justice Kelly as one of its own. She has
15 served as a member of this body, and in 2003 the
16 Assembly presented her with the Michael Franck Award
17 for her outstanding contribution to the legal
18 profession. And over the years Chief Justice Kelly
19 returned several times to the Assembly on a number of
20 matters that were before it and, of course, the most
21 recent being the April meeting. Chief justice Kelly,
22 welcome back.

23 (Applause.)

24 CHIEF JUSTICE KELLY: Now, I have no
25 allusions about why you are clapping, because it means

1 you get out a little quicker.

2 It is nice to be here. It's a pleasure for
3 me to have this opportunity to swear in your new
4 chair, so with that. Are we in a good position here?
5 Are we ready? Okay.

6 I Elizabeth Johnson --

7 VICE CHAIR JOHNSON: I Elizabeth Johnson --

8 CHIEF JUSTICE KELLY: -- do solemnly swear --

9 VICE CHAIR JOHNSON: -- do solemnly swear --

10 CHIEF JUSTICE KELLY: -- to uphold the
11 Constitution of the United States --

12 VICE CHAIR JOHNSON: -- to uphold the
13 Constitution of the United States --

14 CHIEF JUSTICE KELLY: -- and the Constitution
15 of the State of Michigan --

16 VICE CHAIR JOHNSON: -- and the Constitution
17 of the State of Michigan --

18 CHIEF JUSTICE KELLY: -- and the Rules of the
19 Michigan Supreme Court --

20 VICE CHAIR JOHNSON: -- and the Rules of the
21 Michigan Supreme Court --

22 CHIEF JUSTICE KELLY: -- regarding the
23 Representative Assembly --

24 VICE CHAIR JOHNSON: -- regarding the
25 Representative Assembly --

1 CHIEF JUSTICE KELLY: -- and to faithfully
2 discharge the duties --

3 VICE CHAIR JOHNSON: -- and to faintfully
4 discharge the duties --

5 CHIEF JUSTICE KELLY: -- of Chair of the
6 Representative Assembly --

7 VICE CHAIR JOHNSON: -- of Chair of the
8 Representative Assembly --

9 CHIEF JUSTICE KELLY: -- to the best of my
10 ability.

11 VICE CHAIR JOHNSON: -- to the best of my
12 ability.

13 CHIEF JUSTICE KELLY: Congratulations,
14 Elizabeth.

15 (Applause.)

16 CHAIRPERSON JOHNSON: Thank you all so very
17 much. And thank you, Chief Justice Kelly, for being
18 here today for my swearing in and administering the
19 oath. I am greatly honored and humbled by your
20 presence here, and it is a great honor to you, to us
21 to be here as a former member of the Representative
22 Assembly. Thank you so much, Chief Justice Kelly. I
23 look forward to working with you and the other
24 justices as we work together on policy issues that are
25 of importance to the legal profession and to the

1 citizens of the great state of Michigan. Again, thank
2 you so much, Chief Justice Kelly.

3 (Applause.)

4 CHAIRPERSON JOHNSON: I would like to thank a
5 number of people who have made this day possible. A
6 very special thanks to our great executive director,
7 Janet Welch. Janet, you have been a great help to me
8 as I have worked on the Assembly. I look forward to
9 working with you and your incredible staff.

10 Our State Bar staff is among the best in the
11 country. They all work so very hard, especially for
12 the Representative Assembly, and I would like to
13 single out just a few of those very special people who
14 do so much for the Assembly.

15 Marge Bossenbery, who not only works with the
16 Assembly but the Board of Commissioners, helps us
17 tremendously.

18 Elizabeth Lyon, I call her our legislative
19 guru, who keeps us informed of matters coming before
20 the court and before the legislature.

21 Candace Crowley, who helps us with our
22 liaisons with committees and sections.

23 Nancy Brown, who keeps us organized at every
24 single Representative Assembly meeting.

25 To Kari Thrush, who is a godsend in

1 organizing meetings like this and has done a great job
2 on our annual meeting.

3 To Naseem Stecker and her staff, they have
4 done a tremendous job in promoting our Representative
5 Assembly activities in the media.

6 And a special thank you to Anne Smith. As
7 has been previously stated, I don't know how we could
8 run this Representative Assembly without Anne. Anne,
9 you do so much for us, and I truly thank you.

10 (Applause.)

11 CHAIRPERSON JOHNSON: Thanks to our
12 parliamentarian, Judge John Chmura. You have done a
13 fine job for the Assembly this year.

14 (Applause.)

15 CHAIRPERSON JOHNSON: And I am very pleased
16 to announce to the Assembly today that Judge Chmura
17 has agreed to continue to serve as our
18 parliamentarian, and I look forward to working with
19 him in the coming year. Thank you so much, Judge, for
20 agreeing to do that.

21 (Applause.)

22 CHAIRPERSON JOHNSON: Thanks now to
23 Connie Coon, who is our wonderful court reporter. She
24 has served our Representative Assembly for many years,
25 and I am grateful for her dependable, consistent work

1 in recording and transcribing our meetings to
2 perfection. Thank you very much, Connie.

3 (Applause.)

4 CHAIRPERSON JOHNSON: Thanks to our outgoing
5 State Bar President, Ed Pappas, and to our incoming
6 President, Charles Toy. I have enjoyed working with
7 Ed this past year, and I have learned so much about
8 leadership from Ed's own leadership. Ed, if you are
9 in the room, and you were here before, I thank you so
10 much, and I will strive for those ten steps of
11 leadership that you have so beautifully put in the Bar
12 Journal. Thank you so much for your service, Ed.

13 (Applause.)

14 CHAIRPERSON JOHNSON: And to Charles Toy, our
15 new Bar President of about an hour. Charles, I really
16 look forward to working with you in this coming year.
17 Clearly the Bar is in good hands in your able
18 leadership, and we look forward to a great working
19 relationship with this body and your presidency.
20 Thank you, Charles.

21 Charles and I will be visiting the U.P.
22 shortly, in October, and we will be really looking
23 forward to meeting with all of your Representative
24 Assembly members from the U.P., so when we are in your
25 town, please come join us and have an opportunity to

1 really meet with Charles. We really look forward to
2 that.

3 A special thanks to the Representative
4 Assembly officers and past chairpersons of the
5 Representative Assembly that I have had the great
6 pleasure of working with over the years. Ed
7 Haroutunian, who was the chairperson when I became
8 clerk, and Bob Gardella, who was the chairperson when
9 I was clerk have helped me immensely in this role
10 today as a chairperson, and I would also like to
11 recognize not only Ed and Bob but all the other past
12 chairs of the Representative Assembly who are here in
13 attendance today, many of whom were at the pictorial
14 display recognition, but since many of you were not
15 there, I ask all the past chairs of the Representative
16 Assembly to please stand and be recognized by this
17 body for your hard work over the last so many years.
18 Would you please stand. I know there are many of you
19 here.

20 (Applause.)

21 CHAIRPERSON JOHNSON: I thank you on behalf
22 of this whole Assembly for your hard work. I look
23 forward to working with you and to your wisdom and
24 energy as you have served as chairpersons.

25 Very special thanks to our clerk,

1 Victoria Radke, who is now the Assembly chairperson.
2 Congratulations, Victoria.

3 CLERK RADKE: Vice chair.

4 CHAIRPERSON JOHNSON: Vice chair. Vicki has
5 served the Representative Assembly well as clerk and
6 as well on the Board of Commissioners. She has been
7 involved in so many things in the State Bar, it's hard
8 to list them. She serves her constituents well, and I
9 know she will continue in a leadership role not only
10 this year but next as the chair. I thank you so much
11 for your service and your friendship.

12 CLERK RADKE: You're welcome. Thank you.

13 CHAIRPERSON JOHNSON: Now a very special
14 thank you to Kathy Kakish, our chairperson this past
15 year. Kathy has served with dedication, enthusiasm,
16 and total commitment to the legal profession and to
17 the Representative Assembly. She has served with
18 distinction as the 34th chairperson of the
19 Representative Assembly, the final policy-making body
20 of the State Bar of Michigan.

21 While Kathy served as chairperson, the
22 Assembly discussed and acted upon many important
23 policy matters. Her efforts have helped to foster a
24 continuing dialogue between the Assembly and the
25 Supreme Court, which continues today. Her caring and

1 compassionate manner have made our legal profession
2 and the Representative Assembly a much better place.
3 Thank you, Kathy, your knowledge, generosity of spirit
4 and service will be greatly missed by me and those who
5 have worked with you on the Representative Assembly.

6 While we will be honoring Kathy a little bit
7 later with her plaque at the end of the meeting, I
8 would like to take a special moment to say thank you,
9 Kathy, for all you do.

10 (Applause.)

11 CHAIRPERSON JOHNSON: And now a very special
12 thank you to my dear family and friends who are here
13 with me today and those who could not be with me
14 today. Your encouragement and support mean more to me
15 than you will ever know. I thank you from the bottom
16 of my heart.

17 And, lastly, a very special thanks to all of
18 you, my friends and colleagues of the Representative
19 Assembly. As many of you know, our nation is
20 celebrating the bicentennial of the birth of Abraham
21 Lincoln, who has always been a special president to
22 me, so I thought a quote from President Lincoln would
23 be appropriate on this day. He said, The better part
24 of one's life consists of his friendships. I know
25 that for me the better part of my life includes the

1 friendships here of all of you, my friends and
2 colleagues of the Representative Assembly.

3 I am grateful and humbled that you have
4 chosen me to serve as your chairperson this year. I
5 look forward to working with each and every one of
6 you, and I thank you, my dear friends and colleagues,
7 for this opportunity to serve. Thank you.

8 (Applause.)

9 CHAIRPERSON JOHNSON: At this time I would
10 like to ask the clerk, Victoria Radke, to come forward
11 with an announcement on the election. Ms. Radke.

12 CLERK RADKE: Thank you, Madam Chair. How
13 much time have I got? First of all, I would like to
14 thank all my tellers, Mike Pope, Julia Close,
15 John Blakeslee -- whose name is that I can't read?
16 Who wrote that -- Jeff Nellis, and of course me for
17 helping us tabulate the votes today. And I won't make
18 you wait any longer. I would like to announce to the
19 Representative Assembly that your clerk for the next
20 Bar year will be Stephen Gobbo.

21 (Applause.)

22 CHAIRPERSON JOHNSON: Thank you very much,
23 Victoria, and to your tellers, and congratulations to
24 Steve Gobbo. Our thanks also to Krista Haroutunian,
25 who has served very well with this Assembly, and we

1 thank you very much for your interest and
2 participation.

3 (Applause.)

4 CHAIRPERSON JOHNSON: And before we go to the
5 member recognition, as most of you know, today is
6 Constitution Day. Today many attorneys and judges are
7 working with students across the state to teach them
8 about the Constitution and the rule of law. I wish to
9 give special recognition and thanks to the attorneys
10 and judges that work so hard to educate the public and
11 participate in civic education. It is important that
12 we in the legal profession support these efforts, and
13 I am grateful so many of you have not only given of
14 your time but your resources in supporting legal
15 education and the Constitution. I thank you, and I
16 encourage your continued participation in that effort
17 and in the efforts of the State Bar.

18 And at this time we would like to recognize
19 the outgoing members of the Representative Assembly,
20 and when I call your name if you would please come up
21 so that we can recognize you and honor your service.

22 The first person I am going to name has
23 served for a long time with distinction on this
24 Assembly. He has provided such great insight, and I
25 would like to recognize Sheldon G. Larky. Please come

1 forward.

2 (Applause.)

3 The next person, if you will please come
4 forward, Kristen Gramzow.

5 (Applause.)

6 The next person is a person who has helped so
7 much on our committees and in so many ways. I would
8 like to recognize Michael K. Pope.

9 (Applause.)

10 The next is Linda L. Widener.

11 (Applause.)

12 CLERK GOBBO: Linda wasn't here.

13 CHAIRPERSON JOHNSON: James Paterson.

14 (Applause.)

15 Julia Perkins.

16 (Applause.)

17 Linda A. Pohly.

18 (Applause.)

19 Linda has been a representative for a long
20 time, and we appreciate all of your hard work. Thank
21 you, Linda.

22 This person has served very ably on many
23 committees, and I would like to recognize David B.
24 Kortering.

25 (Applause.)

1 And here is one that needs no introduction,
2 but I am going to anyway. I am going to take a point
3 of personal privilege, because this individual has
4 worked extremely hard over the years for the Assembly
5 and for the State Bar of Michigan in his role as a
6 past chairperson and a member of the Bar leadership
7 forum. I have had the great privilege to work with
8 Carl E. Chioini.

9 (Applause.)

10 This next gentleman has also been a very hard
11 worker, Robert W. Spada.

12 (Applause.)

13 Colleen M. Culitan.

14 (Applause.)

15 And last but certainly not least, Michael D.
16 Elkins.

17 (Applause.)

18 Next we would like to start with the
19 recognition of committee chairs. As you already know,
20 we have six standing committees for the Representative
21 Assembly, and these next six individuals that I am
22 going to name have worked extremely hard this past
23 year on behalf of the Representative Assembly. They
24 put in hours and hours of work on these committees, so
25 please, when I announce your name, if you will please

1 come up and receive your plaque.

2 First is Stephen J. Gobbo for the Special
3 Issues Committee.

4 (Applause.)

5 The next person has work extremely hard for
6 the Representative Assembly over the years, and I am
7 pleased to present this plaque to Krista Licata
8 Haroutunian on the Hearings Committee.

9 (Applause.)

10 This next individual has gone above and
11 beyond on committee meetings. When we needed
12 something done, he said he would do it, and then if we
13 needed something else, he said he would do it. The
14 next person is Robert J. Buchanan of our Drafting
15 Committee. Thank you, Bob.

16 (Applause.)

17 The next person, as you saw earlier in our
18 meeting, has done a tremendous job on his committee
19 work. You saw the quality of our award winners today.
20 This next person and his committee have work extremely
21 hard in getting those types of people that truly
22 represent attorneys in our state of Michigan who are
23 doing great things. The next person is Jeff C. Nellis
24 of our Nominations and Awards Committee. Jeff.

25 (Applause.)

1 Once again, you have already seen this person
2 in action with our calendar. He works very hard in
3 keeping us organized and, quite frankly, he did a
4 tremendous job, he and his committee, on keeping us on
5 calendar with the right amount of time for each
6 matter. The next person is Michael K. Pope for the
7 Rules and Calendar Committee.

8 The next person I have had the great
9 privilege of working with for many years on many
10 different things. He is a great legal professional.
11 He is always looking out for the rule of law, what is
12 right, and it gives me great pleasure to give this
13 plaque today to John W. Reiser of our Assembly Review
14 Committee.

15 (Applause.)

16 Thank you to all these fine attorneys for
17 their dedication to the Representative Assembly. Our
18 Assembly could not function without the work that they
19 do. They and their committees are truly to be thanked
20 for the way they put the Assembly above all other
21 things. So thank you very much to all those
22 individuals.

23 Next I would like to have Kathy Kakish come
24 forward. Kathy has served this Bar with great
25 distinction. She has served on the Board of

1 Commissioners, she has served on the Executive
2 Committee of the State Bar, she has served on the
3 Representative Assembly for years. She has been the
4 clerk, the vice chairperson, and this year the
5 chairperson.

6 In everything Kathy does she is dedicated,
7 hard working, and above all she is thinking of you and
8 the attorneys of this great state of Michigan. I
9 would like to take this moment to read the plaque and
10 then to thank Kathy for her hard work.

11 It says, The State Bar of Michigan honors
12 Katherine Kakish, Representative Assembly Chairperson
13 from 2008 to 2009, Vice Chairperson from 2007 to 2008,
14 Clerk from 2006 to 2007. In appreciation for
15 distinguished service to the Assembly, the State Bar
16 of Michigan and all Michigan lawyers, September 17th,
17 2009. Please join me in recognizing and thanking
18 Kathy Kakish.

19 (Applause.)

20 PAST CHAIRPERSON KAKISH: Thank you so very
21 much. I will be very brief. I love the Assembly.
22 That's why I ran. My passion is for the Assembly.
23 When I was at the, where were we, Mackinaw Island, I
24 had to give a presentation about the State Bar, and
25 that was last year, and it has continued with this

1 year.

2 It's about the wow factor of this
3 Representative Assembly. I have learned so much from
4 you, from your dedication, your passion to the
5 profession, everything that you bring to the floor,
6 standing at the microphones debating issues.
7 Yesterday we didn't have many issues that deserved
8 that extensive debate, but I know how it gets, and I
9 love every minute of it, because I know everybody is
10 here to serve the profession we love most.

11 I know you are going to have exciting issues
12 next year, and I look forward to following the news,
13 your news of what you do, and hopefully -- I am term
14 limited now, but hopefully year after that I will join
15 my colleagues in the 3rd circuit as a member of the
16 Representative Assembly.

17 I thank you for everything. It has been a
18 privilege serving you this last year. Thank you.

19 (Applause.)

20 CHAIRPERSON JOHNSON: Thank you, Kathy, and
21 obviously it would be an honor to have you back
22 serving in the 3rd circuit. We look forward to that.

23 Before we end, I have a few announcements.
24 First of all I would like to remind all of you of the
25 session that's going on that Elizabeth Lyon discussed

1 earlier this morning concerning legal defense. It
2 will be held in the Grand Ballroom, which is
3 downstairs, and all of you are certainly welcome to
4 attend. If you have any questions about where it is
5 or issues concerning that, please see me or Elizabeth
6 Lyon.

7 I am very pleased to announce this year that
8 we will have a voting member on every single State Bar
9 of Michigan committee, a Representative Assembly who
10 will be actually a voting member. This is in addition
11 to our liaisons and our section liaisons and
12 committees. I thank every one of you who answered the
13 call with a yes when I asked you to serve.

14 For those of you who have not filled out your
15 form with your section or committee preferences,
16 please do so, and if you will give that to Anne at the
17 end of this meeting, we will make every effort to
18 honor your request.

19 For those of you who aren't aware, there is a
20 reception this evening at the TPC. If you haven't
21 gotten your tickets yet, you may get those at the
22 registration desk.

23 Please remember to turn in your signed
24 attendance sheets to Anne Smith or one of the other
25 staff members at the end of the meeting, and there

1 will be people at the rear of the room.

2 Please remember, as they said before, our
3 April meeting is a March meeting, and that will be
4 March 27, 2010, in Lansing at the Lansing Community
5 College building. Is there any further business to
6 come before this body?

7 Yes, I am reminded by the clerk -- thank you
8 clerk -- former clerk, please return any expense
9 sheets you have. Jim Horsch, our wonderful money guy,
10 has indicated we need those in by October 1st. So
11 please do that. Help Jim and help our treasurer make
12 sure that that happens.

13 Once again, any further business to come
14 before this body? Hearing none, I will entertain a
15 motion to adjourn.

16 VOICE: So moved.

17 CHAIRPERSON JOHNSON: Is there support?

18 VOICE: Support.

19 CHAIRPERSON JOHNSON: All those in favor
20 please signify by saying aye.

21 Opposed.

22 Abstentions.

23 The motion carries. We are adjourned. Thank
24 you very much.

25 (Proceedings concluded at 3:00 p.m.)

1 STATE OF MICHIGAN)
)
2 COUNTY OF CLINTON)

3 I certify that this transcript, consisting
4 of 135 pages, is a complete, true, and correct transcript
5 of the proceedings and testimony taken in this case on
6 Thursday, September 17, 2009.

7
8 October 7, 2009

Connie S. Coon, CSR-2709
831 North Washington Avenue
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