

STATE OF MI CHI GAN
STATE BAR OF MI CHI GAN

MEETING of the REPRESENTATIVE
ASSEMBLY of the STATE BAR OF
MI CHI GAN

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Proceedings had by the Representative Assembly of the State Bar of Michigan at Hyatt Regency Dearborn, Great Lakes Conference Center, Section A, 600 Town Center Drive, Dearborn, Michigan, on Thursday, September 18, 2009, at the hour of 9:00 a.m.

AT HEADTABLE:

ROBERT C. GARDELLA, Chairperson
KATHERINE A. KAKISH, Vice-Chairperson
ELIZABETH M. JOHNSON, Clerk
JANET WELCH, Executive Director
HON. CYNTHIA D. STEPHENS, Parliamentarian
ANNE SMITH, Staff Member

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REPRESENTATIVE ASSEMBLY

9-18-08

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1 Dearborn, Michigan
2 Thursday, September 18, 2008
3 9:10 a.m.

4 R E C O R D

5 CHAIRPERSON GARDELLA: If everyone could be
6 seated.

7 Ladies and gentlemen, my name is Bob
8 Gardella. I am the Chair of the State Bar of Michigan
9 Representative Assembly, the final policy-making body
10 of the State Bar of Michigan, and I hereby call this
11 meeting to order.

12 At this time I would recognize our clerk,
13 Elizabeth Moehle Johnson.

14 CLERK JOHNSON: Thank you, Mr. Chairperson.
15 Mr. Chairperson and members of the Assembly, I am
16 pleased to announce that we have a quorum with over 50
17 members present.

18 CHAIRPERSON GARDELLA: Thank you,
19 Clerk Johnson.

20 At this time I would ask Mr. Wolfson if he
21 could approach the microphone, and, Mr. Wolfson, do
22 you have a motion for us?

23 MR. WOLFSON: Yes, Mr. Chairman, Scott
24 Wolfson from the 3rd circuit. I move that we adopt
25 the proposed calendar that's been circulated this

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1 morning by the Rules and Calendar Committee.

2 CHAIRPERSON GARDELLA: Thank you. Is there
3 support?

4 VOICE: Support.

5 CHAIRPERSON GARDELLA: Any discussion?

6 Mr. Abel, could you state your name and your
7 circuit.

8 MR. ABEL: Good morning. I am Matthew Abel
9 from the 3rd judicial circuit. In regard to the
10 calendar, I believe the agenda requires modification
11 in that item 11, which is the first real item of
12 business, consideration of political and judicial
13 endorsements, is actually new business, where actually
14 item 12 is also new business, but item 15, the
15 electronic recordings, is old business, and that
16 should come before the new business. So I move that
17 item 15 be moved to be 10.1, if you would, or between

18 number 10 and 11.

19 CHAI RPERSON GARDELLA: You are asking that
20 the agenda be amended to accomplish that?

21 MR. ABEL: Correct.

22 CHAI RPERSON GARDELLA: Is there support?

23 VOI CE: Support.

24 CHAI RPERSON GARDELLA: Any discussion?

25 Hearing no discussion, those in favor of the

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1 amendment, which is to move item 15 up in front of
2 item 11, that that be approved, and those in favor
3 please say aye.

4 Those opposed nay.

5 Any abstentions say yes.

6 Hearing none, the motion carries.

7 And now, Mr. Wolfson, if you wish to approach
8 the microphone for the overall approval of the agenda.

9 MR. WOLFSON: If you are soliciting a motion
10 for approval of the agenda as amended.

11 CHAI RPERSON GARDELLA: The agenda as amended,
12 yes.

13 MR. WOLFSON: I would so move for the
14 approval of that.

15 CHAI RPERSON GARDELLA: Support?

16 VOI CE: Support.

17 CHAI RPERSON GARDELLA: Any discussion? Those
18 in favor say aye.

19 Those opposed nay.

20 Any abstentions yes.

21 Hearing none, the motion passes.

22 Next is, I understand that there is a motion
23 from the 2nd circuit.

24 MS. CULLITAN: Colleen Cullitan, 2nd circuit.

25 Mr. Chairman, I move that the Assembly adopt and

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1 approve the summary proceedings from the April 12,
2 2008, meeting as presented in the packet.

3 CHAIRPERSON GARDELLA: Thank you. Is there
4 support?

5 VOICE: Support.

6 CHAIRPERSON GARDELLA: Is there any
7 discussion?

8 Not hearing any discussion, those in favor
9 please say aye.

10 Those opposed nay.

11 Any abstentions yes.

12 The ayes have it, and the motion is approved.

13 At this time we will move on to the regular
14 portion of our agenda. We have something very special
15 today. We are honored to have U.S. Congressman John
16 Conyers, Jr., with us today.

17 As many of you know as lawyers, Congressman
18 Conyers is the Chair of the United States House of
19 Representatives Judiciary Committee. He has a very,
20 very significant position, which is an excellent
21 position for us in Michigan to follow the law closely
22 and watch the developments in Congress knowing that we
23 have one of our local leaders in charge of the
24 Judiciary Committee.

25 Congressman Conyers represents Michigan's

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1 14th congressional district, which includes all of
2 Highland Park and Hamtramck, as well as parts of
3 Detroit and Dearborn. In fact the hotel we are in
4 today is within Congressman Conyers' district.

5 He is a democrat. He has served since 1965
6 in Congress. He first ran in 1964, and the district
7 was numbered as the 1st district until 1993. In
8 January of 2007 he became chairman of the House
9 Judiciary Committee in the 110th Congress.

10 Mr. Conyers is currently the second longest
11 serving member of the House, and the other person who
12 has beat him on the seniority level is another
13 Michigan person, Congressman John Dingell, so Michigan
14 is very fortunate that we have two of the longest
15 serving members of the House and two of the most
16 powerful people in the Congress, as you can see from
17 their chairmanships of the various committees.

18 Congressman Conyers is married to Monica
19 Conyers, who will become the new president of the City
20 Council for Detroit. I think it's tomorrow is the
21 first day that she will be the Council president.

22 In terms of Congressman Conyers' background,
23 after graduating from Northwestern High School in
24 Detroit, he served in the Michigan National Guard from
25 1948 to 1950. He also served in the U.S. Army from

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1 1950 to '54 and the U.S. Army Reserves from 1954 to
2 '57. He also served for a year in Korea and as an
3 officer in the U.S. Army Corps of Engineers and was
4 awarded the Combat and Merit Citations.

5 Congressman Conyers grew up in Detroit and

6 received both his B. A. and J. D. degrees from Wayne
7 State University, and he also is a former assistant to
8 Representative John Dingell prior to his election to
9 Congress.

10 And so at this time I would like you to help
11 me in welcoming Congressman Conyers to address the
12 Assembly this morning.

13 (Applause.)

14 CONGRESSMAN CONYERS: Thank you,
15 Mr. Gardella, for that kind introduction.

16 Officers, ladies and gentlemen, members of
17 the leaders of the Michigan Bar, I am honored to be
18 here. I am one of those who urge every young person
19 who, like me, have been like I was when I went to
20 Wayne University, I wasn't sure of what I wanted to
21 do, and I was so glad I got out of engineering and
22 went into law. Although the combat engineers, the
23 1279th combat engineering battalion didn't do me much
24 justice, as I ended up on a tour of Korea, and how you
25 build and fight at the same time was something I never

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1 even figured out to this day.

2 But this whole notion of where we are today
3 is so important to me, I was mentioning to our
4 parliamentarian. Here we are on the edge of three
5 things, the new Detroit city leadership begins at
6 midnight tonight. We have 48 days to go in an
7 historic national election, and we are confronted with
8 the greatest financial disaster, not since 1929, but
9 in American history.

10 I frequently argue that the committees in the
11 Congress are very important, but I have always took

12 the position that the House Judiciary Committee is the
13 most important one of all, not because I am the chair
14 of it, but because it is the guardian of the
15 Constitution and the 27 amendments, because it has
16 jurisdiction over the Department of Justice, because
17 it promulgates the Federal Criminal Code, the
18 immigration law, the International Treaties,
19 intellectual property laws. And so I have approached
20 this position which I began my career on, and I have
21 now become its chairman. And what an awesome
22 position, what an exciting position.

23 What I wanted to do for just a few minutes
24 today is share with you some views and invite you to
25 share with me some afterward. I am one of those that

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1 still like to talk with and back to the people that
2 talk to me. I get frequent advice on the importance
3 of impeachment from some of my best friends
4 incidentally, and so I love to pick up the phone in my
5 own office and they are giving the person that
6 answered the phone what it is they are supposed to
7 tell this chairman when they see him, and I say, This
8 is John Conyers. I love to do that, so please, any of
9 you that want to try me out, if I am in the office, I
10 will do that. It's a way of keeping in touch.

11 And so we are confronted with so many
12 incredible challenges. We are at a crossroads, not
13 just in American history, but in world history as
14 well, and it's my position that members of the Bar,
15 lawyers, those who look to help make this planet of
16 6.6 billion people, 232 nations, how are we going to
17 make this a better place, what is it we can do while

18 we are here for this brief moment on earth, how can we
19 make it better? What can we do?

20 And it used to be that if you really just
21 forgot about the rest of this earth and took care of
22 the good old USA, which we all -- and, you know, we
23 work out the other things, but the globe has become so
24 small now. China's pollution today is ours next week.
25 The circumstances of disruption and violence,

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1 genocide, hurricanes are all part of a responsibility
2 that we have come to share, and we know that we can't
3 escape it. You can ignore it, as a matter of fact, at
4 our own peril.

5 And it's in that sense that I have been
6 guided by the most important person in shaping my
7 attitudes in my entire life, Martin Luther King, Jr.,
8 who I had the incredible good fortune, and I say this,
9 I have had so many wonderful opportunities that have
10 come my way by accident, by good fortune, by
11 circumstance to be able to stand before you today and
12 invite you to join with me in resolving this. Some of
13 you already have been to our committee. Others have
14 written or contacted me. Judge Stephens I have known
15 for all of her career.

16 And so we are in a unique place and time and
17 profession in which we can make things happen. I
18 happen to subscribe to the belief that everything that
19 you do and say, every act that you do or don't do has
20 an effect, everything. As a matter of fact, what was
21 that song, Everything is Everything. I thought that
22 was, at one time I thought it was silly, then another
23 time I thought it profound, then another time I have

24 realized I didn't know what it really meant, but
25 whatever interpretation you may choose to put on it, I

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1 believe that just coming here this morning for ten
2 minutes -- is my time up? No, you don't ever say that
3 to a congressman. As long as you want?

4 But the whole idea is this, what can we do to
5 make Detroit, our great state of Michigan, the United
6 States of America? We have a document that is
7 emulated all over the world, but we have policies that
8 are distracting from this great written, controlling
9 pieces of paper that tell us how we should relate to
10 one another and to the world. Philippe Sands comes
11 from, the Barrister in London who practices in the
12 U.S. who keeps talking about talking about what
13 changes have been wrought since we were in law school.

14 I remember Professor Schuman (sp) in
15 Conflicts as a senior in Wayne State University Law
16 School, and the study of conflicts of laws at that
17 time was an examination of why nothing in
18 international law worked. There was no successes,
19 nothing worked. And we went through a few cases. But
20 it was the billions of Franklin Roosevelt and Winston
21 Churchill to begin to conceive the idea of a united
22 nations and of all nations coming together and that
23 there be under it certain rules of conduct and certain
24 acts that were outside these rules of conduct and that
25 by that we could get a harness on the historic

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1 inclination toward might making right, which even
2 today is controlling. Martin Luther King, oh,
3 wonderful. Yes, John, jobs, justice and peace, a
4 brotherhood, but, look, Mr. Chairman, when you get
5 down to it you either got the power or you haven't.

6 We still believe that, even though it may
7 crowd up against the notions that there is some
8 imperative among many of us, probably most of us, to
9 create a more peaceful world, a world that,
10 notwithstanding the incredible technology we have to
11 destroy each other and the planet, and this is the
12 tension that arises and must be resolved by people who
13 study and practice the law, and so it's in that sense
14 that I am so honored to join you today.

15 I know how much time Bar activities can take
16 up and other professional duties that go outside the
17 scope of your practice or your profession, and so I am
18 honored to bring these greetings to you, and I am
19 hoping that we can devise more ways in which not just
20 the House Judiciary Committee but the Senate Judiciary
21 Committee, the Energy and Commerce Committee, the
22 Finance Committees, the Banking Committees, because
23 this nation is in a financial crisis now that there is
24 no comparison for, and for all of those with whom I
25 have debated in the Congress about whether we should

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1 deregulate, whether we should privatize, we now are
2 reexamining the notion of American capitalism in a
3 completely new way, a completely new way, because
4 there is evidence coming out even before the hearing
5 that we are holding next Friday about bankruptcy and

mergers, which is a part of our jurisdiction.

We are examining the accusations that are rising that many of the leaders of the largest insurance companies and investment banking corporations in America and in the world knew this was coming and knew that the federal government would have no alternative but to rush in, contradicting everything that they, principles of economic governance that they believed in that you have to back them up. We are too big -- they are too big to fail, but the one million people scheduled to lose their homes are too small to save, and that's a challenge I leave with you this morning. Thank you very much.

(Applause.)

CHAI RPERSON GARDELLA: Thank you, Congressman Conyers. We very much appreciate you being with us here today and the insightful comments, and hopefully more of us will be in communication with the Judiciary Committee, and please come back and see us again.

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CONGRESSMAN CONYERS: Pick up the phone and call me.

CHAI RPERSION GARDELLA: We will.

Moving on in the agenda, the next part of the agenda has to do with the awards, and this is the happy time of the meeting here where we look back on the year and the people that have made substantial contributions to the Bar and the legal profession over their lifetimes, and our recognition of the great service that they have had to our profession and to their respective communities in the state of Michigan.

12 The first award that we will present is the
13 Michael Franck Award, and many of you know Michael
14 Franck was the former long-time executive director of
15 the State Bar of Michigan, and our Bar building in
16 Lansing is named after Michael Franck. In fact, years
17 ago when I worked in the State Legislature Michael
18 Franck was a regular over at the Capitol carrying the
19 mission of the Bar to the state legislators, and he
20 has had a lasting effect in Lansing.

21 The criteria for the Michael Franck Award is
22 the award is presented to a lawyer who has made an
23 outstanding contribution to the improvement of the
24 profession. And to present that award and make the
25 introduction to our recipient is Larry Nolan, who is

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1 one of our Assembly members, and he is from the 56th
2 circuit. So, Larry, if you could approach.

3 MR. NOLAN: Good morning. Thank you,
4 Mr. Chairperson, and good morning fellow colleagues of
5 the Representative Assembly.

6 I am very pleased and honored to present this
7 year's award and recipient of the Michael Franck
8 Lifetime Achievement Award. This individual served as
9 Chief Justice of the Michigan Supreme Court from 1969
10 to 1970. He founded Thomas M. Cooley Law School in
11 the fall of 1972. It's Tom Brennan, and many of you
12 have had the honor and pleasure of having Tom affect
13 your life like he affected my life.

14 In the late summer of 1971 and 1972 Tom
15 formulated an idea and a concept that a law school
16 would give more people a legal education or the
17 ability to obtain a legal education and that it was

needed. Probably would be worse off as a society with a better educated society with more people with law degrees.

I was a direct recipient of that. I had applied to Michigan, I had applied to North Carolina, was rejected, had been wait listed at Notre Dame, and I read that there was a law school forming in Lansing, Michigan, to which I applied. This was my life's

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1 dream, not unlike what Martin Luther King told us to
2 dream about, was to go to law school.

3 My dad worked in a factory for about 35
4 years. I didn't know any lawyers, didn't have any
5 lawyers in the family, didn't have any college
6 graduates. My dad was born in Belfast. He had 13
7 brothers and sisters, came across on the boat,
8 couldn't get a job, half the family went back, came
9 back again.

10 I was proud of that heritage, because
11 religion and legal education was important in my
12 family, and one of the things that Tom did besides
13 give me the opportunity to go to law school to fulfill
14 my dream, and there is thousands of other people that
15 have had that same benefit, was the opportunity to get
16 to know him personally.

17 I went to the Supreme Court after I was
18 admitted in December of 1972, introduced myself. I
19 remember sitting out -- never been in a courtroom,
20 never been in the Supreme Court. Sat outside next to
21 his secretary, Marianne Farhat. If any of you knew
22 Marianne Farhat, she said nothing, she had a glaze
23 that went through you, and you didn't do anything

24 without asking her permission.

25 But I went in there and I said, You don't

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1 know me, Justice Brennan, but I was just admitted to
2 your law school, and I appreciate the opportunity to
3 have a legal education.

4 Three years later I graduated, and I went
5 into private practice, and if you read Tom's book, The
6 Bench, I am Jim Malloy in page six and seven of that
7 fictitious novel. I was the security guard that
8 worked at the Court of Appeals and went to school
9 nights. I was the person that went out when they
10 weren't hiring Cooley grads and opened my own office.
11 I was that person who obtained a not guilty in a
12 second degree murder trial in a three-week trial in
13 Eaton County. I was that person that obtained a large
14 civil award to a civil case. I have lived that dream
15 for the last 33 years.

16 I got the opportunity to know Mike Franck
17 when I served on the Board of Commissioners from 1982
18 to 1984 as chair of the Young Lawyers Section of the
19 State Bar of Michigan. Dennis Archer got me involved
20 in being involved in the State Bar politics. I first
21 met Mike Franck and had a great respect for him, but I
22 got to know him more when Tom Brennan came up with
23 another idea, finding a credit union for the
24 State Bar called the Cooley Credit Union.

25 So he quickly got Mike involved, and Mike was

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1 on the Board. Tom was on the Board, and they decided,
2 I don't know if I missed a meeting, but I was elected
3 president.

4 Well, long and short, the credit union was
5 going to give benefits for members of the State Bar.
6 It lasted about five years, and then finally closed.
7 It was one of those thousand and one ideas that Tom
8 had that many of you may not have heard about that
9 didn't work, but he was always coming up with an idea
10 that did work.

11 He was appointed -- this award and the
12 criteria, and I said in my nomination of Tom that
13 nobody would be prouder than Mike Franck. He would be
14 embarrassed that there was an award named after him,
15 but nobody would be prouder than Mike Franck to know
16 that Tom Brennan was getting this award.

17 In the years that I met and knew Tom and knew
18 Mike Franck, neither had a greater respect for the
19 other than would be expected from one admirer to
20 another. Tom truly respected Mike's administrative
21 abilities and Mike did the same as to Tom.

22 The criteria, as Bob indicated, is presented
23 to a lawyer who has made an outstanding contribution
24 to improvement of the profession. I can go on and on
25 and on, but you are going to enjoy Tom's comments, I

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1 am sure, a little more.

2 Tom, I cannot think of anyone that made a
3 more lifetime achievement contribution to my life and
4 my family's life and where I am at and what I have
5 been able to achieve through the legal education I

6 obtained, and he has done it for thousands of
7 individuals, many of which are sitting in this
8 courtroom have been direct beneficiaries.

9 Cool ey Law School is the largest law school
10 in the United States. We have three separate
11 campuses. Tom nominated me for the board in 1984. I
12 came on with Dick Maher and Ben Gibson, and I have
13 been on for the last 25 years. I have enjoyed that
14 ride. I have enjoyed every association at every
15 professional level that I have had the opportunity to
16 engage in with Thomas Emmett Brennan.

17 One of the greatest things before my dad
18 passed away, my dad always fancied himself as being
19 able to go golfing. Tom invited my dad when he found
20 out that he was in town to go golfing with him and Jim
21 Ryan. So you can imagine my dad in a foursome with
22 his son and two Supreme Court justices, never
23 imagining that he would ever have that opportunity.
24 Little did he know that Tom in his discussions with
25 Jim said, Tom, or Jim said to Tom, did you know Knob

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1 Nose Nolan was Larry's uncle?

2 Well, it happened to be that my Father Hugh
3 who taught chemistry at Catholic Central who was a
4 Brazilian priest was my dad's brother had taught
5 chemistry to both Jim Ryan and Tom Brennan, and Jim
6 Ryan told me that he had sponsored his ability his
7 first year paid for his tuition at Catholic Central,
8 paid Jim Ryan's tuition.

9 Tom told me another story about my uncle that
10 he was talking to someone. When he turned around my
11 uncle hit him across the nose with a ruler bloodying

12 his nose. I said, What did you do at that point, Tom?
13 He said, I just let it drip all over my chemistry book
14 just to spite him. In those days you didn't go back
15 and tell your parents that you had been disciplined by
16 a priest or a nun, and Tom certainly didn't tell his
17 parents.

18 In 1972 he incorporated the Thomas M. Cool ey
19 Law School . The individual s who have signed my
20 nomination were Wal lace Ri ley, Jim Ryan, Joe Reid,
21 Michael Cavanaugh, Chief Justice Cl ifford Taylor, and
22 Louis A. Smith. That's the company that Tom has
23 associated hi mself.

24 No one stands taller in my eyes for having
25 been sole ly responsi ble for thousands of people like

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1 myself getting a legal education than Tom Brennan.

2 I would like to say at this time that in the
3 Ingham County Legal News of September 21st, 2006,
4 going back to show I did a little bit of research,
5 there was an article that Tom wrote called The Wind
6 Beneath My Wi ngs, and that individual , who has been
7 his steadfast partner for 57 years of, well, maybe
8 mari tal bl iss, produc ing si x chi ldren, is Pauline Mary
9 Wi enberger Brennan, who happens to be with us today.
10 Pauline, woul d you stand, please, and be recogni zed.

11 (Appl ause.)

12 MR. NOLAN: She was the one filling out the
13 appl ications, doing the secretarial work, getting the
14 school fi scal ly responsi ble back then, to which Tom
15 gives her ful l credi t. They had si x chi ldren al ong
16 the way. Bill , Mary Beth, Peggy, and Ellen are not
17 able to be here today, but they send their best wi shes

18 and congratulations to their father. Judge Thomas E.
19 Brennan, Jr., is here, Thomas, with his mother and
20 father and Professor John Brennan.

21 (Applause.)

22 MR. NOLAN: And without anything more to say,
23 Tom, you have always had my respect, my admiration,
24 and my gratefulness in regards to being able to go to
25 law school and fulfill my dream. Thank you very much

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1 and congratulations on this award.

2 (Applause.)

3 MR. BRENNAN: This award is very special to
4 me for three reasons. First, because the presentation
5 or the idea for the presentation was initiated by my
6 good friend Bob Gardella, a graduate of the Thomas M.
7 Cool ey Law School, and the Chairman of the
8 Representative Assembly. This body of lawyer
9 delegates from all over the state of Michigan was
10 created by an administrative order of the
11 Supreme Court in 1971. I am proud to say that I was
12 among the seven justices who voted for that order, so
13 I can lay claim to being a founding father of this
14 august assembly.

15 Second, because this award was named for and
16 commemorates the work and the accomplishments of a man
17 with whom I worked both as a justice of the
18 Supreme Court and as a member of the Board of
19 Commissioners of the State Bar. The legendary
20 champion of lawyer ethics and professional
21 responsibility, Mike Franck. Mike was a good friend.
22 Polly and I cherish the many delightful times we spent
23 with Mike and Carol over the years.

24 And thi rd, because I was introduced this
25 morning by Lawrence Patrick Nolan, another graduate of

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1 the Thomas M. Cooley Law School , a graduate as a
2 matter of fact of the very first class, as he told
3 you, who has been like a son to me for more than 30
4 years and whose loquacious Irish charm never fails to
5 light up a room whenever he shows up.

6 One of my favorite movies is Walking of Ned
7 Devine. It's a story of a little Irish village in
8 which an old bachelor dies of heart failure when he
9 learns that he has won the national lottery. The
10 townspeople, fearing that the grand prize would
11 escheat to the government, devise a scheme to collect
12 the money and divide it among themselves. The
13 principal schemer is a lovable rascal named Jackie who
14 cons his old pal Michael O'Sullivan into masquerading
15 as the deceased Ned Devine.

16 A critical moment in the film occurs when the
17 agent from the lottery office shows up during Ned
18 Devine's funeral and Jackie launches into a eulogy of
19 his friend Michael O'Sullivan who is posing as Ned
20 Devine, and, of course, Michael is sitting there in
21 the front row.

22 The words that are spoken at funerals, says
23 Jackie in his galic lilt, are spoken too late for the
24 man who is dead. What a wonderful thing it would be
25 to sit at your own funeral and sit in the front and

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1 hear what's said, maybe say a few words yourself.

2 So it's been a wonderful thing to hear what
3 Larry has had to say about me this morning, and
4 especially so because Polly is here, and I hope that
5 she has been favorably impressed. I have been trying
6 to make a good impression on her for more than 60
7 years, and every little bit helps.

8 What an honor this is. A lifetime
9 achievement award takes a lifetime to achieve, and in
10 my lifetime there have been many, many days of doubt
11 and discouragement, many weeks and months, even years
12 on end when the idea that I might some day receive a
13 lifetime achievement award would have seemed well
14 beyond any reasonable hope or expectation.

15 For nearly ten years after graduating from
16 the University of Detroit Law School I struggled with
17 a fledgling law practice while losing five elections.
18 I might say one of them -- seeing John Conyers here
19 this morning reminded me one of those elections I lost
20 to a young fellow who was 29 years old, I was 26. We
21 were running for the U.S. Congress. His name is John
22 Dingell. He is still there. He is now the Dean of
23 the United States Congress. I am not jealous. I
24 still have my hair.

25 I was trying at that time to support a

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1 growing family, and looking back, it seems that I was
2 either running for public office or Polly was
3 pregnant. I may be the only man in America who was
4 told to get out of politics by his wife's
5 gynecologist.

6 It has been my experience that nothing I ever
7 accomplished came easy or got done without help from
8 other people. My instinct has always been to blunder
9 forward ready or not. I am the poster boy for rushing
10 in where angels and sensible people fear to tread. I
11 confess to you this morning in all candor that the
12 secret to my success has been to undertake great
13 enterprises with vigor, passion, unjustified optimism,
14 and such obvious ineptitude as to invoke the sympathy
15 and invite the assistance of competent colleagues.

16 And so I accept this award, and I thank the
17 Assembly on behalf of the many, many men and women who
18 have pitched in to help me over the last three
19 quarters of a century. Political pals, law partners,
20 teachers, packsters, secretaries, bosses, judicial
21 colleagues, law professors and deans, students,
22 golfing buddies, fellow lawyers, family and friends,
23 critics and opponents, rivals and competitors.

24 They have all combined to push me along the
25 road of life. Sometimes that road has been a six lane

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1 interstate, and sometimes it has been just two tire
2 tracks meandering through the forest. But I have been
3 blessed to make this journey in the company of an
4 exceptional human being who long ago consented to be
5 my wife and soul mate, and so with the faith we have
6 shared we have never really been lost along the way.

7 So I thank you ladies and gentlemen of the
8 Representative Assembly, and I thank the Heavenly
9 Father who has given me so many years and days to seek
10 his will and to do his work. Thank you.

11 (Applause.)

12 CHAI RPERSION GARDELLA: Thank you, Justice
13 Brennan. Those were beautiful remarks, very
14 inspirational for us to look back on your career, and
15 hopefully that will motivate us to follow in your
16 footsteps, and some of those tire tracks and six lane
17 highways that you had.

18 Justice Brennan will be here for the lunch
19 today, along with our other award recipient also, and
20 for our other special award recipient, Susan Spagnuolo
21 Dal, we have Kathleen Oemke, one of our Representative
22 Assembly members from the 44th circuit. Ms. Oemke is
23 a referee in the Livingston County Circuit Court.
24 Ms. Oemke.

25 MS. OEMKE: Thank you, Bob. I first heard of

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1 Sue Spagnuolo when I was being sworn in to the Bar
2 some 28 years ago. At the swearing in it was
3 announced that Ms. Spagnuolo had her tenth baby. She
4 was a graduate of U of D Law School. She was a former
5 teacher, and she had begun her practice in Howell.

6 Sue had a strong desire to make sure that
7 justice was administered to each person no matter how
8 much they could pay. She really wanted to make
9 justice available to everyone. She began her practice
10 in Howell. Her and her husband owned a party store,
11 ice cream store, Spag's. It was famous for melon ice
12 cream, and she most likely received a lot of her
13 clientele from those who knew her from the store.

14 She also had a home in Fowlerville, which is
15 a quaint country atmosphere at that time, some 30
16 years ago, and not known for its affluence, but she
17 gained her clientele from the countryside of

18 Livingston County.

19 Sue was well versed in legal aid type of law.
20 She was trying to make a practice, but with the heart
21 that she had she was not making a lot of money. There
22 became an opening in the legal aid office, and Sue got
23 the job. Sue had continued to represent indigent
24 people. Her hallmark is to call it like she sees it.
25 She is very honest with her clients, very honest with

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1 opponents, and she looks out for children.

2 As you are familiar with legal aid offices,
3 they primarily, probably about 80 percent is domestic
4 law, and the other areas would be in the areas of
5 evictions and other civil areas of practice.

6 Sue lost her husband, and that was a
7 devastating blow for Sue, and I think she sort of had
8 a moment of what am I going to do with the rest of my
9 life. So she decided that she was going to go teach
10 in Belize, and the whole Bar association got together
11 for a big good-bye for Sue Spag, and it was a very
12 joyous occasion. We enjoyed reminiscing with her and
13 everything, and she was off to Belize.

14 Well, I think it was a week later she came
15 back. It wasn't quite what she had hoped it would be,
16 and she regained her position at legal aid and knew
17 her heart was going to be there. She is disarmingly
18 to her opponents by using her wit and her humor. She
19 represents her clients with the same zeal that she
20 would if she was being paid a million dollars. She
21 gives the word justice credibility.

22 She knows people, she understands what they
23 need to have, and tries to deliver that from the legal

24 perspective. She is a true example of lady justice.
25 She is blind to whether they have means or not and she

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1 delivers that justice. And I am very proud to have
2 nominated her for the Unsung Hero Award.

3 (Applause.)

4 MS. SPAGNUOLO: Time to talk. I am a talker,
5 and anybody who knows me at all knows I am rarely
6 quiet. I received about two months ago a letter from
7 the State Bar of Michigan, and I thought, well, it
8 doesn't say I am supposed to vote for somebody on the
9 outside. It's probably the insurance or a trip
10 somewhere. So I set it down and ignored it and got a
11 little bored in the afternoon, opened it, and it was a
12 letter from Robert Gardella, Chair, and I couldn't
13 quite believe it. My heart is palpitating now. I
14 said, oh my gosh. I had not a clue that I had been
15 nominated.

16 So I went to my friend and colleague, Sarah
17 Bouck. I said, Hey, Sarah, did you get a letter like
18 this from the Bar? She read it. She said, Sue, it's
19 the real thing. I said, oh my.

20 It just overwhelms me, because I am not a
21 hero. I do what each and every one of you has done.
22 You have reached out to people, and the people that
23 try to say that attorneys are great, they don't know.
24 They don't know the big hearts that we all have.

25 I have been most fortunate, as Kathy

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1 mentioned, to go to work for legal services. I was
2 first employed in 1987, hired by Dorothy Catrell at
3 Oakl and/Li vingston Legal Ai d. Unfortunately before I
4 slid into the chair Dorothy became ill and left.
5 Sheri Stevens, who I am tickled pink is present today,
6 and Jim Di Meglio acted as directors until Paul a Zimmer
7 was hired, and that was the most delightful experience
8 to work with Paula, and when the redistricting
9 happened in 2002 we were all without jobs. Ann Routt
10 and Bob Gilett of Legal Services of South Central
11 Michigan were kind enough to meet with me, and we
12 worked out an agreement wherein I would go to work for
13 them and still cover Livingston.

14 Working with the staff I work with in
15 Lansing, working with Bob and Ann and having worked
16 with Paula, Sheri, Jim, has been a wonderful
17 experience and allows me the freedom that you don't
18 have in private practice. We can take on all the
19 cases as long as they are within guidelines and worry
20 about who does the work later. Worry about who pays
21 the overhead. That's why we have Ann and Bob. They
22 pay the overhead, and it really is a magnificent
23 freedom that I have enjoyed working with and gives us
24 the opportunity to help a lot of people who really,
25 really need help.

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1 And, outside of saying thank you very much to
2 everybody involved, I know who some of them are, and I
3 haven't quite ferreted out yet who all wrote letters
4 of support for me, but thank you, thank you, thank
5 you, and to be up with such distinguished people is

6 just something that I never dreamt of. Thank you
7 very, very much.

8 (Appl ause.)

9 CHAI RPERSION GARDELLA: Thank you, Sue. Sue,
10 I know from her great work in Ingham County and
11 Livingston County she has covered a lot, lot of
12 different counties in past years as a legal aid
13 attorney, and everything that Referee Oemke had
14 presented to you about all her accomplishments and the
15 great way that she treats her clients and advocates
16 for her clients, those are all true, and there are
17 many more comments behind that and beyond that.

18 The Unsung Hero Award is a more recent award
19 that the Assembly has started to award to our Bar
20 members. It was started during Tom Rombach's tenure
21 as our chairperson of the Assembly, and it's a
22 highlighted award. There are so many people
23 throughout our state who are deserving of this award,
24 people who have not served in various elected
25 positions or Bar Leadership positions but who have

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1 helped their communities, and the criteria for this
2 award that Sue Spagnuolo Dal has received, our
3 criteria, presented to a lawyer who has exhibited the
4 highest standards of practice and commitment for the
5 benefit of others, and Sue Spagnuolo Dal definitely
6 deserves this award, and we hope she will keep her
7 efforts up for many more years to come, and we thank
8 her for all of her great work over the years.

9 (Appl ause.)

10 CHAI RPERSION GARDELLA: One note we will be
11 recognizing Sue Spagnuolo Dal and Justice Brennan at

12 our Luncheon today. They will be there with their
13 various friends and family members at the Luncheon
14 that runs from 12 noon to 2:00. So you will get a
15 chance to say hello to Sue and their respective family
16 and friends who have joined them. So please remember
17 that and so you get a chance to shake hands and say
18 hello to them.

19 At this time we are going to take a short
20 recess. Let's try to limit it to five, ten minutes at
21 most, and then we will be back in to get into our
22 agenda items.

23 (Break taken from 10:05 a.m. - 10:23 a.m.)

24 CHAI RPERSON GARDELLA: I would like to call
25 the meeting back into session here if everyone can

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1 come back into the room and be seated.

2 We are back in session at this time. I would
3 like to recognize Victoria Radke, our Nominating and
4 Awards Committee Chair, to address vacancies that we
5 have at this time.

6 MS. RADKE: Good morning, Bob. Thank you.

7 CHAI RPERSON GARDELLA: State your name and
8 circuit.

9 MS. RADKE: Certainly. Victoria Radke, 47th
10 circuit. Good morning everyone. It's my honor to be
11 the chairperson of the Nominations and Awards
12 Committee. You have seen some of our hard work
13 earlier this morning, and we are pleased to have
14 presented you with those names to receive the Michael
15 Franck and Unsung Hero Awards.

16 The first item of business from my committee
17 is to present this body with nominees to fill the

18 vacancies of membership pursuant to Rule 6, Section 6
19 of the Supreme Court rules. The list of nominees is
20 included in today's materials, and I would ask, as I
21 read each name, I would like the individuals named to
22 please stand and be recognized by this body.

23 From the 3rd judicial circuit, Ray Littleton
24 of Detroit. From the 6th judicial circuit Michael
25 Blau of Farmington. From the 6th judicial circuit,

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1 Elizabeth A. Sadowski of Rochester. From the 9th
2 judicial circuit, Kristin A. Cole of Kalamazoo. From
3 the 19th judicial circuit, Mark Quinn of Manistee.
4 From the 22nd judicial circuit, Elizabeth Jolliffe of
5 Ann Arbor. From the 30th judicial circuit, Joshua S.
6 Smith of Lansing. From the 35th judicial circuit,
7 Robert H. Hoschner of Corunna. And from the 46th
8 judicial circuit, Colin G. Hunter of Southfield.

9 At this time and with the permission of the
10 chair I would move the filling of vacancies with the
11 names and the persons just presented to this body.

12 CHAIRPERSON GARDELLA: Thank you. Is there
13 support?

14 VOICE: Support.

15 CHAIRPERSON GARDELLA: Any discussion? All
16 those in favor say aye.

17 Those opposed nay.

18 Any abstentions yes.

19 The ayes have it. Welcome. Welcome all of
20 you to fill the vacancies that we have.

21 I would also like to thank our Nominating and
22 Awards Committee chair, Victoria Radke. She has
23 worked diligently this year to fill vacancies as they

24 come up. Sometimes people will move their office very
25 abruptly, and we have endeavored over the last five,

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1 six years to make sure that we are at a hundred
2 percent participation, and I think at this time we are
3 very close, if not at, the hundred percent and at most
4 we have one vacancy that just popped up because I
5 think somebody moved out of their circuit.

6 But Victoria Radke and the nominating
7 committee have done a wonderful job this year, and as
8 the chair I don't really have to do anything. They
9 take action and they get quality people. And for all
10 of the new people that we have, I know many of you,
11 welcome, and I know that you will have a great
12 experience on the Assembly. I think we will benefit
13 from having you. We look forward to your
14 contributions. We hope that you can get involved in
15 some of our committees and at least participate in the
16 great debates that we have on some of the issues.

17 And you have more?

18 MS. RADKE: I do. Mr. Chair, with your
19 permission I would like to offer my thanks to the
20 other members of my committee and ask the Assembly to
21 recognize their hard work in filling these vacancies.
22 Tom Evans from the 5th circuit, Suzanne Larsen from
23 25th circuit, Mike Olson from the 44th circuit,
24 Jeff Nellis from the 51st circuit, Richard Paul from
25 the 6th circuit, and Jeff Crampton from the 17th

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1 circuit. I want to thank each of these individuals
2 for their hard work in putting bodies into these seats
3 so that we can do the business of the Representative
4 Assembly, but I would like to make a special
5 recognition and special thanks to you, Bob, for your
6 assistance to my committee and as well as to
7 Anne Smith who worked so diligently with me these last
8 couple months to help me get these seats filled.

9 CHAIRPERSON GARDELLA: Thank you, Victoria.

10 (Applause.)

11 CHAIRPERSON GARDELLA: I would also make
12 another note that Victoria, with the awards process
13 that comes in, we receive a large number of
14 applications, and the committee goes into, starts
15 their work right away, and they work diligently in a
16 short amount of time to analyze the various awards or
17 the applications to have telephone conferences
18 regarding those awards, and I think they picked two
19 very, very good people who are well deserving of that,
20 and so I thank the committee. They did a great job
21 this year.

22 Next you get to hear from me again, and I
23 have a number of remarks to make and a variety of
24 things to bring to your attention.

25 The first item is more of, I guess, an

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1 encouragement to all of you who are long-time serving
2 Assembly members and some of our new members.

3 The new people, by the way, if you have been
4 selected to fill a vacancy, you can be seated in your
5 circuit right now. So, if you haven't done that

6 already, please find your way to whatever circuit you
7 have been selected to fill the vacancy for.

8 Regarding the role of all of you as our
9 Assembly members, whether you have been here a while
10 or you are just starting, all of us have a role truly
11 to be representatives of our circuits, and, depending
12 on who you are and what your role is as an attorney,
13 some of us have more time than others with all the
14 other professional and family and other obligations
15 that you have from other organizations, but there is
16 some basic things that I think all of us should do and
17 that we could do more of to make the Assembly a
18 stronger body and to be more responsive to the people
19 in our circuits. Not that we are doing a bad job now,
20 but I think we can always do better and get people
21 more involved in the issues that come before us.

22 As an R.A. member, you are a leader of the
23 State Bar of Michigan. Whether you like it or not,
24 you are, and we appreciate your leadership and your
25 participation. You and your efforts are very

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1 important to us, and you basically carry the message
2 and the mission of the State Bar to your local
3 community.

4 One of the most important efforts that you
5 can make is to make yourself known to the local bar
6 groups and special interest associations in your
7 circuit. I don't think that's a big problem. Many of
8 you have served as an officer of your local Bar
9 association, so that should be the easy part.

10 One suggestion that I have is at your monthly
11 meetings make an effort to get on the agenda. When

12 you would show up at the beginning of the meeting,
13 remind the chair that you would like to make a quick
14 presentation regarding what the Assembly has focused
15 on previously in the year and what you anticipate they
16 might be addressing later on in the year or address
17 some of the programs that the Bar is involved in.

18 We have a new promotional campaign called
19 Lawyer Care or Lawyer Cares. Lawyer Helps. And
20 Lawyer Helps, that's the new promotional campaign that
21 we have going on right now with T-shirts, caps, and
22 just the logo to assist our profession in carrying
23 forth what our purpose is in society, and the Board of
24 Commissioners has looked at the logos and approved the
25 terminology for the promotional campaign, and so

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1 that's something that will be happening, and all of
2 you can take the Lawyer Helps logo to your Bar
3 associations and have them use that when they have
4 special events. Your members can have the T-shirts on
5 that says Lawyer Helps, baseball caps, and I think
6 that's important. It helps our profession and helps
7 show that we are involved in our community. So that's
8 one of our projects.

9 There is many other projects that come up
10 that the local Bar members may not be knowledgeable
11 of, and so when you hear something at one of our
12 meetings, please take that back. Let your association
13 know that this is what's happening, these are new
14 things that can help you in your practice or help your
15 law firm.

16 The other thing that I would suggest is doing
17 a newsletter article in your Bar association, regular

18 monthly newsletter that comes out or quarterly
19 newsletter. That's important, summarizing these
20 things, because many people don't show up at the local
21 Bar association meetings, but they will read the
22 newsletter. Or ask your local Bar association if you
23 can be put on their e-mail blast list or if you write
24 a short article will they send it out for you and
25 basically do all the work. With all the high tech

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1 things that are out there now, it's easier to send
2 your column out than waiting for the local print
3 version of the newsletter to be distributed. So I
4 would encourage you to do that.

5 It doesn't have to be a long state of the
6 union address that you do. Make it short. Put little
7 bullets in there to make it easier to read. Just get
8 the message out, and then at the end of your article
9 tell them that if you have issues, if you have
10 commentary, please call me and let me know. And
11 that's important for us to carry our purpose to the
12 local bars and to get their input, because we have to
13 be listeners instead of just voters at the meeting. I
14 think we have a lot of good people in our various
15 circuits that can give that input, and I think they
16 expect that they will be consulted too, so keep that
17 in mind.

18 The other thing that I would like to do is to
19 thank our Representative Assembly committee chairs.
20 All of the committee chairs have done a great job this
21 year. I think we may have a couple of them not here
22 today, but we have Victoria Radke. I acknowledged her
23 before. She is our Nominating and Awards Committee

24

chair.

25

Let's see, we have Rob Buchanan. I am not

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1 sure where all the circuits are today. He is our
2 Drafting Committee chair. Right there, right in
3 front. He has done a great job. Again, he and his
4 committee have done excellent work under a tight time
5 deadline. When those proposals come in, within a
6 week, they have to get the drafting done in a hurry.
7 They have gone above and beyond what they were
8 expected to do this year and did more work and gave us
9 more suggestions as to how to make these proposals the
10 best that they can be and the easiest to read and
11 understand.

12 We have Krista Haroutunian. She is our
13 Hearings Committee chair. Krista, there she is, right
14 in the back. Krista, thank you for your work this
15 year. And let's see who else do we have here?

16 Special Issues is Steve Gobbo, and Steve is
17 not here today. I don't think he has arrived yet, but
18 he is expected here later. I believe Steve has not
19 made it today, but he will hopefully be here this
20 afternoon.

21 The other person who really went into action
22 early on, one of the first things I did as our chair
23 when I took over the reins from Ed. John Riser, our
24 Assembly Review chair, had to do what hasn't been done
25 in many, many, many years is do a bylaw change to the

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1 Assembl y, and John as our Assembly Review Committee
2 chair went into action right away. We had numerous
3 hearings, and also we approved that bylaw change, and
4 then the Board of Commi ssioners, they took over and
5 they went into action and approved it right away
6 wi thout any debate. So that has to do wi th contested
7 elections, so thank you, John, for getting things in
8 action so quickly.

9 And last, but not least, Scott W ol fson from
10 the 3rd circuit. I know he is up front here. Scott
11 has been our Rules and Calendar Committee chair, and
12 he has kept our agenda working as well as it can, and
13 wi th the various issues that we have that come in,
14 trying to place those issues in the right order,
15 depending on the time that's anticipated, and
16 sometimes that's difficult. And so I not only thank
17 the chair of each committee, but I thank the members.

18 Thank you for all of you who have served on
19 these commi ttees. You have done a wonderful job. You
20 have taken time out of your schedule for sometimes
21 very lengthy conference calls, and I ask that you
22 continue to serve. You can serve on a number of
23 different commi ttees, but you have done a wonderful
24 job, and we appreciate your time commi tment. It is
25 very much appreciated. All of the officers are very

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1 happy wi th the great work that's been done this year.

2 The other item that I wanted to address --

3 (Appl ause.)

4 CHAI RPERSION GARDELLA: The other point I
5 wanted to make, swi tching subjects here, is the fact

6 that we have members who can change their offices here
7 and there periodically. Offices move or you may leave
8 a firm and go to another firm or change your office
9 location. We had that come up a few times this year,
10 and one thing that the Bar staff would like me to
11 reiterate to you is if you are in a particular circuit
12 and you are moving out of that circuit to another
13 circuit, you automatically will lose your position on
14 the Assembly, and I want to reiterate that to you. So
15 if you do move, please let Anne Smith at the State Bar
16 office know that you have moved so that we can fill
17 the vacancy immediately for that seat.

18 And then the next step is we want you to stay
19 involved in the Assembly, so we hope that you can
20 educate yourself as to the circuit you are moving
21 into, if there is a vacancy there. Sometimes we do
22 have some, sometimes we don't, but check with
23 Anne Smith and she can tell you if there is a vacancy
24 and you will get immediate consideration for that
25 vacancy, and the current members of the Assembly from

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1 that circuit will consider you to fill that vacancy.

2 So just a reminder for you, because, as I
3 said, we want to keep the 100 percent participation
4 rule that we have. Our Assembly is operating in an
5 excellent condition right now, and, in fact, there is
6 competition among some of the seats each year because
7 there is excitement about getting involved in the
8 organization, and that's good. So that point I needed
9 to make.

10 Also, a follow-up from our 35th anniversary
11 of the Assembly. Ed Haroutunian had sort of

12 spearheaded something to memorialize the contributions
13 of the Assembly, and he came up with the idea of a
14 permanent photo display of the past Assembly chairs,
15 and that is almost completed. It will be on the first
16 floor of the State Bar building. As you go down the
17 hallway to some of the hearing rooms, or the meeting
18 rooms I should say, it will be on the wall. We
19 finally received the last one, I think it was our
20 second chairperson, it was a challenge to try to get a
21 photograph from one of our past chairs, but we did it,
22 and it took a lot of effort to do that with a lot of
23 people searching and trying to find family members to
24 get the photographs for people who have moved or that
25 are deceased. So it's finally done, so hopefully by

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1 mid or late October you will be able to see that
2 permanent display in the State Bar building.

3 So stop in if you are at Lansing, if you are
4 in court, stop in and see it, and Anne Smith and Janet
5 Welch, the State Bar staff have done a great job
6 making sure that gets complete. And, again,
7 Ed Haroutunian, I think you are here somewhere, thank
8 you for the great idea to do that, and we would like
9 to see you up there.

10 (Applause.)

11 CHAIRPERSON GARDELLA: The other recognition
12 I would like to give is to the State Bar staff. They
13 do so much work behind the scenes that makes this
14 Assembly run so smoothly. The officers here are very
15 fortunate to have a great staff they can rely on that
16 will remind us when we overlook something to keep
17 things going well.

18 Most of you know the people at the table
19 here. Anne Smith, she is the administrative or
20 executive administrator for the State Bar staff that
21 handles the Assembly activities.

22 (Applause.)

23 CHAI RPERSON GARDELLA: All of you know Janet
24 Welch, and I am going to make comments introducing
25 Janet just a little while.

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1 (Applause.)

2 CHAI RPERSON GARDELLA: Going down to the
3 person behind the computer there, Nancy Brown, she is
4 the membership services director, and her I think
5 responsibilities have expanded a little bit from what
6 they were previously. She is in charge of the various
7 member services programs that are there, in addition
8 to publications and I think some of the communication
9 efforts of the State Bar also, and she does a
10 wonderful job and has helped the Assembly with the
11 issues that we have regarding any communication
12 efforts or services.

13 (Applause.)

14 CHAI RPERSON GARDELLA: Greg Conyers is the
15 director of justice initiatives. Greg was here. He
16 has a program. And Greg has worked tirelessly. He
17 deserves a round of applause.

18 (Applause.)

19 CHAI RPERSON GARDELLA: Greg has done a great
20 effort in a bad financial market right now to make
21 sure that the justice initiatives efforts are funded
22 the best that they can be and has really helped
23 promote the programs and has done an outstanding job.

24 Dawn Evans, who is the director of the
25 professional standards office. Dawn was here earlier

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1 and she was out in the hallway. I don't know if she
2 is here, but she is always a great reference. If you
3 have any ethics issues, she is a great resource. Her
4 office, if you have issues in your locality in a what
5 if or what should I do or what's the position on an
6 ethical issue, her office is the office to call, and
7 she has two new staff attorneys who are very, very
8 talented. And, in fact, one of her staff members is a
9 former chair of the Representative Assembly, so we are
10 happy to have her new people in her office be a great
11 help.

12 The next person, Anne Vrooman. I don't know
13 if Anne is here. She is the director of research and
14 development. Is she in the room? Okay.

15 And also Marge Bossenberry. Marge was out in
16 the hallway and she may still be out there, but Marge
17 does a lot of work for the Assembly.

18 And Cliff Flood, who is the legal counsel for
19 the State Bar. Cliff, stand up and say hello to
20 everybody.

21 (Applause.)

22 CHAIRPERSON GARDELLA: Cliff went into action
23 to help us with the bylaw change at the beginning of
24 this year. He helped us in a short amount of time to
25 get that done and accomplished, and we thank Cliff for

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that, and he helps us on various other issues that come before the Assembly so that we are running smoothly.

Naseem Stecker, she is the media relations director. I don't know if she is still in the room. She has got a lot of work to do today.

And Candace Crowley, who is the director of external affairs. Candace was here earlier, and I don't know if she is here. Candace also helps us in many respects in carrying messages and issues from the various Bar sections and finity Bar groups and special interest groups to the Assembly. She does a great job in linking us to the rest of the Bar so that there is an open line of communication, gives us great ideas in terms of getting input from those various sections and groups. So we thank Candace for all of her help throughout the year.

And Jim Horsch, our financial director. Jim, I don't know if he is in the room. I don't know if I have seen him here. He was here yesterday. Jim has, I think, the challenge of the century right now with the bad financial condition that we have. Jim has done an outstanding job keeping the Bar on solid financial ground with conservative investments that we have had to redirect our focus to to make sure that we

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are on solid ground, and he has accomplished that. We have an excellent person as our financial director, and I can tell you, because I serve on the Finance Committee for the Board of Commissioners, that we are on solid financial ground, and much of that is thanks

6 to Jim's direction in leadership as the financial
7 director.

8 Also Elizabeth Lyon. I just saw her come
9 back in the room. Stand up, Elizabeth.

10 (Applause.)

11 CHAI RPERSON GARDELLA: Elizabeth does our
12 lobbying work, our governmental relations. She is the
13 most well-known person from the State Bar at the
14 Capitol. They know that she is the resource person,
15 and she has done a lot of great things for the various
16 interests of the Bar and to promote our reputation
17 with the state legislators, and I think her role is
18 even more important now when we have legislators there
19 that are for a short period of time, and we have very
20 few attorneys who actually are members of the
21 legislature, so she has an even more important job to
22 educate the legislators as to various legal issues
23 they may not be familiar with because of the various
24 professions that they were in before they took the
25 legislative seats.

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1 Candace Crowley is back in the room. Candace
2 stand up.

3 (Applause.)

4 CHAI RPERSON GARDELLA: A couple of other
5 items. There is also, I guess important, we were
6 talking about pocket book issues before. For those of
7 you who have to submit mileage reimbursements, the
8 State Bar staff has asked that you submit your mileage
9 reimbursement sheets for participation at this meeting
10 on or before September 30th, because our fiscal year
11 is going to be ending. We have to get those in before

12 the end of September, so do your best. When you leave
13 here today, make a mental note to sign the sheet and
14 pop it in the mail to Anne Smith so she can get her
15 accounting work done so that she meets with the
16 various financial deadlines we have.

17 Also, the attendance slips, they must be
18 turned in before you leave today, so don't forget to
19 do that. Those will be distributed at the end of the
20 day here so that you get credit for the meeting. And
21 that should be done. Hopefully we will be out of here
22 by 3:30 or so today, maybe before if we keep things
23 moving on.

24 The last item that I wanted to address is the
25 Access to Justice effort. It's been something that

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1 most of you are probably familiar with, but it's
2 essential that we keep funding this program.

3 Everybody is hit financially. I think every
4 office or clients are hit. Maybe clients aren't
5 paying as much as they want to or would like to, or
6 they are just not paying their bills at all right now
7 because of the bad financial picture or the loss of
8 their jobs, and that may force some of us to say,
9 well, I can't give quite as much as I did before.

10 I encourage you to remember that the Access
11 to Justice, the legal aid offices, if the rest of the
12 economy is getting hit hard and the government is
13 having budget deficits, you know that the legal aid
14 offices are going to be suffering budget-wise too, and
15 so I encourage all of you to make an effort this year
16 before the end of the year or even before the end of
17 this month if you can to make a contribution to Access

18 to Justice.

19 You can even designate which organization
20 will receive the money that you wish your funds to be
21 focused on. There is a large variety, or you can just
22 say, well, I am giving it, they will do the right
23 thing in terms of disbursing it to a lot of good,
24 worthy organizations.

25 So we have a promotion today. In fact, our

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1 President-elect, Ed Pappas, is going to be doing a
2 fundraiser later today and trying to raise money for
3 Access to Justice, but even if you can't be there at
4 that, we are going to be here today. I would
5 encourage you to do what you can to give a generous
6 donation.

7 People like Susan Spagnuolo Dal, who received
8 the award today, we have great people like Susan who
9 are great links to the community for us. It's because
10 of Access to Justice that those programs keep running,
11 and we need your help and we need you to promote
12 Access to Justice. Please do your best this year.
13 They need your help, and I think you will get a good
14 feeling too knowing that the message and mission of
15 the Bar is not just for ourselves, it's to protect the
16 public and for us to have our profession held in high
17 esteem, and we can do that by helping people who may
18 not be able to afford legal services to get help from
19 quality people who have devoted their lives to the
20 poor in our communities.

21 So that's all I have. I wanted to end on
22 that note for my remarks. That is very important, and
23 it's a priority for us this year.

24 Next, I would like to have our esteemed
25 president, unfortunately our outgoing president, Ron

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1 Keefe. He has had a wonderful year this year. I
2 would like him to approach the podium here.

3 As many of you know, Ron is from Marquette,
4 and he and I went on the Upper Peninsula tour last
5 October. We had a great time, covered a lot of miles
6 and saw many of you who practice in the Upper
7 Peninsula, and I got to know Ron very well and his
8 wife, and he is a great human being. He has
9 volunteered so many -- volunteered himself to so many
10 different projects for the State Bar, and I know he
11 will continue to do that. And I have enjoyed serving
12 with him on the Board of Commissioners. I consider
13 him a friend, and, Ron, come on up. I have got a gift
14 for you from the Assembly also.

15 Many of you may have known that back in July
16 Ron Keefe was invited to throw the first pitch out at
17 the Detroit Tigers game. In fact, the scouts were
18 thinking, wow, he is doing better than many of our
19 pitchers, and so, you know, now that he has all this
20 time left, you know, that he may be able to try out
21 for the Tigers. We may see him down in Lakeland in
22 February.

23 But he got it over the plate and did a
24 wonderful job on that, and so we wanted to give him, I
25 guess, some Tigers gear to remember the first pitch,

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1 and also with all that time that he is going to have
2 not doing all the State Bar activities, and believe me
3 he has been speaking everywhere in the state, I have
4 seen him a lot of different places, he is going to
5 have all this time now to just lay on the beach, think
6 of that great pitching experience he has had at
7 Comerica Park in Detroit, so we got him a Detroit
8 Tigers beach towel so he can lay on the shores of
9 Lake Superior during the two weeks in the summer that
10 you can actually go swimming there.

11 (Applause.)

12 PRESIDENT KEEFE: Well, thank you very much.
13 It's great to be here, and thanks for those gifts. I
14 appreciate that very much.

15 On my last day and I guess, indeed, my last
16 couple of hours as president of the State Bar of
17 Michigan, I think it's appropriate that I come back to
18 the place where it all started. Thirteen years ago I
19 began my State Bar service as a member of this
20 Assembly from the 25th circuit, and I guess in honor
21 of that Anne put me in the front row.

22 This Assembly has debated many of the issues
23 important to our profession, and this past year I have
24 had the privilege and responsibility to advocate for
25 the policies of this Assembly, which are the policies

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1 of our Bar association.

2 Let me ask you at this time to join with me
3 in thanking several people whose work has been
4 essential to the accomplishments of our association
5 this year.

13 (Applause.)

14 PRESIDENT KEEFE: I have also had the
15 pleasure of working with Vice Chair Kathy Kakish, also
16 on the Board of Commissioners, on the Executive
17 Committee, and having worked with her over the past
18 year or two I can assure you that the Assembly is in
19 very good hands with her at the helm next year.
20 Please join me in thanking Kathy for her year.

21 (Applause.)

22 PRESIDENT KEEFE: In addition to her service
23 as clerk of the Assembly, Elizabeth Moehle Johnson
24 also serves on the Board of Commissioners. In May I
25 had the opportunity to participate with Liz in her

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hometown of Plymouth in the rededication of a legal milestone known as the Rose of Aberlone, which recognizes an important principle of contract law, and I might add it's a fascinating story in its own right, and it has been brought to life by Professor Otto Stockmeyer in a recent, I am not sure how recent, but Law Review article from the Thomas M. Cooley Law Review, and I would highly recommend this entertaining piece to you.

At that dedication ceremony I had the opportunity to see firsthand Liz's commitment to our

12 Bar association, and I want to personally thank her
13 for her year of service.

14 (Applause.)

15 PRESIDENT KEEFE: As I traveled around the
16 state this year, I have been constantly reminded that
17 it is the talented people who make up the State Bar
18 who make it special, and many of those people are
19 seated in front of me today, and many of whom I had
20 met on my travels. I am just looking out, and I saw
21 Bill Debiasi, and I saw John Evans and a number of
22 people that I have seen throughout the course of my
23 travels, and it's just nice to see all of you back
24 here today.

25 I am also reminded that the values of our Bar

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1 association are the same common core values all Bar
2 associations share. This summer in New York at the
3 ABA annual meeting I attended a summit meeting of
4 State Bar presidents from across the country. The
5 president of the New York Bar who hosted the event
6 noted that in 1963 President John F. Kennedy held a
7 similar meeting of Bar presidents which led to the
8 formation of the Lawyers Committee on Civil Rights.

9 The goal of our meeting was to agree on
10 issues that state bars would like the next president
11 of the United States to address. After a lengthy
12 discussion, we arrived at a consensus of issues that
13 we could recommend to our representative, excuse me,
14 our respective Bar associations, and let me briefly
15 describe some of them to you.

16 The first issue was Access to Justice, which
17 is the first issue for us. That Access to Justice

18 issue, of course, includes civil litigation, increased
19 funding, and limiting restrictions on funding. As I
20 said, ATJ is the top priority of the State Bar of
21 Michigan, and I think I can safely say that we have
22 one of the best ATJ programs in the country. Still
23 many legal, civil legal needs are unmet, as you know,
24 and much more is to be done in that area.

25 The second issue we agreed on was the

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1 importance of a fair and impartial judiciary,
2 including adequate funding for courts and judicial
3 salaries.

4 As ABA president, Tommy Wells wrote recently,
5 When politicians castigate judges for opinions that
6 are legally sound but politically unpopular, it
7 weakens the rule of law. So does widespread stubborn
8 partisanship in many state judicial elections, to say
9 nothing of the appointment process for federal judges.

10 The third issue we supported was the
11 independence of the Bar, including the attorney-client
12 privilege and other issues that should be left to the
13 courts and to the profession to address. Again I
14 quote from ABA President Wells when he wrote, The
15 surest way to protect the Bar's independence is to
16 show that we adhere to the strictest standards of
17 ethics and professionalism.

18 Finally, we agreed that civics education is a
19 shared value, including the amendment of the No Child
20 Left Behind Act to mandate civic education in school.

21 As you can see, it was a productive meeting,
22 and those things will probably come before this
23 Assembly and the Board of Commissioners in coming

24 weeks and months.

25 Now let me touch briefly on a few of the

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1 things that our Bar association has been up to this
2 year. An initiative to explore ways to promote and
3 support an active senior Bar in Michigan has begun to
4 take shape. This started in November, and it's just
5 gone from there to an expanded group, and it
6 continues. And I am very excited about the
7 opportunity for senior lawyers to do pro bono and
8 other volunteer work, start mentoring relationships
9 with new lawyers and establish programming related to
10 retirement and cutting back and closing down law
11 practices.

12 The Bar's commitment to the rule of law was
13 tested this year when then Pakistani President
14 Musharraf suspended the national constitution,
15 detained members of the Supreme Court, and arrested
16 thousands of Pakistani lawyers who were peacefully
17 protesting the dismantling of their legal system.

18 On November 14 of last year numerous Michigan
19 lawyers and others across the United States stood in
20 silence near local courthouses to show solidarity and
21 support for our counterparts in Pakistan. But I would
22 remind you that the rule of law is not just an
23 overseas issue. Here at home we face the challenge of
24 how to preserve our liberties while ensuring national
25 security.

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1 On June 17 the State Bar of Michigan released
2 an important study from the National Legal Aid and
3 Defender Association that overwhelmingly concluded the
4 constitutional right to an attorney in criminal
5 proceedings in Michigan is not being met in our trial
6 level courts. Even in tough economic times we cannot
7 deny our citizens their constitutional rights. We
8 must respond to this report in a meaningful way that
9 ensures equal justice for all, not just for some.

10 I close with thanks to all who helped make
11 this year such an unforgettable experience for me.
12 Time does not permit mentioning everyone by name, but
13 I do want to thank my friends and colleagues on the
14 Board of Commissioners, the Representative Assembly,
15 and the State Bar staff. It was indeed a privilege to
16 stand with you and work to improve our profession for
17 our members and the public. Thank you very much.

18 (Applause.)

19 CHAI RPERSON GARDELLA: Thank you, Ron, for
20 those nice remarks, and thank you for your year of
21 service. Ron has done an outstanding job this year.

22 Next on the agenda, our Executive Director,
23 Janet Welch, will give us a presentation and sort of
24 an update as to what's going on at the State Bar and
25 in Lansing and all the great programs. Janet has so

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1 many balls in the air, she is like the ultimate
2 juggler, a hundred things going at one time with a lot
3 of different projects and activities, and so she is
4 going to give us the update to let you know what the
5 latest and greatest is in Lansing.

6 EXECUTIVE DIRECTOR WELCH: Thank you, Bob.

7 It's a little intimidating to be standing up here this
8 morning after several giants of the profession have
9 been standing here, two giants that I have been aware
10 of my entire adult professional life, one giant who I
11 just met this morning, an unsung hero, and the
12 extraordinary leaders of the State Bar. It's also a
13 little intimidating to be behind schedule and try to
14 bring you up to date on everything that's happening in
15 the Bar in two minutes. For that, I want to refer you
16 to our website. We have a wealth of information about
17 what's going on at the Bar.

18 But I will give you a piece of news that you
19 will not find on our website, and that is that the
20 State Bar of Michigan reached a milestone this week,
21 and that is that we now have over 40,000 active
22 members of the State Bar of Michigan.

23 (Applause.)

24 EXECUTIVE DIRECTOR WELCH: One of the
25 privileges of being the executive director of the

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1 State Bar of Michigan is that I am a member of the
2 House of Delegates of the ABA and I also attend twice
3 a year the National Association of Bar Executives
4 meetings, and as a result of that experience I can
5 tell you that our 40,000 members are second to none in
6 terms of our professionalism, our competitiveness, and
7 I think our ability to meet the really extraordinary
8 challenges that Congressman Conyers laid out this
9 morning.

10 I want to thank Bob for recognizing the staff
11 of the State Bar of Michigan, because the other thing

12 that I have learned from my national experience is
13 that the State Bar of Michigan is second to none. In
14 fact, we are way ahead of the game in a lot of
15 respects.

16 As the Representative Assembly, you have one
17 exclusive task that's laid out in the Supreme Court
18 rules concerning the State Bar of Michigan. I want to
19 comment on that, and that is the exclusive authority
20 to recommend raising Bar dues. For those of you who
21 are looking forward to exercising that exclusive
22 authority, I am here to tell you that I think you are
23 going to be disappointed. The State Bar of Michigan
24 is in very good financial shape.

25 (Applause.)

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1 EXECUTIVE DIRECTOR WELCH: I need to
2 underscore why that is really extraordinary. The last
3 time the dues were raised at the recommendation of the
4 Representative Assembly, we asked for a \$40 increase
5 in order to be able to fulfill the mandates of our
6 strategic plan. The Supreme Court gave us half that
7 increase. That was after ten years of being at the
8 same dues increase.

9 The normal life of a dues increase is about
10 seven years. Given that we got half what we asked
11 for, normally we would be coming back to you right now
12 and saying, you know, it's getting tight, we need to
13 be looking at things. We are not there. We have been
14 very, very careful. The staff of the State Bar of
15 Michigan deserves huge credit, and I am tempted to say
16 that they make my job easy, but I am not going to say
17 that in front of the people who I work for. My job

18 really isn't easy, but they are extraordinary, and
19 they are the reason that we are in such good shape
20 financially.

21 An example of that is Bob mentioned Dawn
22 Evans, who is the director of professional standards.
23 She was sworn in in August as the president of the
24 National Organization of Bar Counsel. Just an example
25 of the quality that we have in our staff. She was out

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1 helping with registration. That's how we are able to
2 make your dollars go far.

3 Nancy Brown is the dean of Bar journals in
4 the country. She is our longest serving member of the
5 State Bar, and here she is doubling as your
6 reporter/recorder of what's going on.

7 We are committed to delivering value to you.
8 Right now the dues for the State Bar of Michigan,
9 which before the dues increase four years ago we were
10 at about 17th in the country. By our calculation
11 right now we are now in the bottom half, 26th in the
12 country, and we are delivering more and more value,
13 frankly, by working harder and up to this point being
14 very, very careful and lucky with our investments.

15 I want to make up for time a little bit, and
16 I don't want to leave the podium without saying
17 something about the outgoing chair of the
18 Representative Assembly.

19 This Assembly has developed the habit of
20 choosing as its leaders people who are really
21 extraordinary in their passion for the profession, in
22 their energy, in their enthusiasm, and in their heart,
23 and in that regard Bob Gardella is no exception at

24 all. I have to say that from the experience of staff,
25 his energy and enthusiasm has been super human. And

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1 mine is not. So I want to publicly apologize to Bob
2 right now for the many times when he has been down the
3 road with his enthusiasm and he has had to wait for me
4 to catch up.

5 You have been very well served and you have
6 made choices that guarantee that you will be very well
7 served in the future. And with that I will see the
8 podium back, and I think we are back on schedule.

9 (Applause.)

10 CHAIRPERSON GARDELLA: Thank you for those
11 nice remarks, Janet, and I thank Janet for all of her
12 help. She has really helped the Assembly. When
13 issues come up, Janet is right there to help us sort
14 through and give us direction and good, good advice as
15 to how to approach issues that we are confronted with.

16 There is a lot of things that happen behind
17 the scenes that you don't see that are in the
18 management of the Assembly throughout the year, and
19 Janet is always a great source of advice and direction
20 with her knowledge in Lansing over the years working
21 at the state senate, working for the Legislative
22 Service Bureau doing drafting, working at the
23 Supreme Court as counsel, and then as general counsel
24 of the Bar and now, fortunately, as our executive
25 director. She has just a great source of knowledge

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1 and knows Lansing and our government system I think
2 better than probably anybody else in Lansing. So
3 thank you for all of your help, Janet.

4 Next on the agenda is item number 15. We are
5 moving ahead now with our proposals. So item 15, Matt
6 Abel from the 3rd district. Matt, if you can
7 approach, we will be considering MCR 6.201(B)
8 preservation of electronic recordings.

9 MR. ABEL: Good morning, ladies and
10 gentlemen, again. I am really nervous, like I am
11 going to court and I am going to fight a motion and I
12 think I am going to lose. I hate that, you know.

13 So anyway, I am a litigator. I have been
14 doing it for 22 years, doing criminal defense, and I
15 submitted this proposal because this stuff really
16 bothers me, and I know it bothers a lot of my brothers
17 and sisters in the Bar. And driving up here today, I
18 am thinking this thing is dead in the water, and then
19 as I am talking to people in the room, almost everyone
20 I have spoken with has supported this either as is or
21 with minor modifications.

22 So, first of all, let me reintroduce myself.
23 I am Matthew Abel from the 3rd judicial circuit, and
24 just so you know, I am running for Wayne County
25 prosecuting attorney on the Green party ticket, and I

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1 am not worthy, I am better, and so I hope you will all
2 support me. Thank you.

3 That's one of the advantages when you
4 introduce a proposal, they actually put you up here
5 for a couple of seconds, and Judge Stephens hasn't

6 given me the heave-ho yet.

7 As I was going through this last night, I
8 pulled an old file that I had, which was a case in
9 Dearborn. It was a traffic stop where my client was
10 stopped for having a dangling ornament from his
11 mirror, and was later found after an illegal search to
12 be in possession of suspected marijuana, which
13 apparently is still illegal in this state. Not for
14 long, but it is.

15 So I subpoenaed the videotape, as any good
16 criminal defense lawyer would do, and took a long time
17 to get it, a lot of kicking and screaming, dealing
18 with the law department, the police, the prosecutor,
19 and eventually we got the videotape. They wouldn't
20 give me a copy. They would just let me, you know,
21 they came up with it five minutes before the hearing
22 started. And so I said, Judge, I think I have a right
23 to see this tape, and he agreed. And let me go in the
24 jury room with my client, and as we are watching the
25 tape, just at the point where the officer approaches

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1 the car and yanks open the door the sound cuts out,
2 and the whole issue was what the officer said to my
3 client.

4 He ended up taking a first offender 7411 plea
5 on that case. If I had had the videotape, I could
6 have shown that was an illegal search. And for those
7 of you who think that it doesn't happen that tapes are
8 missing or destroyed deliberately -- sometimes it does
9 happen innocently -- either you don't practice
10 criminal law or you are not paying attention or you
11 have never been stopped in a traffic stop where you

12 were charged with anything other than a civil
13 infraction.

14 I practice marijuana law, and the
15 laboratories are so far backlogged in Michigan, it
16 takes four to six months to do a lab test on a
17 marijuana case. By the time the client calls me and
18 says I was charged with possession of marijuana,
19 possession with intent to deliver marijuana, it's four
20 to six months down the road.

21 Right away fire off letters to the police
22 department saying preserve any videotapes of the
23 traffic stop, and they say, jeez, we recycle them in
24 30 days or 60 days or 90 days. Here it is four months
25 later. I have what would be a good defense. There

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1 was evidence of it that was destroyed.

2 So when we were here six months ago, I asked
3 the lawyers in the room who practiced criminal defense
4 to raise their hands and the ones who had ever seen a
5 case where a video or an electronic recording was
6 missing to keep your hands raised, and I think maybe
7 one person put their hand down. So this is a
8 pervasive problem.

9 Now, there is one thing I agree with the
10 Attorney General about, and that's I should have used
11 the word "case" instead of "matter." Any electronic
12 recording evidence made by any governmental agency or
13 agent pertaining to the, not the "matter" known but
14 the "case" known. To be consistent with the Court
15 Rules, I have no objection to that friendly amendment,
16 if that's what they are suggesting.

17 However, as this goes on, the Attorney

18 General indicates that requiring a defendant to show
19 bad faith on the part of the police is appropriate.
20 Look, if there is bad faith on the part of the police,
21 you can sue them under 42 USC, Section 1983, for
22 violation of civil rights under color of state law.
23 There is already something where you can prove bad
24 faith.

25 It's so rare to prove bad faith. It's just

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1 not going to happen very often. So I don't think
2 requiring the police to show bad faith is appropriate.
3 I think we ought to require them to show good faith.

4 He says this is unnecessary. If this was
5 unnecessary, I wouldn't be here, ladies and gentlemen.
6 This is necessary, because the police have evidence
7 that they don't preserve. They claim that it's unduly
8 burdensome. Well, jeez, jury trials are pretty
9 burdensome. Maybe we don't need those either. Maybe
10 advising the defendant of his rights, that takes a lot
11 of time when you are going through a plea, maybe we
12 don't need that. This is evidence that they know is
13 there, and they destroy it.

14 In that case in Dearborn, I had to subpoena
15 or FOIA the actual rules regarding preservation of
16 recordings, and I left them in my car, but the
17 Dearborn rules say that at the end of the shift the
18 police officer decides whether to put a videotape on
19 evidence or not.

20 Now, if he is the same guy who is out there
21 beating up the client, the defendant, is he going to
22 be putting that tape on evidence? I don't think so.
23 If he is the guy who did the illegal search, is he

24 going to be putting the tape on evidence? No, not at
25 all. What gives the police officer the right to

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1 decide what evidence is preserved and what isn't?

2 This would require the -- this would
3 actually, if in the case where the evidence isn't
4 preserved, the defendant would be entitled to a jury
5 instruction that the jury shall consider that evidence
6 to have been favorable to the defendant.

7 Now, if it would make a difference, if this
8 would only pass if we change that "shall" to "may," I
9 maybe could live with that. There might be, I haven't
10 seen it yet, an innocent case, where, hey, some
11 equipment really did malfunction, but then you get the
12 repair records. It's funny, they don't have any
13 repair records. It worked at the beginning of the
14 shift, and it's crazy.

15 So the final comment of the Attorney General
16 was that this could deter law enforcement from
17 electronic recording. It's not up to the agency
18 whether they do the electronic recording or not. It's
19 up to the city council or the chief of the police or
20 somebody else. The cops don't get to decide what gets
21 kept and what doesn't. Without this rule, there is no
22 way to enforce this provision that we can stop having
23 missing videotapes.

24 If and when I am the Wayne County prosecuting
25 attorney, I think that if you destroy a tape you can

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1 be prosecuted for obstruction of justice. But that's
2 not happening. And it won't happen, because the
3 prosecutors cover up for the cops, and the cops cover
4 up for each other, and what happens is justice is not
5 served. This is just a little thing to show that a
6 little more justice gets served. Thank you.

7 And, by the way, I have another proposal up
8 later, and if you are thinking, well, I am not going
9 to vote for this one, I am going to wait and vote for
10 the other one, don't do that. This is the important
11 one, and if you vote against this and you get charged
12 with impaired driving, don't call me to handle your
13 case. It would be really bad karma.

14 So on behalf of myself as the proponent of
15 this proposal, I move adoption by this Assembly, and I
16 appreciate your prompt consideration. Thank you.

17 CHAI RPERSON GARDELLA: It's been moved. Is
18 there support?

19 VOICE: Support.

20 CHAI RPERSON GARDELLA: Discussion on the
21 matter. And if you, when you approach the microphone,
22 we have two microphones. One over on this aisle and
23 one up in the front here, if you could state your name
24 and your circuit.

25 MR. POULSON: Barry Poulson, 1st circuit. I,

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1 by the way, the political aspect, as head of the
2 camouflage party, do support Prosecutor Abel in his
3 campaign. He is not worthy, but he is able. We have
4 had that discussion. He is going to put silly strings
5 in place of the tasers.

6 Police destroy evidence when it serves their
7 interest. They come on the stand, though, and they
8 say accidentally, and I have had this happen, and I am
9 sure you have had if you defend clients, we
10 accidentally destroyed the evidence. Very difficult
11 to prove bad faith when you say we accidentally
12 destroyed the evidence, and that's what they say, and
13 then that's what they will always say.

14 There is no pragmatic reason that the State
15 of Michigan can't store countless terabytes, which is
16 about a hundred bucks these days, of video data until
17 the case is resolved. If there are cases, as the
18 Attorney General complains, where they have to be
19 saving this data until the appeals process, how long
20 does that take? How many bytes of data?

21 So we very much support that in the 1st
22 circuit. It's the judge's rule in 1st circuit, for
23 example, that confessions be recorded, and it is the
24 assumption that I make as a defense attorney to make
25 the remark that when the videotape is gone, I make the

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1 remark, and the prosecutor cringes, if it helped the
2 prosecutor, they'd have shown you the pictures today.
3 It would be much more effective if the judge would say
4 exactly the same thing, because it's actually true.

5 CHAIRPERSON GARDELLA: Thank you. Ms. Radke.

6 MS. RADKE: Victoria Radke from the 47th
7 circuit. I guess I would like clarification from
8 Mr. Abel on whether he actually offered as a friendly
9 amendment to change the word "matter" to "case" in
10 that first sentence, and whether in the second
11 sentence he is also offering to change the word

12 "should" to "may." I am unclear on that.

13 CHAI RPERSION GARDELLA: To answer that,
14 Mr. Abel, if you could take the microphone and clarify
15 that.

16 MR. ABEL: Yes to the first one and yes to
17 the second one if that's what it takes to get it
18 passed.

19 CHAI RPERSION GARDELLA: Are you accepting that
20 as a friendly amendment?

21 MR. ABEL: Is that what it's going to take to
22 get this passed? People are shaking their head. No,
23 I don't.

24 MS. RADKE: Are you accepting though to
25 change the word "matter" to "case"?

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1 MR. ABEL: Yes.

2 MS. RADKE: Thank you. I just needed that
3 clarified.

4 CHAI RPERSION GARDELLA: So that will be added
5 as a friendly amendment, that portion.

6 Any other discussion? Mr. Debiasi.

7 MR. DEBIASI: William Debiasi, 3rd circuit.
8 I just want to say that I agree with the Attorney
9 General in terms of the presumption that the proponent
10 wishes to attach to this particular amendment to the
11 Court Rule.

12 If you look at the Court Rule and you look at
13 Sections 1 through 5, there is no such presumption
14 that's attached or jury instruction that has to be
15 given if the judge finds that there is any failure to
16 comply with discovery under Sections 1 through 5. Why
17 should there be a similar presumption under Section 6?

18 It doesn't make any sense, and it is not consistent
19 with the ends of justice.

20 What that is, in fact, consistent with is a
21 particular bias on the part of defense counsel or a
22 presumption as to some sort of bad faith without any
23 proof of bad faith on the part of the prosecution or
24 police.

25 Anyone who has worked in this particular area

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1 of the law and has seen thousands and thousands of
2 videotapes can tell you any prosecutor, that 97
3 percent of the time those videotapes are not
4 exculpatory. They are either inculpatory or they are
5 inconclusive.

6 To have a presumption without any evidence of
7 bad faith, without any evidence that the prosecutor
8 even knew what was on the videotape -- if you have a
9 situation where an individual skips out on a warrant
10 and isn't picked up for two years later and then there
11 is no videotape because the police right now,
12 according to law, are entitled to reasonable record
13 keeping practices, and they have rules for regular
14 record keeping practices that have been established in
15 the Court of Appeals, if they have destroyed a
16 videotape in the course of reasonable record keeping
17 practices and have no knowledge what's on that tape or
18 if the attorney hasn't requested it, now you have to
19 have a presumption that they can go in front of the
20 jury and say presume that this videotape that nobody
21 has seen is adverse to -- that it provides adverse
22 evidence to what the prosecution is saying. That
23 simply is not consistent with the vast majority of

24 cases. That particular presumption is completely off
25 the wall and should be stricken.

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1 CHAIRPERSON GARDELLA: Thank you. Just a
2 point of information. The letter from Attorney
3 General Michael Cox dated September 12th, 2008, that
4 Mr. Debiasi referred to, that was placed at all of
5 your chairs today. And so I think the person who did
6 the duplication is a Michigan State fan. You can see
7 the green colors. Judge Kent.

8 JUDGE KENT: Wally Kent, 54th judicial
9 circuit. Matt and I don't always find ourselves in
10 agreement, but on this issue I do agree with Mr. Abel.

11 There is a presumption of innocence. It's
12 important that the people who must prove guilt
13 preserve the evidence for both sides that they have
14 under their control.

15 I understand that there may be a storage
16 problem. There may be a speedy trial problem.
17 Perhaps a bright line time test of three years,
18 whatever, would be appropriate to let the prosecution
19 and the police off the hook, but short of that they
20 should not be allowed to pick and choose what evidence
21 they preserve and what evidence they destroy. There
22 is no hardship in keeping these recordings, these
23 electronic recordings for a period of time to be sure
24 that the defendant has an opportunity to examine that
25 evidence and to determine for himself whether or not

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1 it is exculpatory. So I support the proposal offered
2 by Mr. Abel.

3 CHAI RPERSION GARDELLA: Thank you, Judge Kent.

4 MR. HAUGABOOK: Terrence Haugabook,
5 3rd circuit. I oppose this. As Mr. Debiasi said,
6 many times we look at these videotapes, and I have as
7 a prosecutor, and there is nothing on them. Let's say
8 an officer goes through a whole shift and encounters
9 24 people. Now we have to make 24 copies so that
10 everybody has a copy of this tape?

11 I mean, it becomes a cost problem. It
12 becomes a storage problem, because everybody who has
13 ever been encountered or ticketed, there would have to
14 be a copy for everybody preserved until everybody's
15 appellate process has completed itself.

16 In this cash strapped society and economy we
17 are in, many police stations or police departments are
18 laying off people and they don't have adequate
19 services. Mostly -- I do a lot of my cases out of
20 Detroit, and I know how cash strapped the DPD, the
21 Detroit Police Department, is, and a lot of times --
22 and the main thing too that I hate about this is the
23 inadvertency. I can't tell you how many times where I
24 have had it happen. I have been watching a tape and
25 then all of a sudden it messes up.

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1 If we have brother counsel's situation, then
2 you're automatically presumed to have done something
3 wrong when it was out of your hands, and that is the
4 part that I think -- what if we live somewhere like in
5 Louisiana and a Hurricane Katrina or Galveston or

6 something like that and they come around and things
7 are destroyed. Now when you get ready to go to trial,
8 they say, oh, you don't have that tape. Ha, here is
9 the coup de grace. I can say, you know, even though
10 it was by hurricane, I can say, hey look, they don't
11 have this tape, therefore, you can presume that what
12 they had is adverse to their case.

13 So I think this is too, paints too broad a
14 stroke, and it becomes costly in the long run. Thank
15 you.

16 CHAI RPERSON GARDELLA: Mr. Ri ser.

17 MR. REI SER: John Ri ser, 22nd circuit,
18 Ann Arbor -- is this live, the mike?

19 CHAI RPERSON GARDELLA: I think we can hear.

20 MR. REI SER: -- where, like you, Matt, we
21 know a little bit about marijuana. In fact it's a
22 civil infraction in Ann Arbor to possess marijuana.
23 And that's one of the things I want to --

24 CHAI RPERSON GARDELLA: Mr. Ri ser, could you
25 put it up a little bit.

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1 MR. REI SER: Is this better?

2 CHAI RPERSON GARDELLA: Yes.

3 MR. REI SER: By adopting this resolution, the
4 Representative Assembly would in a single sentence
5 have the Supreme Court modify the state of
6 constitutional law as it relates to the exclusionary
7 rule. I think such a drastic overhaul of the
8 exclusionary rule deserves consideration by a
9 legislature or through the Michigan Supreme Court or
10 the United States Supreme Court in a published
11 opinion.

12 This is big stuff. The remedy for not
13 preserving evidence gets litigated, I don't want to
14 say ad nauseum, but significantly in appellate courts
15 of our land, and that's where this should be done, or
16 in the Legislature.

17 Let's also take a look at what rule we are
18 attempting to modify. 6.201. What is 6.201? The
19 discovery rule in felonies only, folks. It doesn't
20 apply to the marijuana case. It doesn't apply to the
21 drunk driver who wants to see the bad driving, the
22 field sobriety test. It doesn't apply to domestic
23 violence. It doesn't apply to assault and battery.
24 It doesn't apply to civil infractions. So the
25 preservation of the tape only applies to 6.201.

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1 In Administrative Order of 1994-10 the
2 Supreme Court has said that. They reiterated that in
3 Greenfield a couple years ago. So what we are trying
4 to do is have the police preserve evidence in felony
5 cases.

14 As a prosecutor attorney, I know that any
15 electronic recording in a case could be -- for
16 instance, if it's a drunk driving with a crash, patrol
17 videos, radio traffic, 911 calls, ambulance calls and

18 ambulance traffic, the fire departments there, there
19 could be some interviews on video, there could be some
20 interviews on tape. There are mug shots. There could
21 be digital photos. That's what, I don't know, maybe
22 ten types of electronic evidence that as a prosecuting
23 attorney I now have to preserve.

24 This Court Rule would have a judicial
25 function, the Supreme Court through the Court Rules,

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1 mandate to an executive branch of government what they
2 have to do. It's an unfunded mandate that would have
3 incumbent upon me the requirement to preserve this
4 stuff for years down the road, and I am going to urge
5 that it be defeated. Thank you.

6 CHAIRPERSON GARDELLA: Thank you.

7 MR. KORTERI NG: Thank you. David Kortering
8 from the 14th circuit. That's Muskegon. I practice
9 family law and criminal defense. I am in support of
10 the Court Rule, and I don't know if Matt will consider
11 this a friendly amendment, but on the last sentence,
12 Failure to preserve such evidence, changing the
13 "shall" to a "will." I am not so sure if that's the
14 biggest change, but also a change on the last part of
15 the sentence that says "evidence not produced."
16 Instead of a "should be presumed by jurors to have
17 been adverse to the prosecution," change that "should"
18 to a "may," that's the one that would be a may.

19 I am sure of all the prosecutors, most
20 prosecutors would be against this and say no way, no
21 how for reasons we have already heard. I am sure most
22 defense attorneys would say absolutely for reasons we
23 have already heard. But I think changing those two,

24 making those two friendly amendments would the old
25 fashioned way, talk to the judge before that court

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1 rule, or I am sorry, before that jury instruction is
2 provided to the jury, and the judge makes the decision
3 on the circumstances of whether it was inadvertently
4 destroyed or adversely destroyed, on purpose, look at
5 the evidence or lack of evidence and make the
6 decision.

7 CHAIRPERSON GARDELLA: Mr. Kortering, in
8 response, if we could let Mr. Abel respond as to
9 whether he will make that friendly amendment request.

10 MR. ABEL: I accept both of those amendments.

11 MR. KORTERI NG: That's all I have.

12 CHAIRPERSON GARDELLA: Thank you. Next.

13 MR. BOONSTRA: Mark Boonstra from the 22nd
14 circuit. I oppose this amendment, but I don't want to
15 speak to the merits of it. I would concur with what
16 my colleague from the 22nd, John Risner, and others
17 have said in opposition to the amendment. I just want
18 to put it into procedural context.

19 Although the written document that's before
20 us today on this matter indicates that there was no
21 known prior action by the Representative Assembly, I
22 just want to point out, in fact, we debated this issue
23 six months ago. There was a lively debate about it.
24 And at that point it was referred to the Special
25 Issues Committee, of which I am a member.

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1 That committee, along with -- and this is
2 described, actually, in a subsequent, the pre-sentence
3 report document that's in your binder. The Special
4 Issues Committee, along with members of or delegates
5 from the Criminal Law Section, Criminal Jurisprudence
6 and Prisons and Corrections formed an ad hoc committee
7 that debated this issue ad nauseum on several
8 occasions.

9 As this report indicates, that committee
10 chose not to make any recommendation to amend this
11 rule by matter of consensus. And I find it
12 interesting, I guess, that this particular matter was
13 moved up in the day to a point in time, I don't know
14 why, but Steve Gobbo is not here this morning, he was
15 the chair of that committee, and I would move to table
16 this until Mr. Gobbo, the chair of that committee, can
17 report on the committee's work.

18 VOICE: Support.

19 CHAPERSON GARDELLA: It's not debatable.
20 We have a motion on the floor to table this proposal,
21 and so at this point we have to take a vote on the
22 matter. So hearing the responses, all those in favor
23 of the motion to table say aye.

24 All those opposed to the motion say nay.

25 And any abstentions say yes.

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1 I think that there is enough division where
2 we need to take a show of hands on this one.

3 If our clerk, Elizabeth Moehle Johnson, if
4 you have people to assist you, if the people who have
5 raised their hand in support of the motion to table,

6 please raise your hand.

7 VOI CE: Mr. Chai rman, can we just stand?

8 CHAI RPERSION GARDELLA: Just stand, that's
9 fine, yes. That might be easier.

10 Remain standing if you can, just so that our
11 tellers can . . .

12 Okay. All of our tellers are done. Those in
13 support.

14 Those opposed, if you could please stand.

15 One point, while the tellers are doing
16 things, if you were just elected this year to serve a
17 term starting in April of 2009, you cannot vote on
18 this issue. If you were seated to fill a vacancy that
19 currently exists, you can vote. So if anyone voted on
20 the aye or in favor of the motion to table who was not
21 authorized to vote, please raise your hand and we will
22 make the reduction in that vote, or if you are
23 standing now in opposition to the motion to table,
24 please be seated.

25 At this point you can be seated.

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1 Any abstentions? Any abstentions, waive your
2 hand for me. No abstentions.

3 Fifty-three opposed to the motion and 47, I
4 believe, 47 were in favor of the motion to table, so
5 we will proceed with any discussion on this matter.
6 The motion to table fails.

7 Mr. Crampton, I think you were in line.

8 MR. CRAMPTON: Jeff Crampton from the
9 17th circuit, and I rise in support of this proposal.

10 CHAI RPERSION GARDELLA: Mr. Crampton, if I
11 could interrupt you for just a minute. We do have the

12 luncheon that's going to start at noon, and we have to
13 be in there, so at one point -- I am not just picking
14 on you, but we did debate this at the April meeting, I
15 refresh everybody's recollection on that. And so if
16 everyone could be very brief in their comments, we are
17 going to try to get of everybody, and then we can take
18 a vote, and then the next item that we have regarding
19 the consideration of political endorsements, we will
20 push that, without objection, to after lunch, and then
21 move along from there. But I would like to get the
22 discussion finished and get a vote on this before
23 lunch, and we will hopefully get it done within the
24 next seven minutes, if we can.

25 MR. CRAMPTON: I will be brief.

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1 MR. ROMANO: We cannot move that one matter
2 to after lunch.

3 CHAIRPERSON GARDELLA: Well, we'll have to
4 try to vote on that. Ms. Vestrand cannot be here
5 after lunch, so at this point, to complicate our
6 schedule even more, I may entertain a motion to amend
7 our schedule, once again, to delay the discussion and
8 vote on this matter until after lunch so that
9 Ms. Vestrand can make her proposal. It should be a
10 short proposal. Do I hear a motion?

11 VOICE: So moved.

12 VOICE: Second.

13 CHAIRPERSON GARDELLA: There has been a
14 motion, support. Any discussion?

15 Hearing none, those in favor say aye.

16 Those opposed say nay.

17 Any abstentions say yes.

18 The ayes have it for the modification of the
19 schedule. The motion is carried.

20 At this point I would ask Joan Vestrand, and
21 I would acknowledge Joan Vestrand. She received a
22 Champion of Justice award last night, very deserving,
23 and so I would like to give her applause for that.

24 (Applause.)

25 MS. VESTRAND: Thank you. Hopefully this

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1 won't be controversial.

2 The proposal that I am here to support is a
3 proposal that would discourage, not prohibit, but
4 discourage the chair, chair-elect and clerk of the
5 Representative Assembly from personally endorsing
6 candidates for political and judicial office during
7 their terms on the Representative Assembly.

8 While holding positions as officers on the
9 Assembly, these persons are viewed and often perceived
10 as spokespersons for the State Bar. They have a
11 heightened profile within the Bar, and this could be
12 the very reason that they are approached to provide an
13 endorsement, because of their position and the hope
14 for accompanying impact of that. An officer's name
15 alone could imply an endorsement by the State Bar.

16 As a unified Bar, the State Bar cannot engage
17 in partisan politics, make endorsement of candidates,
18 or take positions on issues other than as permitted by
19 administrative order of the Supreme Court.

20 Consequently, the proposed prohibition would
21 serve to protect the integrity of the State Bar and
22 the effectiveness of its public policy program. It
23 would also serve to protect and insulate our officers

24 from the pressures that befall when approached to
25 provide such endorsements. In declining the request,

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1 officers can cite the policy against such endorsements
2 while holding office. In other words, the proposed
3 policy would provide a graceful exit from a possibly
4 awkward situation from which no negative connotations
5 about the officer could be drawn.

6 It is significant that the Board of
7 Commissioners at its July meeting adopted a parallel
8 policy, and pursuant to that policy, members of the
9 Board are discouraged from personal endorsements
10 during their term of office. The executive director
11 of the State Bar of Michigan is prohibited from such
12 endorsements.

13 I think this is a very good proposal. I
14 think it protects our officers. Again, it's not a
15 prohibition. It's a discouragement from personal
16 endorsements and brings top of mind awareness to the
17 issues that these endorsements raise, and, therefore,
18 I would move for the adoption of the bylaw amendment
19 proposal. Thank you.

20 CHAIRPERSON GARDELLA: Do I hear support?

21 VOICE: Support.

22 CHAIRPERSON GARDELLA: Discussion?

23 MR. CHADWICK: Hi, Tom Chadwick from the
24 8th circuit. I rise to oppose this motion. My law
25 partner is running for judge this year. I intend to

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1 endorse him. I have endorsed him probably. I would
2 hate for his opponent to dig up this rule of the
3 State Bar Representative Assembly and use it against
4 him or me to disparage my character in saying that I
5 did something that was discouraged by this body.

6 This is a legislative body. Members of a
7 legislative body are supposed to have their own
8 opinions, whether it's an opinion on a matter before
9 this body or an opinion on a person running for
10 judicial or political office.

11 We allow judges to make political
12 endorsements. I believe it would be inconsistent to
13 discourage members of this body from making political
14 endorsements, and I oppose this motion.

15 MS. VESTRAND: Just a clarification, it would
16 not discourage the members of the Assembly from making
17 these endorsements, only the officers of the Assembly,
18 the chair, chair-elect and clerk of the Representative
19 Assembly.

20 MR. EVANS: Thank you. Tom Evans, 5th
21 circuit. I also oppose this, and this is going to
22 sound smart alecky, but can you imagine the wave of
23 popularity of Mr. Abel if simply Bob Gardella was to
24 endorse his candidacy for Wayne County prosecutor? I
25 don't want to marginalize anyone's efforts, but it

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1 doesn't seem terribly necessary, but it also seems
2 stifling.

3 If you come from a community, especially an
4 STP community where the same ten people do everything,
5 to say, you know, if you take this position here, you

6 know, as an officer, then you will have to -- no, you
7 don't have to, but we would really like you to shut
8 your mouth.

9 I think stifling free speech like that is
10 going to have an effect possibly diminishing the
11 quality of the people who seek those offices, and, you
12 know, if anything, an advisory, say, you know, don't
13 use this in terms of saying I work for the Bar
14 association, you know, or maybe even an advisory,
15 remember, you may be looked upon as a member or
16 representative of this body would be more effective
17 than saying, you know, please don't say anything. I
18 think that will have a harmful effect to this body and
19 to everywhere members go. Thank you.

20 CHAIRPERSON GARDELLA: I can't resist on the
21 Matt Abel analogy there. I am a Michigan State fan.
22 You know, I bleed green during football season. I
23 don't know if I am green enough though for endorsement
24 of the Green party though.

25 MR. EVANS: And I don't want to marginalize

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1 Matt's efforts.

2 CHAIRPERSON GARDELLA: Is there any other
3 discussion?

4 MS. SADOWSKI: Elizabeth Sadowski from the
5 6th circuit.

6 I would remind us all that political speech
7 is the most important right that we have, and this
8 body should do nothing, nothing to act detrimentally
9 to it. We need to express our political views, and I
10 think that strengthens us, and it strengthens the Bar.
11 It does not hurt us, and I would suggest that we vote

12 agai nst thi s amendment. Thank you.

13 CHAI RPERSON GARDELLA: Any other di scussi on?

14 VOI CE: Call the question.

15 CHAI RPERSON GARDELLA: Mr. Abel .

16 MR. ABEL: Thank you, Matthew Abel from the
17 3rd ci rcuit. I think thi s rule doesn't have any teeth
18 wi th the word "di scourge." Ei ther we shoul d prohi bi t
19 i t or not. To di scourge i t means what, you know?
20 You can still do i t but we are going though sneer at
21 you? And I think if we are going to pass thi s that we
22 shoul d add between the words "di scourge" and
23 "offi cers," we shoul d add the words "judges,"
24 "magistrates," and "all offi cers." I mean, how can a
25 j uge endorse somebody but the clerk of the Assembl y

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1 can' t. That just i s i nconsistent.

2 CHAI RPERSON GARDELLA: Ms. Vestrand, woul d
3 you, i f he i s proposi ng that as a friendl y amendment,
4 woul d you accept that?

5 MS. VESTRAND: I woul d not accept that,
6 because I don' t think that we can use the bylaws for
7 the Representati ve Assembl y to i legislate that.

8 CHAI RPERSON GARDELLA: Any other di scussi on
9 at thi s point? Seei ng none and no one at the
10 mi crophone, I woul d call for a vote on thi s matter.

11 Those i n favor of the proposal please say
12 aye.

13 Those opposed please say no.

14 Any abstenti ons say yes.

15 And i n the Chai r's opini on the noes have i t,
16 and that the motion i s defeated.

17 At thi s point we are at a stage -- thank you,

18 Ms. Vestrand for the presentation, and thank you for
19 the involvement of the Assembly members on the debate.

20 At this point we have to get ourselves into
21 the Grand Ballroom, I believe is where the Luncheon is
22 occurring. All of you should have tickets. They
23 should be on the back of your name badge. They are
24 green. Green is the color of the day. That's the
25 theme.

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1 So if all of you could head down to the Grand
2 Ballroom. It is at the other wing of the building.
3 It's on the first floor. Just go all the way to the
4 other end of the building, and it will be on the left.

5 (Luncheon break 11:53 a.m. - 2:00 p.m.)

6 CHAIRPERSON GARDELLA: If everybody could
7 take their seats, we would like to resume the meeting
8 and go back into our session here.

9 First of all, I am going to ask that we, once
10 again, adjust our schedule, and to stay on so that our
11 speaker can be accommodated, David Carroll is set for
12 2:00. I would like to entertain a motion to keep
13 David Carroll on line for the 2:00 point, and then
14 Mr. Abel's proposal would continue on right after
15 Mr. Carroll is done with his presentation, and in the
16 same motion I would also like to entertain a motion as
17 a combination to allow for Mr. Carroll to have
18 questions presented to him at the end of his
19 presentation if any members are interested in asking
20 questions.

21 Mr. Kent, I would recognize you.

22 JUDGE KENT: Mr. Chairman, I so move.

23 CHAIRPERSON GARDELLA: Is there support?

24 VOI CE: Support.

25 CHAI RPERSION GARDELLA: Any di scussi on? Not

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1 hearing any di scussi on, those i n favor please say aye.

2 Those opposed to say no, or nay.

3 And any abstentions say yes.

4 The motion carries, and I woul d now i ntroduce
5 Elizabeth Lyon. No, I am sorry, i ntroduce Janet Welch
6 to make the presentation of Mr. Carroll.

7 MS. WELCH: Thank you, Bob. The State Bar of
8 Mi chigan has been on record for decades asserting that
9 i ndig ent crimi nal defense i n Mi chigan i s not meeting
10 the standards that i t needs to meet. This body took a
11 substantial step forward when i t adopted the 11
12 principles that shoul d underlie qual i ty publ i c
13 defense. Another giant step forward was taken this
14 spring wi th the publ i cation of the NLADA report on
15 i ndig ent crimi nal defense i n Mi chigan.

16 The author, primary author of that report,
17 was David Carroll. He i s the director of research and
18 evaluations for NLADA, and he i s the go-to person and
19 national expert on this i ssue, and i t i s my pri vi lege
20 and honor to i ntroduce him to you today. David.

21 (Appl ause.)

22 MR. CARROLL: Thank you very much. As you
23 mi ght be able to tell, I am at the tail end of a cold,
24 so please be patient while I keep my throat going
25 here.

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1 As world events unfold daily in far off
2 places like Afghanistan and Iraq, the words on the
3 screen of U.S. Supreme Court Justice Hugo Black speak
4 to the core values that distinguish the United States
5 from those countries under the repression of
6 dictatorships, theocracies, and despots. We are
7 different.

8 Unlike tyrannies, the Constitution of the
9 United States of America promises those accused of
10 crimes the presumption of innocence and equal access
11 to a fair day in court. These core values define the
12 beliefs we as Americans hold in common, whether we be
13 conservative or liberal, black or white, rich or poor.

14 Celebrating the closing refrains of the
15 Pledge of Allegiance, this guiding notion of justice
16 for all is the cornerstone of the American social
17 contract and our democratic system. We entrust our
18 government with the administration of a judicial
19 system that guarantees equal justice before the law,
20 assuring victims, the accused, and the public that the
21 results are fair, correct, swift, and final.

22 In the case of Gideon V Wright the United
23 States Supreme Court concluded that reason and
24 reflection require us to recognize that in our
25 adversarial system of criminal justice any person

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1 hauled into court who is too poor to hire a lawyer
2 cannot be assured a fair trial unless counsel is
3 provided for. Declaring it an obvious truth that
4 lawyers and criminal courts are necessities, not
5 luxuries, the court rule that states, not counties or

6 Local governments, must provide counsel to indigent
7 defendants in felony cases. This mandate has been
8 consistently extended to any case that may result in a
9 potential loss of liberty, including misdemeanors and
10 juvenile delinquency proceedings.

11 I am here today to tell the people of
12 Michigan that the court's obvious truth has been
13 obscured and lost at the hands of Michigan
14 policymakers in the intervening 45 years. The state
15 of Michigan fails to uphold a meaningful right to
16 counsel in its criminal courts as required under the
17 Sixth and Fourteenth Amendments to the United States
18 Constitution.

19 This conclusion was reached by my
20 organization, the National Legal Aid and Defender
21 Association, after an extensive year long study of
22 indigent defense in ten representative counties. This
23 was done in partnership with the State Bar of Michigan
24 and on behalf of the Michigan Legislature under
25 concurrent resolution.

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1 Now, we didn't pick the counties. We wanted
2 to make sure that we weren't accused of cherrypicking
3 either the very best or the very worst to skew the
4 results, so we asked the sponsor of the concurrent
5 resolution, Senator Alan Cropsey, to put together an
6 advisory group made up of representatives from the
7 State Court Administrators, the Prosecuting Attorneys
8 Association, the State Bar, the State Appellate
9 Defender Office, and the Criminal Defense Attorneys of
10 Michigan, plus trial level judges, and we said, You
11 tell us what counties that people would accept the

12 results as being a representative sample. The ten
13 counties are listed up on the map.

14 Michigan was the first state in the union to
15 statutorily require the appointment of counsel and the
16 compensation of counsel for services rendered as early
17 as 1857, yet that obligation was passed on to its
18 counties where it has remained for 150 years with
19 little or no change.

20 Counties are free to establish any form of
21 right to counsel delivery system they so choose
22 without regard to meeting nationally recognized
23 standards of justice, such as those promulgated by the
24 American Bar Association, related to caseload control,
25 attorney training, accountability or other quality

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1 assurance standards. In fact, most counties have a
2 multitude of public defender delivery systems. One
3 for circuit court, one for district court, third for
4 juvenile delinquency representation, and in some cases
5 a different indigent defense delivery model for each
6 district court and/or judge within those courts.
7 Without uniform oversight, each of these systems has
8 become institutionally balkanized over time and are
9 failing.

10 The depth and breadth of this problem is so
11 great that NLADA retells the story of the very first
12 right to counsel case in America, the case of the
13 Scottsboro boys, to draw the analogy that many of the
14 systemic deficiencies identified over three quarters
15 of a century ago in Alabama still to this day permeate
16 the criminal courts of Michigan.

17 These include judges hand picking defense

18 attorneys, lawyers appointed to cases for which they
19 are not qualified, defenders meeting clients on the
20 eve of trial and holding nonconfidential discussions
21 in public courtrooms, attorneys failing to identify
22 obvious conflicts of interest, failure of defenders to
23 properly prepare for trial and sentencing, attorneys
24 violating their ethical canons to zealously advocate
25 for clients, inadequate compensation for those

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1 appointed to defend the accused, and a lack of
2 sufficient time, training, and resources to properly
3 prepare for a case in the face of the state court
4 system that values speed over substance.

5 Now, to just show you how out of track
6 Michigan is, 30 states, 30, now fund 100 percent of
7 trial level indigent defense services entirely at the
8 state level. Three more fund the vast majority, well
9 over 90 percent of indigent defense, so Michigan is
10 just one of seven states left that put the entire
11 burden for paying for the right to counsel for the
12 trial level on its counties.

13 Economic hardship and depressed property
14 values mean many counties cannot adequately invest in
15 the social services needed to reverse their slow
16 rising crime rates. The result is that public
17 defender offices in cash strapped counties are far too
18 often under resourced, which in turn increases the
19 opportunity for mistaken convictions and a further
20 waste of taxpayer dollars.

21 Counties in Michigan grappling with budget
22 problems are forced to look for the cheapest possible
23 option for providing indigent defense. With no

24 statewide oversight or standards to ensure justice is
25 equal across county lines, financially strained

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1 counties have often chosen low bid, flat fee contracts
2 in which an attorney is asked to handle every single
3 case that comes down the pike for a flat fee,
4 guaranteeing that lawyers will not have good resources
5 to properly defend the case.

6 Currently today 41 of Michigan's 83 counties
7 currently use such a system, a system deemed by all
8 national standards to be the worst solution possible
9 because the ethical conflicts it creates between the
10 lawyer and the defendant. As you can imagine, the
11 amount of money someone keeps is entirely related to
12 how much is spent on a case, so the chances of hiring
13 investigators or experts is quite low.

14 Collectively, Michigan counties spend about
15 \$74.5 million a year on indigent defense services.
16 Now, that may sound like a big amount of money, but
17 Michigan currently ranks 44th of the 50 states in
18 public defense funding. By spending only \$7.35 per
19 capita, which by the way is 38 percent less than the
20 national average, Michigan ranks lower than such
21 states as Alabama. Texas is right next to Michigan.
22 These are not bastions of the Sixth Amendment in our
23 country.

24 One of the most glaring results of this
25 failed policy is what passes for justice in Michigan's

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1 district courts. People of insufficient means in
2 Michigan are routinely processed through the criminal
3 justice system without ever having spoken to an
4 attorney, in direct violation of the
5 U.S. Constitution. The district courts employ a
6 variety of manners to avoid their constitutional
7 duties, including uninformed waivers of counsel and,
8 more importantly, the threat of personal financial
9 strain through the imposition of unfair cost recovery
10 measures. Anything to emphasize speed over substance
11 is the mantra of the district courts.

12 Again, it was the Scottsboro boys case in
13 which the U.S. Supreme Court warned against such
14 actions. They said, The prompt disposition of
15 criminal cases is to be commended and encouraged, but
16 in reaching that result a defendant must not be
17 stripped of his right to have sufficient time to
18 advise with counsel and prepare his defense. To do
19 that is not perceived promptly in the calm spirit of
20 regulated justice but to go forward with the haste of
21 a mob.

22 And, as bad as the level of justice people of
23 insufficient means receive in the district courts,
24 juveniles facing delinquency proceedings are even more
25 of an afterthought. At risk juveniles in particular

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1 require special attention from public defenders if
2 there is any hope to change behavior and prevent
3 escalating behavioral problems that will increase the
4 risk that they'll eventually be brought back into the
5 adult criminal justice system in later years.

These are common children who have been neglected by parents and the range of other support structures in our society that could channel children in appropriate constructive directions. When they are brought into a court and given a public defender who has no resources and a caseload that dictates that he dispose of the case as quickly as possible, the message of neglect and xlabellessness continues and the risk, not only of recidivism but of escalation of misconduct, increases as you do that process.

16 We are dealing with new technology here, so
17 we are a little off.

In assessing the right to counsel in Michigan
NLADA used what's called the American Bar Association's ten principles, a set of fundamental standards that public defense systems should meet in order to deliver, and this is the ABA's words, effective, efficient, high quality, ethical, conflict-free representation to accused people who cannot afford to hire an attorney.

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These include independence of the defense system from both the judicial and political governmental systems. Early appointment of counsel so that you can get and investigate the crime quickly and figure out what the best resolution is. Confidentiality, that you shouldn't be discussing everything in a holding pen in front of other people who could then use that information to cut their own deal. Workload control, so that you are not asking people to carry an unlimited number of cases.

11 Attorney qualifications, to make sure that

12 that attorney that is getting that case can handle
13 that case. If you were being asked to be defended on
14 serious felony cases, I don't think you would want a
15 real estate attorney. I think you would want a
16 criminal defense attorney. Continuous representation,
17 training, and other things that we will talk about
18 slowly.

19 Now, the very first ABA principle requires
20 independence of the defense function from the
21 judiciary, yet Michigan statutes give the authority
22 for oversight to the judiciary specifically. While
23 the vast majority of judges do strive to do justice in
24 all cases, political pressures, administrative
25 priorities, such as the need to move dockets, or

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1 publicity generated by a particularly notorious crime,
2 can make it difficult for even the most well-meaning
3 judge to maintain their neutrality.

4 Having judges maintain a role in the
5 supervision of indigent defense services creates the
6 appearance of partiality, creating the false
7 perception that judges are not fair arbitrators.
8 Policymakers must guarantee to the public that
9 critical decisions regarding whether a case should go
10 to trial, whether motion should be filed on the
11 defendant's behalf, and whether certain witnesses
12 should be cross-examined are based solely on the
13 factual merits of the case and not on a public
14 defender's desire to please the judge in order to
15 maintain his job or get next year's contract.

16 When the public fears that the court process
17 is unfair, people are less inclined to show up for

18 jury duty or to come forward with critical information
19 about crimes.

20 The failure of this policy was again pointed
21 out in the Scottsboro boys case over 80 years ago. I
22 think this is very important. This is what the U.S.
23 Supreme Court said 80 years ago. How can a judge
24 whose functions are purely judicial effectively
25 discharge the obligations of counsel for the accused?

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1 He can and should see to it that in the proceedings
2 before the court the accused shall be dealt with
3 justly and fairly. He cannot investigate the facts,
4 advise or direct the defense or participate in those
5 necessary conferences between counsel and the accused
6 which sometime partake of the inviolable character of
7 the confessional. This is 80 years ago, yet Michigan
8 is still one of those states that keeps the power of
9 indigent defense with the judiciary.

10 Stemming from these failures to maintain
11 independence, each of the ABA principles are similarly
12 unmet. There is simply no training or supervision for
13 the defense function. It's often hard in a report of
14 this size to talk about the absence of stuff.
15 Criminal defense is an ever evolving field. You have
16 to keep up and have constant. You just think about
17 the advances in DNA sciences in the past decade and
18 the need to constantly stay abreast of everything.

19 In Ottawa and Shiawassee Counties public
20 defenders do not conduct independent investigations
21 for their clients. When they think something is
22 wrong, you know what they do? They ask the police to
23 reinvestigate. Even though oftentimes, and, again,

24 this isn't painting the police function with a broad
25 stroke, but when you have already investigated and

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1 come to a conclusion, it's very hard to break out from
2 those bonds and look at things anew.

3 Judges in Wayne County appoint what's called
4 standing counsel or an attorney that happens to be in
5 court that day with a defendant because their attorney
6 didn't show up. So you have been working with this
7 attorney, they haven't shown up because of conflicts,
8 Wayne County judges will say, you know, would you
9 please stand in for this client.

10 Now, ABA principle eight is one that requires
11 parity between the resources of the public defenders
12 and those of the prosecutors, including parity of
13 workload, salaries, and other resources.

14 One of the reasons why Giideon determined that
15 defense lawyers were necessities rather than luxuries
16 was the simple acknowledgement that states quite
17 properly spend vast sums of money to establish a
18 machinery to prosecute offenders. This machinery,
19 including federal, state, and local law enforcement,
20 the FBI, State Police, local labs, state-retained
21 experts, et cetera, can overwhelm a defendant unless
22 she is equipped with analogous resources.

23 Now, no one is thinking that there is going
24 to be one-to-one parity in the sense you are going to
25 add up all those resources and give it to the defense,

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1 but what can be done is have similar pay, similar work
2 loads, and other things that can make it a more even
3 fight. Without such resources, the defense is unable
4 to play its appropriate role of testing the accuracy
5 of the prosecution evidence, exposing unreliable
6 evidence, and serving as a check against prosecutorial
7 or police overreaching.

8 In detailing the great disparity of resources
9 all across your state, NLADA notes that we were
10 invited to attend a conference of the Prosecuting
11 Attorneys Association of Michigan this past March up
12 in Grand Traverse. When I attended this conference,
13 it was one of those things that I ended up thinking I
14 was going in and out quickly, and I got snowed in. No
15 one told me don't go to Grand Traverse in the middle
16 of winter.

17 So I was graciously offered to stay and
18 attend some of the panels that were going on, and I
19 sat and listened as prosecutors made compelling
20 arguments about how prosecutors are underpaid,
21 overworked, lacked sufficient training and work under
22 stringent time guidelines that make the proper
23 administration of justice difficult at best.

24 Now, I am not an expert in the prosecution
25 function, but our court observations around your state

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1 make us believe that the presentations made by the
2 prosecuting attorneys are true. The underfunding of
3 the prosecution fund in Michigan, though, only serves
4 to highlight how truly far off the mark the defense
5 function is.

14 Now, one more quote from the Scottsboro boys
15 case. This is the section that's quoted in case after
16 case when the Supreme Court expands the right to
17 counsel. Most notably, this past year about two
18 months ago in the *Rothgery* decision the Supreme Court,
19 once again, expanded the right to counsel and said,
20 The right attaches at the start of court process
21 whether the prosecution is there or not.

Now, this is something that was coming up constantly in our quest of looking at your systems. Judges and others said, well, why are you on about having defense attorneys at arraignments. We don't

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often have prosecutors there either.

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1 often have prosecutors there either.

Well, the court has said unequivocally this year that that does not count as justice, and again they quoted this: The right to counsel would be heard in many cases of little avail if it did not comprehend the right to be heard by counsel. Even the intelligent and educated layman has small and sometimes no skill in the science of law. If charged with a crime, he is incapable generally of determining for himself whether the indictment is good or bad. He is unfamiliar with the rules of evidence, left without

12 the aid of counsel. He may be put on trial without a
13 proper charge and convicted upon incomplete evidence
14 or evidence irrelevant to the issue or otherwise
15 inadmissible. He lacks both the skill and knowledge
16 of adequately to prepare his defense, even though he
17 had a perfect one. He requires the guiding hand of
18 counsel at every step in the proceedings against him.
19 Without it, though he be not guilty, he faces the
20 danger of conviction because he does not know how to
21 establish his innocence.

22 The time is now. The people of Michigan need
23 to come together and demand that we uphold the
24 constitution. We did not in our report make
25 recommendations on how to fix it. We are happy to aid

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1 anyone that is willing to look at it where we can tell
2 you how other states have approached this and fixed
3 it, but the bottom line is there is no cookie cutter
4 answer. You necessarily have to take into account the
5 uniquenesses all across your state. It may be a
6 system that looks quite different in the Upper
7 Peninsula than it does in Wayne County.

8 But that is for the people of Michigan to
9 decide. We didn't feel like we as outsiders could
10 come in and tell you what to do. We simply wanted to
11 expose what the problems are, but we are happy to help
12 in any way we can. And at this time I would like to
13 just take any questions if that's still okay with the
14 chair.

15 CHAIRPERSON GARDELLA: It is.

16 MS. SADOWSKI: Is there one state or locality
17 that you found which might be a proper model for us to

18 consider?

19 CHAI RPERSION GARDELLA: If I could ask, if
20 anyone has questions, if you could come up to the
21 microphone so we could get everybody's question on the
22 recording system. State your name and circuit.

23 MS. SADOWSKI: Elizabeth Sadowski from the
24 6th circuit. My question is whether there is any
25 state or locality that has a model which you might

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1 suggest we consider?

2 MR. CARROLL: Again, going to this idea that
3 there isn't a cookie cutter model, there is three
4 states that are generally seen as at the top. They
5 are Oregon, Minnesota, and Massachusetts. Oregon has
6 an entirely state funded contract system. They
7 contract with individual attorneys, consortia of
8 attorneys, or private 501(c)(3) public defender
9 offices, but their contracts are nothing like you
10 would recognize in Michigan. They include all these
11 ABA standards, so it says literally how many cases can
12 be handled. They have a very advanced waiting system,
13 so serious felonies count more than less serious
14 felonies, et cetera.

15 Massachusetts runs almost entirely on an
16 assigned counsel system where private attorneys are
17 paid hourly, but they agree to intensive training,
18 supervision, and oversight from a statewide body that
19 again demands that they have certain caseload controls
20 and all the ABA ten principles.

21 Minnesota has what you would probably
22 recognize as the more typical public defender system
23 in which there is top down governmental employees that

24 are full time and on staff in each of those.

25 My sense from walking around your state is

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1 that you are probably looking at something closer to
2 Montana that just revamped their indigent defense
3 system three years ago. They have a mix. In the
4 urban areas it made sense to have staff employees. In
5 the rural areas it made sense to have a combination of
6 assigned counsel and contract, because it's just not
7 the caseload to be able to support staffed public
8 defenders.

9 Interestingly enough, I think one of the
10 states that would be a good one for you to look at is
11 Wisconsin, and I say that because I also know our
12 friends in the Prosecuting Attorneys Association are
13 also looking at Wisconsin's model to change the
14 prosecution system to more of a district or circuit
15 system.

16 This past summer there was a conference that
17 brought people both from the defense and prosecution
18 system in Wisconsin to come and talk to public
19 defenders and prosecutors, and I think there is a lot
20 of good that comes from that. And I think they also
21 share a lot of the same sort of uniquenesses as far as
22 how the state looks as regards to urban areas and
23 rural areas and stuff. So those are the states I
24 would start looking at to get some ideas on how to do
25 it.

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1 MR. HOSCHNER: Robert Hoschner from the 35th
2 circuit. My question to you is, and I only ask this
3 because I am from Shiawassee County and I worked in
4 that system for 36, 37 years, and I ask this question
5 because I don't know where you got your information,
6 and I am wondering how you got that information, since
7 it certainly is not what I experienced in 36 years and
8 the comment you made about Shiawassee County. I also
9 have a cold.

10 MR. CARROLL: Sure. Our methodology is
11 explained in the report, but I will give you the quick
12 thumbnail. We went to each of the ten counties, and
13 we conducted in-person interviews with public defense
14 providers, judges, county officials, prosecutors,
15 et cetera. We also did courtroom observations and sat
16 in the various district courts, circuit courts,
17 et cetera. We also gathered as much information as we
18 can in regards to caseload, budget, and other things,
19 and you put together all those various perspectives
20 that you have seen, in addition to what's known about
21 systems that function.

22 So, for instance, we took the ABA ten
23 principles, and we set up a very formal protocol and
24 asked specific questions to find out, you know, the
25 difference between there is quality lawyers in this

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1 system but there is nothing that guarantees it. It's
2 only grown up that way or there is certain things
3 versus having strict rigors to be able to ensure that
4 each attorney is going to be able to handle those case
5 loads. So each of the counties, obviously, have

6 different variations on a theme. Some are better than
7 others.

8 But in Shiawassee, on the issue of the
9 question of using police to investigate, that was
10 generally the theme that we heard from several
11 different people, including defense attorneys and
12 prosecution, and so we stand by that. But we do, the
13 methodology is spending an intense, depending on the
14 size of the county. In Wayne County we brought a team
15 of like 12 experts. In Shiawassee, I think we brought
16 three, and spent four or five days on the ground and
17 did those interviews and did those observations and
18 did those fact gathering.

19 MR. HOSCHNER: The reason I say that is
20 because in the 36 years I practiced law in Shiawassee
21 County I had many murder cases, rape cases, thousands
22 of cases I defended. I always had the opportunity to
23 go before the judge and get additional help as far as
24 I needed. I never in thousands of cases had to go
25 back and ask the police to do any further

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1 investigations unless it was with the prosecutor and
2 the judge because there appeared to be some obvious
3 reason why, obvious reason why we wanted them to
4 reinvestigate.

5 I always had the opportunity to have
6 investigations. I sometimes had to, I sometimes had
7 to ask the judge, you know, permission at first to
8 make sure that he knew what I was needing and what
9 kind of money it was going to cost, but I would get
10 that information, provide it to him, and he would
11 always give me the right to do that.

12 I have three people in my office that have
13 been doing criminal defense work for many years. I
14 don't know that any one of them ever talked to anybody
15 from your organization.

16 I only say this because I loved working. I
17 am not retired, at a young age for various reasons,
18 but I really respected what we did in Shiawassee
19 County, and, granted, you have only taken ten of the
20 counties in the state, one of which is my county, but
21 I don't feel that we were so severely put behind in
22 terms of how you are representing us at this
23 particular point.

24 For example, we had a system wherein the
25 older attorneys, the more experienced attorneys were

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1 the ones who got the felony cases, were the ones who
2 got the criminal cases that were the severe cases, and
3 the judges all knew who those attorneys were, and they
4 were the ones that were put on that list, and maybe
5 there is only six attorneys out of 50 in that county
6 that were put on that list, and it was done by a
7 variety of people, prosecutor being part of it, judge
8 would be a part of it, the other defense attorneys
9 would be a part of it.

10 I think there is more to our system in this
11 state than what it appears from looking at this
12 particular representation. I only say that because,
13 you know, I really loved what I did for 36 years, and
14 I thought I did an excellent job. In fact, I had many
15 murder cases of which I did far better than I thought
16 I should for an indigent defendant, and I always felt
17 that I had the opportunity with my judges to do what I

needed to do for that defendant, and I always had the opportunity to speak to him alone, I always had an opportunity to let him tell me what he needed to do and that I could advise him at any given time, and I always had the time to do that.

23 I just want to make sure that -- this is the
24 first time I have ever been to one of these things, so
25 I don't know why I am up here so impassioned, but I

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1 really believe that we had a good system. It may not
2 have been the best, it may not be able to compare to
3 some of the other parts, but we had a good system, and
4 we did it as a small, local community with the money
5 we had, and you are right, we needed money from some
6 other source than our own pockets, because that was
7 the hardest thing to deal with, and many a times I
8 would turn in hours and hours and hours of work and
9 get paid very little. So I gave more in my career
10 than I ever received.

11 MR. CARROLL: Thank you for those comments.

12 (Applause.)

I think this type of debate is very healthy.

24 I hope it continues as we move forward in this
25 campaign to do it, but I must comment that you said

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1 several things in that that you went to the judges
2 every time you needed something. Now, in that
3 instance it may be someone that wasn't feeling
4 pressures and there weren't budgetary constraints and
5 they were able to give you experts or not, but that's
6 not always the case, and that's why the Supreme Court
7 again has said that the judiciary must be out of it.

8 Again, I have made a lot of friends with the
9 prosecution, but the prosecution, there is no place
10 for the prosecution in deciding which criminal defense
11 lawyers are adequate to be able to do certain cases.

12 So it's fair game. I think we are open to
13 having these debates further, and it's also, I think
14 when reform happens, it's very tough for a -- criminal
15 defense lawyers are often the ones that are most vocal
16 at the beginning because it cuts to the core of who
17 they are.

18 I think I met many, many committed public
19 defenders and private defense counsel in your state,
20 and I think they aren't trying to do a bad job. I
21 think they are doing by their own, what's given to
22 them, a very good job. The problem is that given the
23 structure of the system even Superman couldn't be
24 doing what is expected under the ABA guidelines and
25 what the U.S. Constitution recommends.

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1 I would say, if people would ask around, how
2 many counties are now respecting the Rothgery decision
3 that was handed down two months ago? I would say very
4 few in your state.

5 So this isn't about the quality of the
6 lawyers and who they are. It's about the system to
7 allow them to do what the U.S. Constitution expects.

8 MR. BARTON: Bruce Barton, 4th circuit. I
9 agree with most of what you have said. I am from
10 Jackson County. Remember that's the McJustice county,
11 according to your report.

12 First of all, I want to to some extent
13 defend, and I don't think you really have put down the
14 attorneys from the county, but we have outstanding
15 criminal attorneys who are appointed, who don't spend
16 as much time on their cases as I would on a retained
17 case, and that's the fault of the program.

18 In fact, the system you studied has been
19 changed. In fact, what had happened was that the
20 Board of Commissioners told the judges they were
21 spending too much money, and the Board of
22 Commissioners wanted some bargaining, and so there was
23 a system set up of not just appointed attorneys but a
24 bid process, and the bid process awarded bids to
25 attorneys at various levels. Like, I think it's \$355

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1 for a minor felony case, \$500 or a little more for a
2 serious felony case, and \$8,000 is a low bid for a
3 murder case.

4 In any event, the problem is with the Board
5 of Commissioners. They don't want to spend the money,

6 they don't have the money, I suppose. And that I
7 think should be pinpointed that any system which
8 relies on appropriations from the Board of
9 Commissioners is going to have the same flaws that you
10 have mentioned.

11 I think we get by because we have excellent,
12 or at least good, criminal defense attorneys
13 appointed. At the present time they are screened by
14 the entire panel of judges who know their background.
15 Until recently -- I know they are good attorneys,
16 because most of them were assistant prosecuting
17 attorneys when I was prosecutor. That has changed
18 recently. Some have retired, and a couple of them
19 have become judges, which gives you some idea of their
20 caliber.

21 Our system works fairly well except to the
22 extent that, one, there is no investigative process
23 available which isn't the police except the problem
24 that attorneys are working on volume. They go in
25 Friday morning with felonies and sit with the

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1 prosecutor, and the prosecutor says, well, I will plea
2 bargain down to this, take it or leave it, and
3 generally they take it, because they can't afford to
4 do much else.

5 In most cases the prosecutor is making a
6 legitimate offer, but, even so, that's a speedy up
7 process conducted by underpaid attorneys.

8 By the way, I don't agree that the
9 prosecutors are underpaid. I have been there. I
10 started with something like \$5,000 a year as an
11 assistant prosecutor. We got finally in our county a

12 system of a prosecutor's union, so to speak, that
13 bargained with the Board of Commissioners.

14 I don't know about other counties, but I
15 don't think our people are underpaid, and I am sure
16 that they have the support of the Prosecuting
17 Attorneys Association of Michigan, which has -- when I
18 was prosecutor we got that started with one lawyer and
19 one assistant. My understanding now is they have
20 something like 150 employees in their own building. I
21 don't think prosecutors are overpaid, and I certainly
22 don't think they don't have support services that are
23 somewhat lacking to defense attorneys.

24 MR. CARROLL: Think you. I think you said a
25 couple very important things. One, the ABA, first

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1 principle on independence, I spent a bit of time
2 talking about independence from the judiciary, but
3 independence from the political process is there as
4 well. Most states that's a broad, bipartisan,
5 statewide commission to oversee indigent defense
6 insulated from some of these very broad questions that
7 you talk about.

8 Let's face it, you know, in most instances
9 county commissioners aren't constitutional scholars.
10 They don't necessarily understand what the
11 requirements of the Sixth Amendment are, and I think
12 in their defense they are doing what they think is in
13 the best interest of the taxpayers, which is to hold
14 down costs as much as possible.

15 If these battles are going on on 83 different
16 counties instead of once at the state level, you are
17 always going to have issues with a new commissioner

18 comes on and reeducation has to start all over again.

19 I do think for those that haven't read the
20 report, by the way, I spent one whole chapter looking
21 at Jackson County in depth, because I felt it really
22 was a good example of all these problems going on, and
23 I chose it, not because I thought it was the worst,
24 but because I thought it was the best of the ten
25 counties that we saw.

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1 Indeed, I was very impressed with the
2 presiding judge there, Judge Chad Schmucker, as
3 someone that really cared about defendants, and his
4 demeanor on the bench and talking to clients just
5 showed someone that really thought deep about the
6 issues of what it means to be a judge. And if it
7 can't work in Jackson County, and I should say in
8 Jackson County they spent more on indigent defense
9 than they did on the prosecution at the time we were
10 there, if they can't do it with those resources and
11 with a person like Judge Schmucker presiding over the
12 system, then what does that mean for the places that
13 don't have the resources or the Judge Schmucker?

14 In regards to -- you know, I think, I hear a
15 lot of people that say things like you did, sir, of I
16 think we do fairly well, you know, and I would agree
17 in many instances you are doing okay here or fairly
18 well, but that's not what the Constitution says. It's
19 not the right to counsel given whatever the current
20 economic status is. It's a very definite, this is
21 what needs to be done, and so I know people are going
22 to struggle with this. I know I am in for a lot more
23 people questioning our methodology, questioning how we

24 did that. I want that. Please, let's engage in
25 debate and get to the bottom of it, because the system

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1 is not working for clients. Thank you, sir.

2 MR. BARTON: If I may, I meant to end with a
3 question, and it's directed to the panel, to the
4 State Bar itself. What are we going to do about it?

5 MR. CARROLL: I am actually going to turn to
6 Janet.

7 MS. WELCH: Can you hear me? I am going to
8 have to lean over here. I was sort of hoping someone
9 would ask that question, because the question I would
10 ask if I were you is, given that the Bar has been
11 aware for a long time that we are falling short in
12 this area, why now when the state is in about as
13 desperate a financial situation as it's ever been in,
14 why are we doing it now, and isn't it really a time
15 when there is absolutely no chance at all of success?
16 I tell you what we are doing, and then I will make a
17 comment about why I think that failure is impossible.

18 We are doing what any interest group, and our
19 interest I think is the Constitution, what any
20 interest group does when it wants to make change. We
21 are educating legislators, and we are also having
22 conversations with the Supreme Court, because there is
23 two parts to this. There is the money and there is
24 the standards, and if you don't have standards, it
25 doesn't matter how much money you spend. So we are

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1 engaging in both those areas, and I would say that we
2 would have no chance of success at all if we didn't
3 have a most powerful ally possible on our side, and
4 that is the Constitution. And so I am very hopeful
5 that all of the forces are coming together right now
6 to move us forward.

7 I would ask David to comment a little bit on
8 the story that he has been telling about his
9 involvement with Louisiana and where they were and how
10 successful they have been.

11 MR. CARROLL: Sure. Thank you. I started
12 very similarly in Louisiana as I did in Michigan in
13 that some people called our organization saying, We
14 really have dire constitutional issues around the
15 Sixth Amendment, and I went down there, as I did here,
16 and saw some things that perked my curiosity, and they
17 ended up doing a report down there, they had very
18 different setups, different issues than in Michigan,
19 but the bottom line was they were not fulfilling the
20 Sixth Amendment to the U.S. Constitution.

21 We did a report like this. It lead to the
22 legislature, court, and executive branch forming a
23 three-branch working group to work through these
24 issues. They put on hearings. They had all the
25 people come to say, you know, oh, they overreached on

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1 this report or they underreported on this, gave
2 everybody, judges, prosecutors, public defenders,
3 clients, victims the ability to come before them and
4 hold hearings on this.

5 At the end of the day they realized that they

6 had the major problem they did, not the least of which
7 was that there was a lawsuit filed by the National
8 Association of Criminal Defense Lawyers alleging all
9 this, and the Legislature decided they didn't want the
10 courts to try to fix this. They would rather fix it
11 themselves.

12 Now, Louisiana quadrupled the amount of money
13 being spent on indigent defense in the years after
14 Katrina. So if there was ever a dire economic
15 situation, it was post-Katrina Louisiana, that at the
16 end of the day when they realized that the
17 Constitution was being violated on a daily basis, the
18 Legislature of Louisiana created a complete statewide
19 indigent defense system with an independent board, all
20 the money coming from the state instead of from their
21 counties, they are called parishes, they meet all the
22 ABA ten principles. They looked to Montana, because
23 they felt they needed a mixed system too, so they have
24 staff public defenders in places like Baton Rouge,
25 New Orleans, and Lake Charles, and then they have

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1 contract and assigned counsel in the suburban and
2 transitional and rural areas as well.

3 So this can be done. When people come
4 together -- people are always asking me where is the
5 money going to come from in Michigan? Where is the
6 money going to come from in Michigan? I say, you know
7 what, I am not a budgetary expert on your state. I
8 can't tell you.

9 Now, we do look and say there is that
10 Michigan where you rank 44th for cost per capita on
11 indigent defense. You rank about third or fourth for

12 cost per capita on corrections. My sense is that if
13 you look at the criminal justice system in whole,
14 there will be cost savings by investing on the front
15 end and saving on the back end, but those are
16 decisions for other people to make.

17 MS. GRAMZOW: Kirsten Gramzow from the 6th
18 circuit. I apologize upfront if you had already
19 stated this, but I was curious if any of the
20 individuals who participated in your study, if they
21 had practiced criminal law.

22 MR. CARROLL: In our study? Yes, in fact, we
23 have an interdisciplinary team of people with social
24 science backgrounds, but we also bring the leaders
25 that we consider from across the country of criminal

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1 defense lawyers, specifically public defense.

2 There is an organization called the American
3 Council of Chief Defenders, which are the public
4 defenders from a lot of statewide systems and, indeed,
5 some from large urban areas as well that come together
6 and meet, you know, much like other organizations do,
7 and so we have on staff some criminal defense lawyers,
8 as well as social science researchers, but we
9 augmented our team with leaders from around the
10 country. So we have, for instance, the chief public
11 defender from Wisconsin on some of the teams because
12 we felt he brought a certain perspective. We have
13 people who are experts in assigned counsel systems
14 going to those systems that were assigned counsel
15 systems.

16 In Wayne County we brought people from, you
17 know, Massachusetts and California and Texas and other

18 places to come and look at that.

19 So, yes, it was very much, it's probably 80
20 percent were criminal defense lawyers on the team.

21 MS. GRAMZOW: Thank you.

22 CHAI RPERSION GARDELLA: Thank you, David, for
23 the great presentation.

24 (Applause.)

25 CHAI RPERSION GARDELLA: It was very

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1 informative, gives us food for thought, especially
2 when you are out there talking to your various
3 legislators who represent your various communities in
4 Lansing.

5 At this point --

6 JUDGE STEPHENS: I just asked if I could have
7 a point of privilege. Tomorrow, for people who are
8 interested in this subject, we are going to spend some
9 time looking at the future of indigent defense, public
10 indigent defense in Michigan. We will start at 10:00,
11 from 10 until 12. David Carroll is one of the
12 presenters, but there will also be some Michigan
13 people who have some ideas and have a willingness to
14 form an effort to work on this in the future. So
15 please join us tomorrow.

16 CHAI RPERSION GARDELLA: And, again, that is
17 tomorrow from 10 a.m. to 12 p.m., 12 noon, and it's
18 called The Future of Michigan's Public Defense System:
19 Free-For-All or Fix. I am sorry, Free-For-All or
20 Fixed Once and For All.

21 Now, back on track for our proposal agenda.
22 Returning to Matt Abel's proposal, that's item number
23 15 that was moved up, and that is consideration of

25 Mr. Olson.

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1 MR. OLSON: Mr. Chairman, in light of the
2 debate that has been held on this in two separate
3 meetings, I would move to call this question.

4 CHAIRPERSON GARDELLA: Is there support?

5 VOICE: Support.

6 CHAIRPERSON GARDELLA: There is no discussion
7 on that matter. All in favor say aye.

8 Those opposed no.

9 And those abstaining yes.

10 In the chair's opinion the ayes have it, so
11 at this point we would go to the question, and at this
12 point we would have a vote on the overall question on
13 Mr. Abel's proposal, which was item number 15 on the
14 agenda.

15 All in favor of that proposal and the motion
16 that's pending on that say aye.

17 Those opposed nay.

18 And those abstaining say yes.

19 In the chair's opinion there is division
20 where I would like to have a show of hands on that
21 one. Let's do standing like we did last time.

22 First of all, those in favor of the motion
23 stand please. Thank you to those people that are
24 standing.

25 Now all those opposed to the motion please

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1 stand. You can all be seated.

2 Any abstentions stand. I don't see any
3 abstentions.

4 With that, the motion is approved 62 votes to
5 37 votes.

6 (Applause.)

7 CHAIRPERSON GARDELLA: Next on the agenda is
8 item number 12, consideration of Canon 2(F) of the
9 Michigan Code of Judicial Conduct. Mr. Abel, if you
10 would like to approach the microphone or the podium,
11 whichever you prefer.

12 MR. ABEL: Thank you, Mr. Gardella. I have
13 been upfront, and it wasn't all that much fun. Thank
14 you all very much, by the way, for your support on
15 that last proposal. I think that was the right thing
16 to do, obviously.

17 In regard to the proposals regarding
18 pre-sentence investigation reports, I have no
19 particular ownership on this.

20 CHAIRPERSON GARDELLA: Mr. Abel, this is on
21 the second page. This would be item 12, which was
22 going to be 11:25.

23 MR. ABEL: I am sorry. Thank you. In regard
24 to that matter, the only comments that were received
25 that I am aware of were those from the Attorney

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1 General, and it may be that this matter needs more
2 discussion. I am not sure it does. It seems that the
3 Attorney General missed the point, which is that the
4 defendant who is doing the appeal is the one who
5 should have the copy of the report.

6 CHAI RPERSION GARDELLA: Mr. Abel , this is item
7

12.

8 MR. ABEL: Code of conduct, okay. This has
9 to do with -- maybe I should have gone upfront --
10 judges allowing relatives to be employed in the courts
11 in which they work, and I know that that happens in
12 various places, and, for example, in Livingston County
13 the prosecutor's wife is in charge of juries -- she is
14 the court clerk -- and that to me is certainly an
15 appearance of impropriety. Now, I am not saying the
16 judge did anything wrong in this. They are like why
17 should that reflect on the court? How is the judge
18 doing anything wrong?

19 Well, it's the court's hiring practices that
20 are at issue here, and there is an appearance of
21 impropriety when someone who is related to someone in
22 a position of authority has more than just a straight
23 ministerial role, where they have the opportunity to
24 impact the docket and the jury.

25 If the body felt that this needs more work,

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1 because there really were no comments on this aside
2 from -- well, there were no comments -- that if we
3 were to refer it, I would suggest that we refer it to
4 the Assembly Review, I am sorry, Special Issues or
5 Drafting Committee with specific instructions to seek
6 comments from particular sections that are involved,
7 basically any section that is involved in litigation
8 where people are in court would be impacted, and I see
9 those as criminal law, family law, general practice,
10 judicial conference, legal administrator, litigation,
11 negligence, prisons and corrections, public

12 corporation Law, Civil Procedure in the Courts
13 Committee, the Criminal Jurisprudence and Practice
14 Committee.

15 CHAIRPERSON GARDELLA: Mr. Abel, are you
16 making that as a motion to refer it to the Special
17 Issues Committee?

18 MR. ABEL: Yes, with instructions, because --
19 unless you all want to vote for it right now.

20 CHAIRPERSON GARDELLA: Is there support for
21 his motion?

22 VOICE: Support.

23 CHAIRPERSON GARDELLA: With the motion to
24 refer it to the Special Issues Committee with
25 instructions to refer the proposal to all of the

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1 sections of the Bar so that they can comment or make
2 proposals to modify the proposal, whatever they
3 choose, the support does go along with that. I see a
4 yes on that. So any discussion on that proposal, or
5 on the motion?

6 Hearing none, all in favor say aye.

7 Those opposed nay.

8 And any abstentions say yes.

9 The motion carries that that motion and the
10 proposal will be referred to the Special Issues
11 Committee for further development and consideration.

12 At this point we will move along to item
13 number 16, which is consideration of MCR 6.425, (B)
14 and (C), which is providing copies of presentence
15 reports to defendant and defendant's counsel. The
16 proponent is Matt Abel.

17 MR. ABEL: Thank you. I appreciate it. I

18 may be a little more organized now.

19 This is the proposal in which the Drafting
20 Committee, when it was referred to them, replied, not
21 by changing this, but by drafting their own two rules.
22 As I was beginning to say, I don't have any particular
23 ownership of this language. I just think it's
24 important that pre-sentence reports be provided. It's
25 something that I have run across in my daily practice,

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1 and I support the Drafting Committee's revisions and
2 proposals regarding 6.425(B) and, I am sorry,
3 6.610(F).

4 CHAIRPERSON GARDELLA: Mr. Abel, are you
5 withdrawing your proposal on 16?

6 MR. ABEL: Yes, as long as these others are
7 going to be moved today.

8 CHAIRPERSON GARDELLA: So we will take that
9 off the agenda and that is withdrawn.

10 Moving along, in fact, we are almost caught
11 up on the agenda now. We are five minutes behind now.
12 Item 17, consideration of MCR 6.425(B) presentence
13 report: Adding information to; adjournment allowed
14 when not timely submitted before sentencing. The
15 proponent will be Judge Wallace Kent.

16 Actually we are doing a second one at the
17 same time, which is consideration of MCR 6.610(F),
18 pre-sentence report for district court: Adding
19 information to; adjournment allowed when not timely
20 submitted before sentencing, and the proponent on that
21 is Marty Krohner from the 6th circuit.

22 JUDGE KENT: Thank you, Bob. Steve Gobbo
23 could not be here today. He had to be in Cleveland

24 for some meeting on cemetery regulations, and he asked
25 us to step in.

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1 Matt, by the way, this suit is not green. I
2 graduated from U of M. This is a badly muddled maize
3 after last Saturday.

4 Mr. Abel had proposed an amendment to the
5 Court Rules which would require some early disclosure
6 of the presentence investigative reports in order that
7 counsel and defendants have the opportunity to examine
8 them in advance of the sentencing date and prepare to
9 answer in some meaningful way what they perceive to be
10 deficiencies or inaccuracies in the report.

11 Our ad hoc committee, which was constituted
12 of the Special Issues Committee and interested
13 persons, went a little bit further by drawing some
14 bright line rules, specifically that the report must
15 be provided at least two days in advance, and going
16 one step further, that for the purpose of preparing
17 for appellate review that the defendant himself, as
18 well as counsel, could retain copies of the
19 presentence reports which were provided to them in
20 advance of sentencing without having to make a written
21 request of the court that those were theirs to keep.

22 That's the essence of the report that we make
23 as to that particular rule. We also investigated the
24 companion rule in district court, which will be spoken
25 to by our other speaker, and in juvenile court, which

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1 I am familiar, and in juvenile court the Court Rule
2 makes reference to the statute, which specifically
3 allows the retention of the presentence, and which
4 further makes reference to the opportunity for timely
5 review in advance of sentencing. So we make no
6 recommendations as to those rules.

7 With that having been said, I will defer.

8 MR. KROHNER: Thank you, Judge. Steve Gobbo
9 is supposed to deliver this speech. Instead it's
10 taking two of us to do the work of only one.

11 Steve sent me the report, so I am going to
12 read it in deference to him. If you recall at the
13 last meeting in the spring when we had all this hope
14 for a nice summer of sports which we don't know where
15 it's gone but now we are facing the fall and the long
16 winter, all these issues were raised, and we had a lot
17 of discussion, and at some point in time somebody came
18 up with the great idea, and I think it was Steve, that
19 we have an ad hoc committee and sign on those who
20 wanted to participate.

21 So the Ad Hoc Committee was invited. People
22 that signed up were Mark Boonstra, Kim Eddie, Gordon
23 Gold, John Hammond, C.J. Horkey, Wally Kent, Marty
24 Krohner, Mike McClory, David Perkins, Paul Ryan, Ron
25 Foster, Richard Stapleton and Steve Taratuta.

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1 As chair of the Special Issues, I am indebted
2 to these individuals for taking the time to assist the
3 committee in its deliberations, though not all the
4 members were able to participate during the meetings.

5 The Ad Hoc Committee reached consensus about

6 the amendment of 6.201, which we have already dealt
7 with. The Ad Hoc Committee, first they chose not to
8 make any recommendations. That's just a footnote for
9 posterity. The Ad Hoc Committee reached consensus
10 recording amendment 6.245, the presentence, and did
11 recommend the amendatory language which you have in
12 your report. It's also noted that the other two
13 rules, as Judge Kent talked about.

14 As a result of the conference that it was
15 determined that 6.610 for the district court should be
16 the -- following, because they both, between 6.425
17 and 6.610 were basically the same dealing with
18 basically the same essence, that being the presentence
19 report, so the committee felt that we should have,
20 shall we say, rules that kind of merge from district
21 into circuit so that there is no distinguishing
22 between them, because the essence is the same thing,
23 and that is whether or not your liberty is at stake or
24 whether or not you are going to get probation, jail,
25 or whatever.

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1 So we felt that it basically should also
2 contain the same type of wording so that defense
3 attorneys have an adequate opportunity to prepare for
4 the sentencing as well as give their client adequate
5 opportunity to at least have access to the report.

6 So you have those in your file, and we will
7 take questions if you have any. No, sorry. I am
8 sorry, no questions. I think that's invitation to
9 disaster.

10 I am going to move that this body adopt the
11 recommendation of the Special Issues Committee on

12 MCR 6. 610.

13 CHAI RPERSION GARDELLA: Is there support?

14 VOI CE: Support.

15 CHAI RPERSION GARDELLA: Any di scussi on?

16 Seeing no di scussi on, all those in favor of
17 the pending motion say aye.

18 Those opposed say nay.

19 Any abstenti ons yes.

20 The motion is approved. Thank you,

21 Mr. Krohner.

22 (Appl ause.)

23 CHAI RPERSION GARDELLA: We have a second
24 motion.

25 JUDGE KENT: And I will move the adoption of

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1 the recommendations regardi ng MCR 6. 425(B) and (C) as
2 set forth in your report.

3 CHAI RPERSION GARDELLA: Is there support?

4 VOI CE: Support.

5 VOI CE: There is no C.

6 JUDGE KENT: (B), I beg your pardon. I stand
7 corrected.

8 CHAI RPERSION GARDELLA: Is there support to
9 that motion?

10 VOI CE: Support.

11 CHAI RPERSION GARDELLA: Any di scussi ons?

12 Ms. Radke.

13 MS. RADKE: Thank you, Robert. Victoria
14 Radke, 47th ci rcuit. The issue that was presented
15 before court by the good judge has two thi ngs, one is
16 the provisi on of the presentence report adequatel y
17 before sentencing but also a retentio n after

18 sentencing. The issue of the position that is stated
19 only says that we are voting on to mandate the
20 distribution of copies of the presentence report
21 before sentencing. Are we going to amend that to
22 include retention afterwards?

23 JUDGE KENT: I have to look at the manner in
24 which it was set forth, and, yes, it was our intention
25 that it should do so, and I believe that's included in

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1 our proposed 6.425(B).

2 MS. RADKE: That is the issue, Judge, but the
3 vote, the statement of the position that we are voting
4 on does not include both the --

5 JUDGE KENT: I understand you now, and I
6 would ask that we adopt or that the position be
7 restated to include both issues.

8 MS. RADKE: Thank you.

9 JUDGE KENT: I don't believe I have to amend
10 my motion. It's subject to the comments of Judge
11 Stephens. We are asking, Judge Stephens, do you
12 believe it needs to be, the motion needs to be amended
13 in order to reflect the fact that the proposal
14 includes both issues?

15 JUDGE STEPHENS: The motion on the floor is
16 the one you made.

17 JUDGE KENT: You are not asking to change the
18 motion then. You wanted to be sure that it's clear
19 that it includes both issues?

20 MS. RADKE: Yes, Judge, I want to make sure
21 that the position that the people are voting on, they
22 understand that if they vote yes they will be not only
23 approving that we ask the Supreme Court to mandate

24 distribution of the report prior to sentencing but
25 also mandate distribution to counsel and the defendant

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1 after.

2 JUDGE KENT: And that is the intent of the
3 motion.

4 MS. RADKE: Thank you.

5 CHAIRPERSON GARDELLA: The motion being on
6 the floor, we have support. Additional discussion.

7 MR. HAUGABOOK: Yes, Terrence Haugabook,
8 3rd circuit. One of my concerns is if you have a
9 defendant that's being incarcerated, and I deal with a
10 lot of defendants who sometimes cooperate with the
11 government, if you distribute their presentence
12 report, and I have a lot of defendants sometimes when
13 they sign confidentiality or cooperation agreements
14 with us, they ask for them to stay with their lawyer
15 because if they are going into a jail or something
16 like that, people rifle through their materials.

17 So you get somebody, you give him his
18 presentence report, somebody down the line of a gang
19 or an organization wants payback for this guy who
20 testified and cooperated against him, somebody rifles
21 through there, through his presentence report, finds
22 out where his family members are, and then you have
23 people starting to intimidate and harm family members
24 of somebody who cooperated.

25 So you got to think in terms of that. What

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1 about the incarcerated defendant. Do you want him
2 running around with his presentence report with all of
3 his personal information so that somebody can go in
4 his cell or whatever and swipe it and annihilate his
5 family or something as payback. That's something to
6 think about.

7 CHAIRPERSON GARDELLA: Thank you. Any other
8 discussion? Mr. Abel.

9 MR. ABEL: Thank you. I just want to respond
10 to that last comment. This doesn't require the
11 defendant to take it to prison with him. It just
12 allows him to do that if he wants to.

13 CHAIRPERSON GARDELLA: Thank you. Any other
14 discussion?

15 Seeing none, all those in favor of the motion
16 say aye.

17 Those opposed nay.

18 Any abstentions yes.

19 The motion is approved.

20 We are done with the proposals at this point.
21 We have some other things to do, and I am going to add
22 one additional thought here. Just to give everyone a
23 reminder, and this is, Bruce Courtade had given me
24 this suggestion just before lunch. It's a great idea.

25 As it relates to the mileage reimbursement,

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1 for those of you who do wish to donate to Access to
2 Justice, one small first step on a contribution is if
3 you want to waive your mileage reimbursement and have
4 that earmarked for Access to Justice, that is a
5 possibility, and you can see the State Bar staff to

6 have that accomplished if you wish to do that.

7 The next item is I would like to present
8 recognition to our parliamentarian before we get
9 further into the agenda, so I have something for
10 Judge Stephens for all of her great work with the
11 Assembly over the last number of years.

12 As many of you know, and I think I mentioned
13 previously, Judge Stephens, she has served on the
14 Board of Commissioners, she has served on the
15 Representative Assembly, she has chaired the Justice
16 Initiative Committee for the State Bar. She is, in my
17 opinion, the best volunteer that the State Bar has.
18 She is involved in so many things, and she is a great
19 example for all of us, and I was able to talk her into
20 continuing as the parliamentarian this year. I was
21 very pleased that she agreed to do it one more year
22 for me, and I would like everyone to give
23 Judge Stephens a round of applause for all the great
24 work that she has done.

25 (Applause.)

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1 CHAIRPERSON GARDELLA: We are presenting
2 Judge Stephens with a nice, not the usual plaque, but
3 somewhat of a sculpture type presentation, and it's a
4 beautiful presentation, so if you want to see that
5 after the meeting, it's a very nice design, and,
6 again, thank you very much for all the contributions.
7 We appreciate it.

8 JUDGE STEPHENS: Thank you.

9 (Applause.)

10 CHAIRPERSON GARDELLA: One other item too,
11 for our executive director, for all the things that

12 she does for us, a token of our appreciation, the
13 Representative Assembly officers have given her a
14 bottle of wine. She may need it after dealing with us
15 all year long, but we hope that she will enjoy it, and
16 might be able to use it yet today.

17 (Applause.)

18 CHAI RPERSION GARDELLA: And as I said before,
19 we rely on Janet's guidance on so many issues. How
20 our issues will affect the Legislature, how our issues
21 will affect the Court of Appeals or the Supreme Court,
22 and Janet is always there with her advice from her
23 career in Lansing knowing how these issues have to
24 mesh together with other projects that are going on in
25 Lansing, and she is so helpful in that regard, plus

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1 all the other administrative things that we need to do
2 with the Bar. We are so fortunate we have her as our
3 executive director, and we hope she stays a very, very
4 long time.

5 (Applause.)

6 CHAI RPERSION GARDELLA: Next on the agenda.
7 We will be passing the torch here in a lot of
8 different ways in the next few minutes. And the next
9 item is the nomination and election of the Assembly
10 clerk for the 2008/2009 year. And is there a motion?
11 At this point we have one of our members, Victoria
12 Radke, from the 47th circuit who has applied for that
13 position. She is the only one who has applied, and so
14 do I hear a motion from the floor for the nomination
15 of Victoria Radke to fill the clerk's position for the
16 next year?

17 VOICE: So moved.

18 CHAI RPERSION GARDELLA: Is there support?
19 VOI CE: Support.
20 CHAI RPERSION GARDELLA: All in favor say aye.
21 Those opposed nay.
22 Any abstentions yes.
23 The motion is carried, and congratulations,
24 Victoria.
25 (Applause.)

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1 CHAI RPERSION GARDELLA: And I must say that
2 the Bar is in good hands and the Representative
3 Assembly is in very good hands for next year with your
4 incoming chair, Kathy Kaki sh, assistant attorney
5 general. She has done so much over the years, whether
6 it be the Drafting Committee, helping with other
7 special projects of the Bar. She will do an excellent
8 job.

9 Elizabeth Moehle Johnson has done so much,
10 not only on the Assembly, but the Bar Leadership forum
11 and many other things.

12 Victoria Radke has done an outstanding job
13 just helping us get everything together and organized
14 and filling the vacancies and getting the awards done.
15 She has been a very energetic member, and so I know
16 that when I leave the tradition of energy for the
17 Assembly will continue, and I also encourage you, all
18 of you to keep your involvement up, because that's
19 what makes this organization so effective.

20 So congratulations, Victoria.

21 And next I have the pleasure of introducing
22 Judge Michael Talbot for the swearing in of our new
23 chairperson.

24 Judge Michael Talbot was appointed to the
25 Michigan Court of Appeals in 1998. Previously he had

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1 served as a judge in the Wayne County Circuit,
2 Recorder's Court and the Detroit Common Pleas Court,
3 and worked as an attorney in private practice. He is
4 a member of the Judicial Tenure Commission. He
5 received his bachelor's degree from Georgetown
6 University and his law degree from the University of
7 Detroit, and so I would ask Judge Talbot if you could
8 come on up to the front here.

9 HON. MICHAEL TALBOT: I am going to do just
10 that. I am going to put my robe on, and I will tell
11 you why.

12 First of all, thank you very much, and,
13 Victoria, congratulations. Those are my idea of great
14 elections. I wouldn't mind a few of those myself.

15 This is a very special moment. First let me
16 thank you. You have all been sitting here all day
17 long, and so you have got to be a little bit numb, so
18 I am just going to say one or two words literally,
19 just a few words, but this is a very special day for
20 Kathy, and it's deserving of the wearing of this robe
21 and the recognition of all that she has accomplished
22 in her journey up until today.

23 I am not sure how much all of you know about
24 her background. Some of you know probably quite a
25 bit, but when she was quite young her dad and mom

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1 decided that it was necessary and for business
2 opportunities when in early years, at the age of ten,
3 she left Detroit and went back to Amman, Jordan, and
4 as an English speaking person in that community she
5 had to learn a foreign language. She went through
6 schools there, had to acclimate herself to that
7 experience and did well, and having done all that,
8 having moved and learning Arabic and becoming fluent,
9 she then went to school and completed at the
10 University of Jordan her bachelor's degree in English
11 language and literature, and then for seven years was
12 with Jordan radio and television working as a
13 newscaster. And also with Radio Jordan's foreign
14 service in doing interviews, involving herself in
15 foreign affairs.

16 Always had an interest and a fascination with
17 law and American jurisprudence, and at some given
18 point then after her many years of service there had
19 the courage to literally get up and come on back and
20 with no money go to Wayne State, get her law degree,
21 as many of you had to do, struggle, work, and study at
22 the same time, working for Ford Motor. They hired her
23 in their legal division editing papers for them and a
24 journal for them, and then she got a job with the
25 Arab-American and Chaldean Council, worked for

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1 Channel 50 television. Don't worry. You will be all
2 right. I can even do this. I can do the balance of
3 this report.

4 I remember also then, having done all that,
5 she came to work for the Michigan Court of Appeals,

6 and she worked in our research division for two years
7 and then clerked for me for a year. She then was
8 hired by the Attorney General, and you will see in the
9 back of the room, if you wonder how she has done over
10 there, well, those who are members of the Attorney
11 General staff that are here just to share this moment,
12 please stand. Take a look at that. Isn't that a
13 great compliment.

14 (Applause.)

15 HON. MICHAEL TALBOT: Some of you may also
16 know a program called the Michigan Political
17 Leadership Program that's at Michigan State. They are
18 very selective, only a handful of individuals per year
19 can attend, it is highly, highly respected, and, as
20 some of you know, it takes ten months of your time to
21 go through that program, and Kathy is a graduate of
22 that program also, even as she has given of her time
23 to the Bar, as you have.

24 So this is a very special moment in her life.
25 It's a privilege to be able to participate in the

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1 swearing in ceremony, and so, Kathy, if you will join
2 me, and you have the oath of office. Have you got
3 some family. Let's have them come on up.

4 (Applause.)

5 HON. MICHAEL TALBOT: There are seven nieces
6 and nephews, and we have six of them here today.
7 Great.

8 You guys can take a look at what's happening
9 or watch out there.

10 Kathy, if you will raise your right hand,
11 please, and repeat after me.

12 I do solemnly swear.

13 MS. KAKI SH: I do solemnly swear.

14 HON. MICHAEL TALBOT: That I will support the

15 Constitution of the United States.

16 MS. KAKI SH: That I will support the

17 Constitution of the United States.

18 HON. MICHAEL TALBOT: And the Constitution of

19 this state.

20 MS. KAKI SH: And the Constitution of this

21 state.

22 HON. MICHAEL TALBOT: And the Supreme Court

23 rules.

24 MS. KAKI SH: And the Supreme Court rules.

25 HON. MICHAEL TALBOT: Concerning the

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1 State Bar of Michigan.

2 MS. KAKI SH: Concerning the State Bar of
3 Michigan.

4 HON. MICHAEL TALBOT: That I will faithfully
5 discharge.

6 MS. KAKI SH: That I will faithfully
7 discharge.

8 HON. MICHAEL TALBOT: The duties.

9 MS. KAKI SH: The duties.

10 HON. MICHAEL TALBOT: As Chair of the
11 Representative Assembly.

12 MS. KAKI SH: As Chair of the Representative
13 Assembly.

14 HON. MICHAEL TALBOT: Of the State Bar of
15 Michigan.

16 MS. KAKI SH: Of the State Bar of Michigan.

17 HON. MICHAEL TALBOT: According to the best

18 of my ability.

19 MS. KAKI SH: According to the best of my
20 ability.

21 HON. MICHAEL TALBOT: Congratulations.

22 MS. KAKI SH: Thank you.

23 (Applause.)

24 PAST CHAIRPERSON GARDELLA: One last comment.

25 Now she is your new chair, so one point of privilege

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1 that I have here. I have the pleasure of passing the
2 gavel to Kathy. She has a new gavel that she can use
3 to keep everybody in order here. Usually you don't
4 have to use it very often, so it's a pleasure,
5 Chai rperson Kaki sh.

6 CHAI RPERSON KAKI SH: Thank you very much.

7 (Applause.)

8 CHAI RPERSON KAKI SH: But now we don't want
9 Bob to leave that quickly. It's this time now in the
10 meeting that I really would like to say a very, very
11 special thank you to Bob. He has done a great -- a
12 fabulous job this year. He has been working for the
13 Representative Assembly, promoting the mission of the
14 Representative Assembly and its policy-making function
15 within the Bar and outside the Bar.

16 As now the former president of the State Bar
17 of Michigan, Ron Keefe, described Bob as being a
18 strong and vocal advocate for the Representative
19 Assembly this year, and our Executive Director, Janet
20 Welch, described Bob as having extraordinary energy.
21 That's true, he was a very strong and vocal advocate.
22 He had all this energy that he put in this last year,
23 but also I would like to add that anybody who knows

24 Bob knows that he has this warm friendliness and sense
25 of humor, and he did bring it with him into the entire

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1 work this year. It's just been a wonder working with
2 him, great experience, and, as a token of
3 appreciation, there are two things that I would like
4 to give Bob.

5 The first, of course, is a beautiful plaque
6 that reads, The State Bar of Michigan honors Robert C.
7 Gardella, Representative Assembly Chairperson 2007
8 through 2008, Vice Chairperson 2006 through 2007,
9 Clerk 2005 through 2006, in appreciation for the
10 distinguished service to the Assembly, the State Bar,
11 and all Michigan lawyers, September 18th, 2008.

12 It's well deserving. I know it's a plaque
13 commemorating your great service to the State Bar of
14 Michigan, Bob, but I also hope that for many, many
15 years to come you will still be providing your
16 voluntary services and energy to this legal
17 profession. Thank you.

18 (Applause.)

19 CHAIRPERSON KAKISH: Now the second thing
20 that is going to be given to Bob comes from
21 Liz Johnson and me, so if Liz can approach the podium.
22 As I mentioned, Bob does have a great sense of humor,
23 and I am sure many of you have heard the bowling alley
24 incident that Bob had with his six, seven-year-old son
25 Bobby, seven-year-old son Bobby.

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□

1 Well, Bobby was bowling, along with Bob, and
2 he threw his ball down the lane. I am not good at
3 bowling, so forgive me if I make a mistake here, and
4 the ball apparently stopped in the middle of the lane.
5 Well, Bob, being so energetic, couldn't wait for
6 somebody, the owners of the place to come and pick the
7 ball from the lane. Well, I am told that the lane has
8 a lot of wax on it. So Bob went over there, tried to
9 get the ball, slid, and stayed there because there was
10 no traction for him to get up at all.

11 Well, over the last year Bob always made it a
12 point to take his kids out to spend quality time with
13 his children, nine-year-old Katie and seven-year-old
14 Bobby, along with his beautiful wife Janet, and so as
15 a token of appreciation for all the time that Liz and
16 I took away from Bob, we are giving him a little gift
17 that comprises of 12 sessions at the bowling lane for
18 him and his family.

19 (Applause.)

20 PAST CHAIRPERSON GARDELLA: I need to tell
21 you that there is a reason that that line is there and
22 your foot is not supposed to go over it. I provided
23 so much entertainment for the people at the Sparkling
24 Lanes bowling place that day.

25 CHAIRPERSON KAKISH: Now we move on to the

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□ REPRESENTATIVE ASSEMBLY

9-18-08

1 next item on your agenda, and that is to recognize the
2 chairs of the five various committees that are
3 actually the backbone for their operation of the
4 Assembly, and when I call your name, the chair of each
5 committee, please come up, and, Bob, your job is not

6 over. You will be presenting the plaques to these
7 individuals.

8 The first person, and I am going
9 alphabetically by the name of the committee. First is
10 Assembly Review, John Riser.

11 (Applause.)

12 CHAIRPERSON KAKISH: Of course we have heard
13 about the great work of all the five committees
14 earlier on today when Bob mentioned them in his
15 speech, and, indeed, the committee chairs and the
16 committee members put a lot of hours, a lot of efforts
17 in everything that they did for the Assembly this
18 year.

19 The second committee is Drafting, Robert
20 Buchanan.

21 (Applause.)

22 CHAIRPERSON KAKISH: The third committee,
23 Hearings, Krista Haroutunian.

24 (Applause.)

25 CHAIRPERSON KAKISH: The next committee is

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□ REPRESENTATIVE ASSEMBLY 9-18-08

1 Nominating and Awards, Victoria Radke.

2 (Applause.)

3 CHAIRPERSON KAKISH: Next, Rules and
4 Calendar, Scott Wolsen.

5 (Applause.)

6 CHAIRPERSON KAKISH: Last but not least, and
7 did I say five committees? Somebody should have
8 corrected me. I am surprised nobody did. There are
9 six committees. The sixth committee is Special
10 Issues, Steve Gobbo. Of course Steve could not be
11 with us today. He is out of town. He is flying in to

12 town, and he should be at some Bar function later on
13 this evening, but Steve did a wonderful job on Special
14 Issues and worked very hard for that. So a round of
15 applause for Steve.

16 (Applause.)

17 CHAIRPERSON KAKI SH: Moving on, there are
18 several people now who have actually come to the end
19 of their terms and are considered term limited. We
20 certainly hope that we know that next year they can't
21 be with us on the Representative Assembly, but you
22 know you can take only a one-year absence and
23 hopefully you will be with us the following year, and
24 I would like to mention their names and, again, Bob
25 will be giving you your certificate, but if you would

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□ REPRESENTATIVE ASSEMBLY 9-18-08

1 come to the podium here when I call your name.

2 Deborah Blair.

3 (Applause.)

4 CHAIRPERSON KAKI SH: Steven Drakos.

5 (Applause.)

6 CHAIRPERSON KAKI SH: The Honorable David
7 Herington.

8 (Applause.)

9 CHAIRPERSON KAKI SH: Alan Kanter.

10 (Applause.)

11 CHAIRPERSON KAKI SH: Barbara McQuade.

12 MR. HAUGABOOK: Accepting the award. She is
13 in trial.

14 CHAIRPERSON KAKI SH: Donald Morgan.

15 (Applause.)

16 CHAIRPERSON KAKI SH: David Perkins.

17 (Applause.)

18 CHAI RPERSION KAKI SH: Victoria Radke.
19 (Applause.)
20 CHAI RPERSION KAKI SH: I know it comes as a
21 surprise, but there is a rule that we can extend her
22 period of service while she serves as an officer of
23 the Representative Assembly. Thank you, Victoria.
24 H. William Reising.
25 (Applause.)

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1 CHAI RPERSION KAKI SH: Vincent Romano.
2 (Applause.)
3 CHAI RPERSION KAKI SH: And Terri Stangl.
4 (Applause.)
5 CHAI RPERSION KAKI SH: Now three very short
6 items. First of all, a reminder to fill out your
7 attendance slips and to pick up your mileage and to
8 submit your mileage before the end of this month.
9 The second thing is to fill out your forms if
10 you have not done so for committee assignments and
11 section liaisons.
12 And, third, I look forward to seeing you at
13 the April meeting.
14 Can I entertain a motion now to adjourn this
15 meeting?
16 VOICE: So moved.
17 CHAI RPERSION KAKI SH: Support?
18 VOICE: Support.
19 CHAI RPERSION KAKI SH: Any discussion?
20 Hearing no discussion, this matter is now
21 adjourned. Thank you very much.
22 (Proceedings concluded at 3:37 p.m.)
23

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REPRESENTATIVE ASSEMBLY

9-18-08

1 STATE OF MICHIGAN)
2 COUNTY OF CLINTON)

3 I certify that this transcript, consisting
4 of 161 pages, is a complete, true, and correct transcript
5 of the proceedings had by the Representative Assembly on
6 Thursday, September 18, 2008.

7 October 8, 2008

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

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