

STATE OF MICHIGAN
STATE BAR OF MICHIGAN

MEETING of the REPRESENTATIVE
ASSEMBLY of the STATE BAR OF
MICHIGAN

Proceedings had by the Representative Assembly of the
State Bar of Michigan at DeVos Place, Ballroom A,
303 Monroe Avenue, N.W., Grand Rapids, Michigan, on
Thursday, September 30, 2010, at the hour of 9:00 a.m.

AT HEADTABLE:

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

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1 Grand Rapids, Michigan
2 Thursday, September 30, 2010
3 9:10 a.m.

4 R E C O R D

5 CHAIRPERSON JOHNSON: Will you please take
6 your seats so that we may begin.

7 Good morning, members of the Representative
8 Assembly. My name is Elizabeth Johnson, and I am the
9 Chairperson of the Representative Assembly of the
10 State Bar of Michigan, the final policy-making body of
11 the State Bar of Michigan. At this time I would like
12 to call this meeting to order.

13 At this time I will call and recognize the
14 Clerk of the Assembly, Stephen Gobbo, to indicate
15 whether or not we have a quorum. Mr. Gobbo.

16 MR. GOBBO: Madam Chair, I am pleased to
17 announce that we have a quorum.

18 CHAIRPERSON JOHNSON: Thank you very much,
19 Mr. Gobbo.

20 Next I would like to call and recognize
21 Mr. Michael Blau, chairman of the Rules and Calendar
22 Committee. Mr. Blau.

23 MR. BLAU: Good morning, Madam Chair, I move
24 for adoption of the proposed calendar.

25 CHAIRPERSON JOHNSON: Is there support?

1 VOICE: Support.

2 CHAIRPERSON JOHNSON: I hear some support.

3 There has been a motion and support for approval of

4 the calendar. Any discussion?

5 Hearing none, all those in favor of approving

6 the calendar as presented, please signify by saying

7 aye.

8 All opposed say no.

9 Any abstentions.

10 Thank you very much. The calendar as

11 presented is approved. Thank you very much, Mr. Blau.

12 Next I would entertain a motion for approval

13 of the summary of proceedings from March 27, 2010

14 meeting.

15 VOICE: So moved.

16 CHAIRPERSON JOHNSON: Thank you. Is there

17 support?

18 VOICE: Support.

19 CHAIRPERSON JOHNSON: Thank you. There has

20 been motion and support to approve the summary of

21 proceedings of our March 27, 2010 meeting.

22 All those in favor signify by saying aye.

23 All those opposed say no.

24 Any abstentions.

25 The motion to approve the summary of

1 proceedings of the March 27, 2010 meeting is approved.

2 As many of you know by now, since we last met
3 the Representative Assembly has lost one of its
4 members. Paul J. Raine of the 6th circuit passed away
5 in July. Paul served the Representative Assembly from
6 the 6th circuit since 2002. Paul was also a past
7 chairperson of the State Bar's Taxation Section. He
8 is survived by a wife and two children. I would ask
9 at this time for a moment of silence to remember Paul
10 and his family and to acknowledge Paul's contribution
11 to this Assembly and to our profession.

12 (Moment of silence.)

13 CHAIRPERSON JOHNSON: Thank you very much.

14 The next item is number two, filling
15 vacancies. I would like to call Mr. Jeffrey Nellis,
16 the chairperson of the Nomination and Awards
17 Committee, to the podium to make his presentation.
18 Mr. Nellis.

19 MR. NELLIS: Good morning. We have two
20 vacancies that we had to fill, one of course because
21 of the untimely passing of Paul Raine. We also had
22 one in the 10th circuit, Saginaw County. I just want
23 to -- I emphasize again, and every time I talk at
24 these meetings I always point out how it's always our
25 goal to have a hundred percent participation. We have

1 been very fortunate over the past several years to be
2 able to accomplish that. In conjunction with members
3 of the committee, also Anne Smith again has been
4 invaluable in helping us deal with these kind of last
5 minute situations, also Liz Johnson, appreciate your
6 help.

7 I just want to say, while I am up here I want
8 to congratulate Liz for a very successful year. I
9 think your preparation, your planning, your attention
10 to detail has been greatly appreciated by everyone
11 here.

12 That having been said, after going through
13 the process, we have a replacement for the 6th
14 judicial circuit, and at this time we would make the
15 motion for the appointment of Daniel Cherrin of
16 Royal Oak. And with regard to the 10th circuit, we
17 would also move for Terri Stangl of Saginaw to be
18 appointed at this time.

19 CHAIRPERSON JOHNSON: Thank you very much,
20 Mr. Nellis, and thank you for those very kind
21 comments.

22 There is a motion for these two vacancies.
23 Is there support?

24 VOICE: Support.

25 CHAIRPERSON JOHNSON: Any discussion?

1 Hearing none, all those in favor of the filling the
2 vacancies for the 6th circuit with Daniel J. Cherrin
3 and for the 10th circuit Terri L. Stangl, please
4 signify by saying aye.

5 Those opposed say no.

6 Any abstentions.

7 The motion to allow Daniel J. Cherrin of the
8 6th circuit and Terri L. Stangl of the 10th circuit
9 has passed. The new members may now be seated in
10 their circuit. Please take your seats and thank you
11 and welcome to the Assembly.

12 (Applause.)

13 CHAIRPERSON JOHNSON: I would like to extend
14 my thanks to Jeff and his committee. They have been
15 working very hard under difficult circumstances in
16 these last few months to fill these vacancies. As
17 Jeff said, I am so pleased to say again that we are at
18 100 percent participation. Thank you very much, and I
19 would like to recognize the committee members if they
20 are here, John Mills of the 6th circuit,
21 Elisia Schwarz of the 28th circuit, Bruce Barton of
22 the 4th circuit, Anne McNamara of the 47th circuit,
23 Rick Paul of the 6th circuit, and the Chair,
24 Jeff Nellis of the 51st circuit. Thank you all very
25 much.

1 Our next item is awarding the Representative
2 Assembly's Unsung Hero Award. This award is given to
3 a lawyer who has exhibited the highest standards of
4 practice and commitment for the benefit of others.

5 This year the award is given posthumously to
6 Kevin J. Moody. Here to make the presentation of the
7 Unsung Hero Award on behalf of the Assembly to Kevin's
8 wife and family are Mr. Thomas W. Linn and
9 Mr. Michael W. Hartman of the Miller Canfield firm
10 where Mr. Moody worked for many years in their Lansing
11 office.

12 MR. LINN: Good morning. I am Thomas Linn
13 and the chairman emeritus of Miller, Canfield,
14 Paddock & Stone. Previously I was the chief executive
15 officer of Miller Canfield, and my successor,
16 Michael Hartman, and I really nominated Kevin for this
17 honor, and I want to thank the Representative Assembly
18 for really granting this honor to Kevin.

19 Kevin, I mean, he was really a person of
20 tremendous energy, tremendous life, tremendous spirit.
21 He was a vigorous lawyer and would do anything to help
22 his clients within appropriate ethical bounds.

23 But we are not here to honor him as a lawyer.
24 We are really here to honor him for his work in the
25 area of pro bono and the service to others in our

1 community. That's an important responsibility. I
2 know you all take it seriously. We take it very
3 seriously at Miller Canfield.

4 Sometimes our pro bono obligations run into
5 our obligations or perceived obligations to try to
6 make money, you know, and support ourselves. But
7 Kevin for 20 years was the chair of our pro bono
8 activities, and Kevin reminded us, told us about our
9 responsibilities, challenged us to do better. He
10 would find pro bono cases, and he would find people to
11 handle them. He would stress to us every year our
12 obligations to make contributions to Access to Justice
13 and other appropriate pro bono charities, and Kevin
14 was always there.

15 It's not an easy task being the pro bono
16 chair in a large firm like ours, and Kevin did it with
17 vigor, with enthusiasm and always with a great heart
18 and a kind spirit. He was a fine man. Unfortunately,
19 he was taken from us in the prime of his career, but
20 he left a tremendous mark in the pro bono area, also
21 his personal life. He was a great volunteer with
22 youth organizations and other not-for-profit
23 organizations in Lansing.

24 This is a tremendous honor for him, for our
25 firm, and I thank you again for your kindness in

1 extending it to Kevin.

2 I would like to introduce Kevin's widow,
3 Nancy Moody, who is here to accept the award on behalf
4 of Kevin and her family. Nancy Moody.

5 (Applause.)

6 MRS. MOODY: Thank you very much, Tom, and I
7 too want to extend my thanks to the Representative
8 Assembly and in particular to Tom Phillips, who I know
9 spent a lot of time and energy at Miller Canfield
10 working on the actual nomination application and said
11 a lot of very wonderful things about Kevin, but they
12 were wonderful because they were all just the facts,
13 and I really appreciate that, Tom, and I appreciate
14 Miller Canfield's support in the entire nomination
15 process, so thank you all.

16 I thought because they gave us a few minutes
17 I would give you just a little bit of insight into who
18 this man, Kevin Moody, is, and I also want to
19 recognize that I am not here alone accepting this
20 award on Kevin's behalf. Kevin's mom, Marilyn Moody,
21 is here. Our son, Nolan Moody, is here. Our
22 daughter, Maureen, is here in spirit. She is out in
23 D.C. and couldn't be here, and then I have got about
24 15 family members, and we have got several Miller
25 Canfield attorneys who are also the professional

1 family. So thank you all very much.

2 I brought a little thing along that I wanted
3 to read to you. When Kevin was in the hospital for
4 his last stay and came home for his last journey, the
5 word spread very quickly, and a little note arrived in
6 our mailbox that was not mailed, it was placed there.
7 It came handwritten. It came with a child's drawing,
8 and the note said this. Dear Mr. Moody, I have never
9 really known you well, but certainly well enough to be
10 touched by your magic. The smile and friendliness you
11 always carry is remarkable. When I look at you, all I
12 can do is demand of myself to be a better person
13 because of the fine one you have always been. This
14 world is a better place and that is so because of the
15 tremendous contributions you made to it. Thank you.

16 The letter was unsigned. But it had a
17 postscript, and that said, P.S. if I were to sign this
18 it would be unfair, for it would exclude all of the
19 others who share such sentiments. Instead, I leave it
20 open, because the reach of your impact has no bounds.
21 And that is the kind of guy Kevin was.

22 The last thing I wanted to say was that when
23 I first heard of this award, obviously I and all of
24 our family members were very touched and very pleased.
25 It's a great honor, and I thought, gosh, you know,

1 it's just too bad, because Kevin is not here, and he
2 would have loved to have known that he was given honor
3 and respect for all of the pro bono work he did over
4 his entire lifetime, but then I thought about Kevin.
5 He was not a guy that wanted attention. He was not a
6 guy that needed awards, and he really was just a
7 person, as Tom said, with a huge heart, a giving
8 spirit, a wonderful soul, and in the end it's actually
9 perfect that he is getting this posthumously, because
10 he wouldn't have needed it, but we will really
11 appreciate it. Thank you.

12 (Applause.)

13 CHAIRPERSON JOHNSON: On behalf of the
14 Representative Assembly, I present this plaque.

15 (Applause.)

16 CHAIRPERSON JOHNSON: On behalf of the
17 Assembly and personally I extend our sympathy to
18 Kevin's entire family. We are also very grateful for
19 the amazing work of Kevin during his lifetime, and I
20 hope that by honoring Kevin we here today remember how
21 important it is to make a difference for others in our
22 lifetime. Thank you very much and thank you to
23 Kevin's wonderful family.

24 Next, moving on to our Michael Franck Award,
25 but before we start the presentations on the award, I

1 would like to share with you an amazing story.

2 In reviewing the many nominations for these
3 awards that the Nominations Committee and I read, a
4 very glowing letter of support from Shel Stark came in
5 on behalf of John VanBolt. We read further in the
6 nominations and letters of support and found a very
7 glowing letter of support from John VanBolt on behalf
8 of Sheldon Stark. Neither of these men knew when they
9 wrote their letters that they themselves had
10 anonymously been nominated. I think it says a lot
11 about each man's professionalism and character and
12 also why they are both being honored and receiving the
13 award today.

14 The Michael Franck Award is a very important
15 award in the Representative Assembly. This is where
16 the Assembly recognizes lawyers who have made a
17 substantial contribution to the legal profession. The
18 Michael Franck award is named after long-time director
19 of the State Bar of Michigan, and it is this
20 Representative Assembly's highest honor.

21 The Assembly's Nominations and Awards
22 Committee received many excellent nominations for this
23 award this year, but after extensive review decided
24 unanimously to give this award to two distinguished
25 lawyers.

1 Our first recipient this year is
2 John F. VanBolt from the Attorney Discipline Board.
3 Here this morning doing us a great honor and doing a
4 great honor for Mr. VanBolt, a woman who herself fits
5 the award and in fact was the recipient of the
6 Representative Assembly award in 2003, a past member
7 of this Representative Assembly, a woman who supports
8 this Assembly greatly, it is my great honor, and I
9 hope you will join in welcoming today to make the
10 presentation our own Chief Justice of the Michigan
11 Supreme Court, Marilyn J. Kelly.

12 (Applause.)

13 CHIEF JUSTICE KELLY: Thank you. Good
14 morning.

15 VOICES: Good morning.

16 CHIEF JUSTICE KELLY: It's a real pleasure to
17 have this opportunity to present a well-deserved award
18 to John VanBolt, who has served so long and so well as
19 one of the linchpins of our attorney discipline
20 system.

21 There is a popular show on the Discovery
22 channel called Dirty Jobs. In each episode the host,
23 Mike Rowe, performs some difficult, dangerous, or
24 unpleasant job under the guidance of an experienced
25 worker in that field. The program's website has a top

1 ten challenging and rugged dirty jobs, like disaster
2 clean-up crew member, coal miners, steamship boiler
3 cleaner, sheep shearer, or back biologist to name a
4 few. Each of us could compile our own top ten list of
5 difficult and demanding jobs, and one that would
6 certainly make my list and the list of most attorneys
7 is the one John holds, executive director and general
8 counsel of the Attorney Discipline Board.

9 That John has served in that capacity for 24
10 years and 30 years in the attorney discipline system
11 says a great deal about his ethical standards and his
12 legal expertise. His job calls for the tact of a
13 diplomat, the firmness of a general, the moral
14 authority of a pastor, and the leadership of a
15 Fortune 500 CEO. Add to that the professionalism and
16 civility that John has always demonstrated, even in
17 difficult situations.

18 Now, many nomination letters, and there were
19 over three from the Bench and the Bar, myself
20 included, who supported John's nomination echoed the
21 same themes over and over again. Elaine Fieldman,
22 former chair of the ADB wrote, John enriched me as a
23 lawyer. John set the example for professionalism and
24 civility. Former State Bar President, Ed Pappas, who
25 served on the ADB hearing panel, praises John as a

1 consummate professional who always provided sage
2 advice. Bill Hampton, another former ADB chair, lauds
3 John's work as absolutely outstanding and, as you
4 heard, Shel Stark wrote a letter saying John is the
5 epitome of fairness, an outstanding contributor and
6 stalwart of our ethics program.

7 John Suhrheinrich, Judge Suhrheinrich,
8 praises his outstanding leadership, and Professor
9 Theodore St. Antoine describes John as being of the
10 highest caliber, both professionally and personally.

11 Only someone of the highest caliber could
12 have helped to maintain a discipline system whose
13 integrity is beyond reproach. This has not been an
14 easy task. Many of you will recall a time when in the
15 '80s the Attorney Grievance Commission, the ADB's
16 sister agency, was under a cloud and exposed the
17 entire profession to controversy.

18 In her nomination letter, former Justice
19 Patty Boyle described that difficult time and how
20 John's guidance, institutional memory, and integrity
21 helped ensure that the legal profession would not only
22 continue to be self-regulating but that it would also
23 have earned the public's trust.

24 As Justice Boyle observed, John VanBolt's
25 exemplary service gave the members of the Michigan

1 Supreme Court complete confidence in the Board's
2 competence and integrity. Indeed, in Michigan John is
3 known as the go-to person on professional conduct
4 matters, an ex officio member of the State Bar
5 Standing Committee on Grievances for many years, he
6 has generously given of his time as a speaker on
7 numerous substantive and procedural topics and most
8 recently he served as a member of the State Bar work
9 program charged by the Supreme Court with reviewing a
10 comprehensive proposal to amend discipline procedure
11 rules.

12 But John's accomplishments are not limited to
13 Michigan. He is also well known for his leadership on
14 the national level, having been a founding member and
15 past president of the National Council of Lawyer
16 Disciplinary Boards, which he continues to serve as a
17 member of the board. He is also a member of the ABA
18 Center for Professional Responsibility and the
19 Association of Professional Responsibility Lawyers.
20 As Judge Danhof observed in his nominating letter, the
21 fact that John's colleagues throughout the country
22 turn to him for advice and education speaks volumes.

23 In the famous novel To Kill a Mockingbird,
24 one of the characters describes the hero, Attorney
25 Atticus Finch, to Finch's young daughter Scarlett.

1 Here is what he said. There are some men in this
2 world who were born to do our unpleasant jobs for us.
3 Your father is one of them.

4 It's my great pleasure to present the
5 Michael Franck award to another such attorney, one who
6 for decades has done a difficult and essential job
7 quietly, effectively, and with great personal grace.
8 Please join me in honoring John VanBolt.

9 (Applause.)

10 MR. VANBOLT: Thank you so much,
11 Chief Justice.

12 Chairperson Johnson, members of the Assembly,
13 friends, colleagues, let me say a couple quick things.
14 First, as far as the dirty jobs part goes, when I was
15 in college I worked at the Flint Greyhound bus station
16 cleaning the restrooms there. This is a piece of
17 cake.

18 I would also like to say that when I was out
19 having coffee this morning, I was talking with
20 Shel Stark, and we really did mean what we said about
21 each other in our letters, but Shel said, So have you
22 got a joke? And I said, Joke? Nobody told me about a
23 joke. I only got four instructions so far on this.
24 Mark Armitage told me, Doesn't matter what they tell
25 you, talk as long as you want. My wife Jane, who is

1 here, told me, Stand up straight. Bill Danhof said,
2 Wear a bright tie. And Anne Smith told me about five
3 minutes ago, The award is heavier than it looks. For
4 God's sake, don't drop it.

5 This is a special honor. As a former member
6 of this body, I do understand your traditions and the
7 seriousness with which you take your responsibilities,
8 and I am honored on that score. I am also honored
9 because I did know Mike Franck. I worked for
10 Mike Franck in a sense. You may know that the highest
11 award that the American Bar Association gives in the
12 field of professional responsibility is the
13 Michael Franck Award, so to receive an award with his
14 name on it has a very special meaning.

15 I only want to say a couple things, and it's
16 pretty much just going to be what you expect, which is
17 the thank you to the people who help me do my job, but
18 it has to be said. I don't get up in the morning and
19 say I am going to go off this morning and all by
20 myself deal with the problems of the attorney
21 discipline system. There are several groups of people
22 that support somebody in my position.

23 First among these in a sense is the members
24 of the Attorney Discipline Board. This is an
25 outstanding group of people on every level. Some of

1 them are here today, Bill Danhof, chairperson, is here
2 and Carl VerBeek, who is a member of the Board, former
3 chair of the Attorney Grievance Commission.

4 When I just look at some of the names of some
5 of the people, for instance on the current Board,
6 Tom Kienbaum, Craig Lubben, Jim Cameron, Andrea Solak,
7 these are really top notch people, and then when I
8 tell you some of the people I have been privileged to
9 serve with over the years, Wally Riley
10 George Bushnell, Ted St. Antoine, Judge Suhrheinrich,
11 Judge Marty Doctoroff, Lori McAllister, Nancy Wonch,
12 Miles Hurwitz, Patrick Keating. I don't know how the
13 court comes up with these people sometimes. I don't
14 know what they have to tell them or what kind of
15 pressure they have to put on to get them to put in the
16 time that's involved to be a member of the board, but
17 I am extremely grateful.

18 Which brings me, of course, to the court,
19 because it is the court, it is Chief Justice Kelly and
20 her predecessors who have overseen the process and who
21 have year after year after year appointed truly
22 outstanding members of the Attorney Discipline Board.

23 We do joke a little bit at the Board that as
24 far as administrative matters with the court go,
25 really the worst thing is that they are in Lansing and

1 we are in Detroit and we are kind of out of sight, out
2 of mind. On the other hand, the best thing about our
3 relationship is they are in Lansing and we are in
4 Detroit. We are kind of out of sight, out of mind.

5 I don't have that kind of impediment as far
6 as my relations with the State Bar, which is the other
7 group, that I must say it is not an accident, I am
8 sure, that the Court Rule that empowers the Attorney
9 Discipline Board says that the goal of the discipline
10 process is the protection of the public. You probably
11 recognize that phrase. For many years it was on the
12 back of our Bar cards. It is still embedded into the
13 granite of the Roberts B. Hudson room at the State Bar
14 of Michigan, the language about no organization of
15 lawyers can long survive which has not as its first
16 principle the protection of the public. In that
17 regard, the State Bar, you, members of the Assembly,
18 the staff, Janet Welch, the people, the staff members
19 that I deal with at the State Bar, you have given of
20 your time. You have been enormously supportive, and I
21 thank you for that.

22 As far as groups go, the most important group
23 here, and I hope that they will stand in a second, are
24 the employees of the Attorney Discipline Board.
25 Mark Armitage, the deputy director; Sherry Mifsud, the

1 office administrator; Kathy Leal-Paredes and Allison
2 Plourde, the two case managers; Jennifer Petty, our
3 legal assistant, and Juliet Loiselle,
4 secretary/receptionist. They really keep the place
5 going, and there are three things you should know
6 about them. One, they are enormously talented. Two,
7 they are enormously dedicated, and, three, they are
8 actually nice people. We actually go to lunch
9 together, and not because we have to. We do get along
10 well, and that I am grateful for. If you would please
11 stand, I would appreciate it.

12 (Applause.)

13 MR. VANBOLT: They are the reason that I look
14 forward to going to work in the morning, but
15 fortunately for me at the end of the day I look
16 forward to going home where I can see my friend, my
17 date to the senior high school prom, my wife, Jane.
18 Thank you.

19 (Applause.)

20 MR. VANBOLT: One of the things I do in my
21 nondiscipline hours is sing in a chorus at University
22 of Michigan, the Choral Union. I have done that for
23 about 30 years, and last spring we performed a work
24 with the Detroit Symphony at Orchestra Hall with
25 Neville Marriner conducting and Michael York speaking

1 words from the 1940's film Henry V, and because we did
2 two rehearsals and then three performances, I got to
3 hear these speeches from Henry V five times in a row.
4 So five nights in a row I got to hear Michael York
5 being Henry V exhorting his downtrodden troops on the
6 eve of the battle of Agincourt, and it resonated, all
7 five nights it resonated, and it still resonates, and
8 as I thought about coming up here today, it resonated,
9 because, although those of us who serve in public
10 service are not quite as beleaguered as those troops
11 were, we are not suffering from dirt, rain, mud and
12 dysentery, for example, but sometimes we do get the
13 impression that we labor in anonymity or that perhaps
14 we are not as appreciated as we might be, and
15 generally that's fine, but on an occasion like this,
16 with profound apologies to Shakespeare and
17 Michael York, let me just close by saying this.

18 This day, the 30th of September, shall ne'er
19 go by from this day to the end of the world but we in
20 it shall be remembered. We few, we happy few, we band
21 of brothers, for those who toil with me shall be my
22 family and be we ne'er so violent. This day has
23 gentled our condition. Thank you.

24 (Applause.)

25 CHAIRPERSON JOHNSON: Our next recipient of

1 this year's Michael Franck Award is Sheldon J. Stark
2 from the Institute of Continuing Legal Education.
3 Here to present the award on behalf of the Assembly is
4 Mr. Jeffrey Kirkey of the Institute.

5 MR. KIRKEY: Thank you very much. It's a
6 great honor for me to present this award to
7 Shel Stark. Many of you know Shel. He has been
8 running around at these annual meetings for many
9 years, but for those of you who don't know him well, I
10 would like to introduce you. I could go on and on
11 about all of Shel's great qualities, but instead I
12 would like to show you exactly what it is that makes
13 Shel such a deserving recipient of the Michael Franck
14 Award. I turn to one of Michigan's for most
15 litigators, Ed Stein, to help put this together.

16 (Video presentation shown. Dialogue as
17 follows:)

18 MR. STEIN: Shel Stark is finally ready to
19 answer questions. At long last we are going to hear
20 what he really thinks. We are going inside
21 Shel Stark. Tracy Allen, let's start with your first
22 question.

23 MS. ALLEN: Shel, you practiced law for
24 almost 30 years. What do you miss most about the
25 hands-on practice?

1 MR. STARK: Answering interrogatories

2 MR. STEIN: Well, besides answering
3 interrogatories, what do you think was your most
4 significant contribution to American society as a
5 trial lawyer?

6 MR. STARK: Fighting about little stuff.

7 MS. ALLEN: You were known as a great
8 cross-examiner. What were your most effective
9 techniques?

10 MR. STARK: (Grabbing tie and holding it up
11 as if it were a noose.)

12 MR. STEIN: Some people may think that's a
13 little extreme. How many trial lawyers did you find
14 used such extreme methods?

15 MR. STARK: Not as many as I wish there were.

16 MR. STEIN: Shel, you were one of Michigan's
17 most successful plaintiff's employment lawyers. What
18 single tactic was most important to your big verdicts?

19 MR. STARK: Screwing around with a lot of BS.

20 MS. ALLEN: ICLE expanded its offerings
21 considerably during your tenure. To what do you
22 attribute that expansion?

23 MR. STARK: The prominence of the lawyer
24 jokes.

25 MS. ALLEN: And as an ICLE teacher you have

1 consistently received excellent evaluations. What do
2 you think is responsible for those evaluations?

3 MR. STARK: We saw the same people over and
4 over again.

5 MR. STEIN: You are now about to become a
6 professor at U of D Law School. What teaching
7 techniques do you intend to use there?

8 MR. STARK: The number one is the gotcha
9 technique. You discover somebody isn't prepared and
10 keep throwing questions at them until they are
11 humiliated, keep melting on the steps.

12 Another is taking discussions off into
13 totally abstract areas that have no relationship to
14 the real world, to the practice.

15 MS. ALLEN: What kind of lawyers do you want
16 your students to become?

17 MR. STARK: Attack puppies.

18 MR. STEIN: Why attack puppies?

19 MR. STARK: Well, one of the things I like
20 about U of D is that their motto is practice ready
21 graduates, and I am a great believer in that.

22 MS. ALLEN: And what attack puppy techniques
23 are you going to teach them?

24 MR. STARK: Uncivil, unprofessional,
25 obnoxious behavior.

1 MS. ALLEN: Let's conclude with a few
2 questions about Shel Stark the person. Who do you
3 most remind yourself of?

4 MR. STARK: Maybe Augustus Caesar. Franklin
5 Roosevelt. Otto von Bismarck.

6 MR. STEIN: Shel, thank you so much. This
7 has been an amazing adventure into the mind of one of
8 Michigan's great lawyers. And thank you, Tracy Allen,
9 and thank all of you for joining us inside Shel Stark.

10 (Conclusion of video presentation.)

11 (Applause.)

12 MR. KIRKEY: Fascinating, huh? See what I
13 mean, he epitomizes exactly what we want in our
14 lawyers. Okay, I will admit there may have been a
15 little creative editing in that video, but we were
16 just trying to make him look good.

17 All kidding aside, Shel Stark has had two
18 remarkable careers, and he is embarking on a third.
19 Following Shel's successful career as one of the
20 state's premier employment litigators, we were
21 fortunate to have him join ICLE. Shel brought the
22 same energy, enthusiasm, and dedication for law
23 practice to his new role as ICLE's education director.

24 Thirty minutes ago we kicked off the Solo and
25 Small Firm Institute, now in it's seventh year. Shel

1 partnered with the State Bar of Michigan, with the
2 General Practice Section and the Law Practice
3 Management Sections to develop this two-day program
4 that helps Michigan lawyers with practice management,
5 technology, and substantive law. Shel has
6 collaborated with the Business Laws and Litigation
7 Sections of the State Bar as well as practice group
8 leaders and law clerks to develop business and
9 litigation boot camps tailored to the needs of new
10 lawyers.

11 He worked closely with the ADR Section and
12 SCAO to develop high level mediation training for
13 Michigan lawyers serving both as trainer and mentor to
14 over 1,000 Michigan lawyers who have taken ICLE's
15 40-hour mediation training. He partnered with the
16 Family Law Section of the Bar to develop the Family
17 Law Institute which has become in a short amount of
18 time ICLE's single most popular program drawing more
19 than 500 lawyers each year and many judges too.

20 Most recently Shel took on the challenge of
21 developing education for Michigan lawyers who wanted
22 to break into the field of bankruptcy. He reached out
23 to the Michigan Consumer Bankruptcy Association and
24 worked with its leaders to develop three very
25 successful basic bankruptcy courses and a new consumer

1 bankruptcy institute. The list goes on and on. Shel
2 is a master at bringing groups together to achieve a
3 common goal.

4 He retired from ICLE on August 31st and is
5 now a distinguished visiting professor at U of D Law
6 School, and he will be mediating cases all over the
7 state. I encourage you to visit starkmediator.com to
8 find out more.

9 Shel has reached and inspired literally
10 thousands of Michigan lawyers with his educational and
11 mentoring activities. He exudes enthusiasm for law,
12 lawyers, learning, and innovation. I am one of those
13 thousand. Shel is my friend and mentor. All of us at
14 ICLE appreciate Shel and what he has contributed to
15 the Michigan Bar and we miss him greatly already.

16 Congratulations, Shel, on this tremendous
17 award.

18 (Applause.)

19 MR. STARK: Thanks, Jeff. Thanks to the
20 Representative Assembly, thanks to Ed Stein. God, I
21 hate to be so transparent. Good-bye any influence I
22 have ever had with the Bar.

23 This award coming from you bearing
24 Mike Franck's name, and I too knew Mike Franck, is
25 very meaningful to me, and I am deeply honored. Truth

1 be told, I have always wanted to be the person my
2 golden retriever thought I was, and I only regret that
3 she is not around anymore to see that there were a few
4 other people who agreed with her.

5 I promised my wife I wouldn't tell this joke,
6 but as I prepared for this I looked for a quote about
7 awards. Maybe you are familiar with this Jack Benny
8 line. I am just sorry, Rita, I can't resist. He
9 said, when receiving an award he said, I don't deserve
10 this award. But I also have arthritis, and I don't
11 deserve that either.

12 I want to thank the kind and generous people
13 who wrote letters on my behalf and supported this. It
14 is one of those amazing little ironies of life when
15 you work with such wonderful and talented lawyers and
16 people that I wrote a letter for John VanBolt and he
17 wrote a letter for me. If I had known I was up, I
18 certainly wouldn't have been so generous. I couldn't
19 be more thrilled to be receiving this with
20 John VanBolt, who I consider to be a friend and an
21 inspiration.

22 Some of my finest hours were spent toiling in
23 the vineyards of the Attorney Discipline Board. That
24 was some good work, and I appreciate your bringing me
25 into it, John.

1 It's always been a little amazing to me that
2 you can be honored for doing something that you love
3 and doing it with people that you want to be with and
4 respect and giving back to this extraordinary
5 profession that we are all a part of. Amazing.

6 But even when you are fortunate enough to be
7 recognized and to have a moment like this in your
8 life, no one ever deserved it on their own. We all
9 stand on the shoulders of many other people. We are
10 all part of a circle of supporters and colleagues and
11 friends and family, without whom none of this would be
12 possible, who enable us to spend our time in that way.

13 If you know me, you know that I am a movie
14 buff and one of those people who stays after to watch
15 the credits roll, and I have to tell you I love seeing
16 who gets credit for being a gaffer, whatever that is,
17 and a best boy, whatever that is, and the assistants
18 and the drivers and the stand-ins and the music, and
19 the lawyers and the accountants, and my all time fave,
20 the caterers, who always have such great names.

21 And there are as many credits for the
22 Michael Franck Award in my life. The mentors who
23 tutored me and inspired me, people like Bill and
24 Ernie Goodman, Don Loria, George Downing,
25 Beverly Clark, Marianne Buitani (sp), the lawyers on

1 the other side who forced me to be the best I could be
2 if I was to get some justice for my clients. People
3 like Tom Kienbaum was mentioned, John Scott,
4 Bill Saxton, John Grady. The colleagues who
5 befriended me and helped me face the demons that the
6 trial lawyer grapples with. Kathy Bogas,
7 George Bedrosian, Mike Pitt, Red Pinske (sp),
8 Ed Stein, Deb Gordon. The family that stood behind me
9 and covered my back, made excuses for me and accepted
10 me warts and all. Forty-two years Rita Stark was
11 there.

12 (Applause.)

13 MR. STARK: And for the last 11 years the
14 extraordinary and gifted staff at ICLE. Boy, do I
15 know what John was thinking about when he recognized
16 the folks at the ADB. They carried out my plans at
17 ICLE. They implemented the ideas I brought. They
18 nagged my speakers, and if you have ever spoken for us
19 you know about that nagging. They are professionals.
20 They took care of the details, and they created the
21 illusion that I actually knew what I was doing.

22 So thank you to Jeff Kirkey, my successor.
23 They say that in every workplace there is a best
24 friend, and Jeff was my best friend. He has proven
25 his skill and ability by shepherding through and

1 getting me this award. We live by myths, and he has
2 managed to pursue that myth on my behalf.
3 Stephanie Fisher and the course administration crew
4 who make the trains run on time, and most of all to
5 Lynn Chard for her leadership. I want to thank her
6 for her leadership, for believing in me, for managing
7 to supervise me. Can you imagine having to be my
8 supervisor? Oh, my God. And for giving me the
9 opportunity to contribute to the improvement of the
10 profession we all love.

11 An award is not the end. It's the beginning
12 of the next step. I appreciate this, I welcome this,
13 I thank you for this, and I promise you I am going to
14 continue to do what I love to do. Thank you.

15 (Applause.)

16 CHAIRPERSON JOHNSON: Congratulations to all
17 of our award recipients today. At this point I would
18 like to inform you that our award recipients will
19 attend today's luncheon, the inaugural luncheon, and
20 they will be acknowledged and their names will be
21 mentioned in the program. We are very proud to have
22 all of them acknowledged again at the luncheon, and we
23 encourage all of you to attend.

24 Pursuant to our calendar, we will now take a
25 break. We will take a break for ten minutes, and we

1 will be in recess until ten minutes after 10. Please
2 be back in your seats ready at ten after 10 to begin
3 again.

4 (Break was taken at 10:00 a.m.-10:15 a.m.)

5 CHAIRPERSON JOHNSON: Will you please all
6 take your seats so that we may proceed. Will you
7 please all take your seats. Thank you very much. We
8 are now back in session.

9 I have just been informed that Ms. DeVries
10 from Access to West Michigan has not yet arrived.
11 Without objection, we will move her remarks to
12 immediately after our lunch.

13 Moving now to tab number eight, the
14 chairperson's remarks. I stand today before an
15 extremely talented and vibrant body of attorneys and
16 judges. This Representative Assembly, our
17 Representative Assembly, the final policy-making body
18 of the State Bar of Michigan.

19 Looking out over this hard working group of
20 professionals makes me very proud to be part of this
21 legal profession. The fine work this Assembly has
22 done this year is very gratifying. I am honored to
23 serve this Assembly as your chairperson. I am most
24 pleased with the work done by this Assembly in the
25 pro bono arena.

1 This Assembly in March unanimously supported
2 a proposal on pro bono that is a model for attorneys
3 in every state. We can look forward to and hope for
4 its implementation in the near future. I thank the
5 Supreme Court for its consideration of this important
6 proposal.

7 This Assembly and the State Bar have worked
8 on many areas of importance to the legal community and
9 the public this year. Not only in the area of
10 pro bono, but in civic legal education. Lawyers and
11 judges give of their time to make sure that students
12 in our state learn about the law in a meaningful way.
13 With cutbacks in school budgets this year, the need
14 for such programs only grows. I thank the State Bar,
15 this Assembly, and all the lawyers and judges that
16 assist in civic legal education programs, such as the
17 mock trial program, Constitution Day and Law Day
18 programs, and the new professionalism in action
19 program. I urge you and fellow colleagues to continue
20 to support these worthwhile programs now more than
21 ever. Together we can make a difference.

22 The support you have shown to our
23 Representative Assembly's Access to Justice fundraiser
24 and food drive is phenomenal. Your generosity at last
25 spring's meeting and now today at our annual meeting

1 is amazing.

2 As Edmond Burke once said, the only way for
3 evil to triumph is for good men to do nothing.
4 Clearly the good men and women of this Assembly have
5 again stepped up and done something very positively to
6 make our profession better and to make a positive
7 difference in the lives of the citizens of our state.
8 Together we can make a difference. You have made a
9 difference this year, and I am most grateful.

10 Speaking about those who have made a
11 difference, the Representative Assembly is fortunate
12 to have had the support this year of some incredible
13 individuals at the State Bar building. I would like
14 to take this moment publicly to thank some very
15 special people who have made my year as chairperson so
16 very rewarding.

17 First, I would like to recognize and
18 acknowledge the hard work from the State Bar Executive
19 Director, Janet Welch. We are so fortunate in the
20 State Bar of Michigan that we have such a talented
21 leader, somebody who is so familiar with policy and
22 law and working with people. We are so grateful for
23 your leadership, Janet.

24 Every member of the staff of the State Bar
25 has contributed greatly to this Assembly in some way,

1 large or small. This past year, for which I am most
2 appreciative, our receptionists at the State Bar
3 building were always there to greet me with a smile on
4 my many trips to Lansing. Jim Horsch and his
5 wonderful staff worked tirelessly on reapportionment
6 numbers for the Assembly last fall and the spring.
7 Kari Thrush and her staff helped to coordinate
8 meetings, including this annual meeting, our 75th
9 annual meeting.

10 Naseem Stecker and Samantha Meinke helped to
11 coordinate our media and public relations for the
12 Assembly. Greg Conyers contributed greatly with
13 support to the Assembly and encouraging our Assembly
14 to tackle those tough but important diversity issues.

15 Anne Vrooman for her ease in explaining
16 complex numbers and ideas. Candace Crowley for her
17 assistance in the successful Upper Peninsula tour.
18 Elizabeth Lyon for keeping the Assembly ahead of all
19 of the important policy issues. Nancy Brown and her
20 staff in member services for always handling our
21 meetings with great professionalism. Cliff Flood, our
22 State Bar counsel, for being there throughout the
23 reapportionment and all the many other legal questions
24 and decisions this past year. A very special thanks
25 to Marge Bossenbery, executive coordinator, who helped

1 with everything and was invaluable in my work on the
2 Board of Commissioners, as well as on the
3 Representative Assembly.

4 Very special thanks to Dawn Evans who
5 graciously and professionally helped me as I started
6 my term and helped the Assembly and the entire
7 State Bar with items too numerous to mention. And a
8 thank you of the highest magnitude to our own
9 Representative Assembly guru, Anne Smith, who has
10 tirelessly worked day and night for the good of this
11 Assembly, not only today but for many years. I am so
12 grateful for all of you. We are truly fortunate to
13 have Janet and her incredible staff representing our
14 profession and our Representative Assembly.

15 Thank you to the many volunteers who have
16 helped this Assembly this year. Our parliamentarian,
17 Judge John Chmura, Chief Judge of the 37th District
18 Court, has been very helpful, always professional, and
19 truly knows the Roberts Rules of Order. The Assembly
20 is grateful for your expertise and your many hours of
21 service. Thank you, Judge Chmura.

22 Thank you to our very special court reporter,
23 Connie Coon. Connie has been the court reporter for
24 this Assembly for, I believe it is 26 annual meetings.
25 We could not handle our meetings. We could not do our

1 jobs without Connie. Thank you, Ms. Coon.

2 Special thanks to this year's Assembly
3 committee chairs. They will be mentioned later, but I
4 want to acknowledge them individually. Rob Buchanan,
5 Drafting Committee; Marty Krohner, Hearings;
6 Krista Licata Haroutunian, Special Issues; Mike Blau,
7 Rules and Calendar; and Jeff Nellis, Nominations and
8 Awards. My job was made so much easier by your
9 professionalism and hard work.

10 Thank you to our State Bar President,
11 Charles Toy, who you will hear from in a moment.
12 Charles has done a tremendous job this year as
13 president. You all know that, but what you don't know
14 is what a great supporter he has been to me and to
15 this Assembly this past year. I will be forever
16 grateful.

17 Thanks to the all of the past chairs of the
18 Representative Assembly, many of whom are present here
19 today. Their wise counsel has been invaluable for me
20 and one of the main reasons for the proposal later
21 today before you on the Past Chairperson's Committee.
22 Their institutional memory and their assistance has
23 been of great importance, and I thank all of you. In
24 fact, will you please stand, all the past chairs of
25 the Assembly that are present here. I know you are

1 here, so please stand. Thank you.

2 (Applause.)

3 CHAIRPERSON JOHNSON: And now a very special
4 thank you to the officers of the Assembly. To
5 Clerk Steve Gobbo, I am very grateful for your hard
6 work this year. Thank you for all you have done with
7 this Assembly, and we look forward to you in the next
8 few years in our leadership role.

9 And to our Vice Chair, Victoria Radke. I am
10 so appreciative of your support and hard work and
11 especially for your friendship. I know that the
12 Assembly will be in good hand with these two leaders.

13 And most importantly a special thanks to all
14 of you, my friends and colleagues of the Assembly. As
15 Abraham Lincoln once said, The better part of ones
16 life consists of their friendships. I know that for
17 me the better part of my life includes the friendships
18 here of all of you, my friends and colleagues of the
19 Representative Assembly. I am grateful and humble
20 that you have chosen me to serve as your chairperson
21 this year. I thank you my dear friends and colleagues
22 for the opportunity to serve. Thank you.

23 (Applause.)

24 CHAIRPERSON JOHNSON: Thank you all very
25 much. I have a quick announcement. A pair of glasses

1 was found in one of the restrooms here. If they are
2 yours, they will be up front with our Vice Chair,
3 Victoria Radke. Also, Anne Smith has asked that I let
4 you know, for anybody who is parked in the DeVos
5 parking garage only, she has parking passes, and if
6 you will see her at lunchtime. The DeVos parking
7 only.

8 I would also like to recognize at this
9 point -- I understand that Supreme Court Justice
10 Alton T. Davis, Tom Davis, is now in the room, and I
11 would like him to stand and be recognized by this
12 Assembly.

13 (Applause.)

14 CHAIRPERSON JOHNSON: Thank you very much,
15 Justice Davis, for being here with us today.

16 Next, moving on to tab number nine, remarks
17 from the president. Charles Toy is the 75th president
18 of the State Bar of Michigan. Charles is a dynamic,
19 intelligent attorney who has been an incredible
20 president of the State Bar this year, but probably
21 more importantly to this Assembly, he has been a great
22 supporter of the Representative Assembly and what we
23 do. I have had the great privilege of working with
24 him this year, and I hope you will join me in
25 recognizing and thanking the president of the

1 State Bar of Michigan, Charles R. Toy.

2 (Applause.)

3 PRESIDENT TOY: Good morning. This will be a
4 brief address, and, judges, you know what brief means.
5 I will be done in about 40, 50 minutes, something like
6 that.

7 I am going to have three parts to this
8 address. Number one is a thank you, number two is
9 encouragement, and lastly a challenge.

10 I want to thank you for what you do day in
11 and day out in your jobs. From the position of
12 State Bar President, as I need to ponder what to write
13 about in the President's Pages that hopefully you all
14 read all year long, but you get a chance to look
15 introspectively, you look at the profession, and you
16 start realizing some things that you don't have time
17 to think about while you are working in the trenches,
18 while you are perhaps filing a motion, while you are
19 answering interrogatories, while you are participating
20 in this process that's adversarial, but what you are
21 really doing is upholding the constitution. You are
22 relying on an independent judiciary. You believe in
23 the rule of law.

24 How would you like to be an attorney in a
25 country where there is no independent judiciary? And

1 I could go on and on, but I won't, so thank you for
2 what you do.

3 During this year as State Bar President, I am
4 exposed to many attorneys. I see the altruistic side
5 of those attorneys. In fact, you had a small glimpse
6 of that this morning, because in the awards that were
7 given, if you listen to the nominee and you listen to
8 the award winner, you hear the altruistic side of our
9 profession. And that's what makes our profession a
10 great profession.

11 We heard it last night in the awards assembly
12 over and over. But not only do I want to thank you
13 for what you do from day to day, but how about what
14 you do in your communities as people of influence.
15 Each one of you are a person of influence. You serve
16 on boards, you help community organizations, you
17 provide law-related education, you participate in
18 activities such as coaching, Habitat for Humanity,
19 shelters, perhaps a rescue mission. We celebrate with
20 you through A Lawyer Helps program. You can see
21 examples of it on the web page and also in the Bar
22 Journal. That's why many times you will see attorneys
23 wearing "A Lawyer Helps." If you don't have one of
24 these pins, see me, see Elizabeth. We will get one
25 for you.

1 So if you think about our profession, in a
2 nutshell as a profession we serve and protect the
3 public. As a State Bar we serve you and we protect
4 the public, and in serving you what we are really
5 doing are giving you the tools, helping you, assisting
6 you to serve and protect the public. So it's all
7 about serving and protecting the public, and that is
8 why being a lawyer is the greatest profession of any
9 profession. We are helping others.

10 Now, let me encourage you, and the
11 encouragement is very simple, continue to serve and
12 protect the public, continue to do what you are doing,
13 but also think of those that perhaps are underserved,
14 those who cannot afford an attorney. I want to
15 encourage you to take seriously our professional
16 responsibility to provide pro bono services or to give
17 \$300 so another attorney can provide pro bono
18 services. This is a critical responsibility of our
19 profession. It's even more critical because of
20 numbers that you have heard, and I am not going to
21 repeat those numbers, but those numbers, it's critical
22 that we fulfill that responsibility. What we need is
23 more unsung heroes like you heard about this morning.

24 Lastly, a challenge. Michigan, as you know,
25 is undergoing a dramatic change in demographics, a

1 dramatic change in the economy. The Judicial
2 Crossroads Task Force, which you will hear about later
3 in this meeting, is studying the judiciary in relation
4 to Michigan's changing demographics and economy.

5 Similarly, are there any policies of the
6 State Bar that need to be reviewed, examined, perhaps
7 new policies promulgated in light of Michigan's
8 changing demographics and economy? I have no
9 particular policy in mind, but changes in Michigan are
10 unprecedented, and so, therefore, should the policies
11 be reviewed in light of the unprecedented changes?
12 Are there some policies perhaps that are obsolete.
13 Are there some that are anachronistic? Are new
14 policies needed? I challenge the Representative
15 Assembly to review and update State Bar policies and
16 in doing so you will be, we all will as a profession
17 be better equipped to serve and protect the public.

18 In ending, I want to tell you what a champion
19 of the Representative Assembly your Chair, Elizabeth
20 Johnson, is. On many occasions when we sit as a Board
21 of Commissioners she will say, This is a policy
22 decision. This should come to the Representative
23 Assembly first. And she is our constant reminder of
24 how important a task you are asked to do. Your work
25 really can be inspirational. I don't know if you have

1 ever thought about it in that sense, but it can be.
2 So thank you, Elizabeth, for your service, for your
3 leadership, thank you for those reminders. And I want
4 to tell you that you are in good hands, because
5 Victoria Radke, she is already starting to remind us
6 of those same things.

7 I also want to thank you lastly for your
8 service as members, continue to debate, continue to
9 resolve policies that uphold the finest traditions and
10 responsibilities of our profession to serve and
11 protect the public. Thank you very much.

12 (Applause.)

13 CHAIRPERSON JOHNSON: Thank you very much,
14 Charles. The State Bar will greatly miss your
15 leadership.

16 The next item on our agenda is number 10,
17 remarks from the executive director. I have already
18 said a few things about Janet Welch, but I think it's
19 important to note that Janet is always there for the
20 attorneys and judges of this state and especially for
21 the Representative Assembly. We are one of the most
22 fortunate state bars in the country because we have a
23 person who is as knowledgeable about legal matters as
24 Janet Welch is. It gives me great pleasure to
25 introduce to you, to reintroduce to you our Executive

1 Director, Janet Welch.

2 (Applause.)

3 MS. WELCH: Good morning. Thank you,
4 Elizabeth.

5 I want to start by elaborating personally on
6 an obvious thing, and that is that the Representative
7 Assembly is not an abstract concept. It is the people
8 who compose the Representative Assembly and in
9 particular the leadership of the Representative
10 Assembly. I was thinking about that, because at this
11 meeting of the Representative Assembly when there is a
12 changeover every year, and I have gone through the
13 cycle every time I think, How is the Representative
14 Assembly going to function without, in this case
15 Elizabeth Johnson, and then I think back, Well, I
16 think that every year.

17 And so the consoling thing is that the
18 Representative Assembly always manages to choose
19 people who are passionate advocates for the profession
20 and they are passionate advocates for the
21 Representative Assembly and they are tremendously
22 hard, tireless workers. You do that all the time, so
23 there really isn't any reason to have that what's
24 going to happen next feeling that I feel every year
25 and I think other people do as well. Victoria will be

1 a wonderful leader.

2 But part of it we are feeling I think is that
3 every leader of the Representative Assembly has a
4 unique personality and brings that unique personality
5 to bear, so I want to say just a short amount about
6 the personality that Elizabeth brought to the
7 Representative Assembly, and, again, I am elaborating
8 on the obvious, but she has been the consummate
9 gentlewoman. She is such a role model of civility and
10 composure and kindness, and I think that is one of the
11 marks she will leave behind, and that's her stamp of
12 personality on the Assembly.

13 She is so gentle and polite and civil that
14 sometimes you forget what a passionate advocate she
15 can be, and suddenly you realize she has just beaten
16 everyone on that point with a big smile on her face,
17 and so I have no doubt that she will go on and
18 continue to serve the profession, but she has left her
19 mark on the Representative Assembly, and we will miss
20 her.

21 I have the luxury of my remaining I think six
22 minutes of talking about just a couple of items,
23 because the big items that you need to know about are
24 going to be presented to you by other people today.
25 The Judicial Crossroads Task Force, the Master Lawyers

1 Section, indigent public defense, which are big items,
2 and I look forward to hearing what the experts on that
3 have to say to you about them.

4 I do want to tell you about something really
5 important that's about to launch in the next few
6 weeks, and that is the State Bar's Triennial Economics
7 of Law Practice Survey. In the past it has had
8 limited participation, and that means that it's
9 usefulness has been somewhat limited. You may
10 remember this from the Smith V Khouri decision of the
11 Supreme Court a couple of years ago on calculation of
12 attorney fees. They pointed to, the opinion pointed
13 to the State Bar's Law Practice Management Survey as
14 being, economic survey, as being a uniquely important
15 tool and pointed out some of its limitations, and in
16 response to that we had a committee which took the
17 survey apart and put it back together again in a way
18 that we think will be easier for the membership to
19 fill out.

20 For one thing, we have divided the survey
21 into people in private practice and everyone else, so
22 that will make it easier for both groups to fill out
23 the survey. It's streamlined. You are going to be
24 getting an e-mail, click on the link in the e-mail or
25 go to the State Bar's website to fill this out. This

1 is not a Nike situation. This is not a "just do it"
2 situation. This is just do it and tell everybody else
3 to do it, because it's very valuable to the whole
4 profession that the results of the survey are as
5 representative as possible.

6 This year we are going to do what some other
7 state bars have done successfully, and we are going to
8 incentivize people to take the survey by having a
9 drawing for prizes. I think I need to say nothing
10 more than iPad, but there will be more than the iPad,
11 so pay attention and please fill out the survey when
12 you get it.

13 It occurred to me when I realized that I had
14 a little bit of time that I have not told the Assembly
15 a couple of things that I have told the Board of
16 Commissioners and that I just told Solo and Small Firm
17 Institute, and I want to make sure that I don't miss
18 telling you this, because I think that this is the
19 body that needs to be aware of potentially huge
20 changes in the practice of law that some people think
21 are happening, because this body is going to have to
22 deal with how that affects the Rules of Professional
23 Conduct and what we want to recommend to the court
24 about what we should be doing about that.

25 These are what many people looking at the

1 global situation and the practice of law think are the
2 two biggest game changers coming our way. The first
3 is disaggregation of legal services, and think about
4 this as you hear what we have to say about the
5 Judicial Crossroads Task Force.

6 Bottom line is, if you are charging attorney
7 fees for something that can be done at nonattorney
8 rates, chances are now and increasingly in the future
9 some attorney is going to be outcompeting you for that
10 service, because they are only going to be charging
11 attorney rates for what attorneys are uniquely
12 qualified to do, which is to bring to bear their legal
13 knowledge and skills on a legal problem. So that
14 means document -- that explains, for example, why the
15 big firms are outsourcing document preparation and
16 they are outsourcing anything that is not specifically
17 the lawyer part of practicing law.

18 Bigger picture, how and where legal work gets
19 done is changing, and this isn't just about the fact
20 that it's now possible to practice law out of your
21 car. It's about the transnational nature of business
22 and the fact that even clients in family matters are
23 crossing borders, and the practice of law is crossing
24 borders.

25 I want to tell you that England, the

1 birthplace of the common law, has decided that
2 beginning next year nonlawyers can own law firms.
3 Kind of gives you the ethical shivers. This is what
4 it would look like. It means that the equivalent of
5 Wal-Mart -- and there may even be Wal-Mart in England,
6 I don't know -- that Wal-Mart can provide legal
7 services. So you walk into a Wal-Mart, the Wal-Mart
8 greeter says, You looking for legal service? It's
9 over there behind the toilet paper.

10 Very scary concept. But I want you to think
11 about this. If that idea turns out to be profitable
12 for the people who practice law and Wal-Mart, what are
13 the barriers that are going to keep it from coming to
14 happen in this country?

15 Second thing I want to tell you about is that
16 the proponents of the change in England, one of the
17 reasons that they got that across is that they said
18 right now legal services are not affordable to the
19 poor. We are not making them affordable, and this
20 will help.

21 So I guess that's a challenge for us. If it
22 turns out that they are right and that is a more
23 affordable way to provide legal services, if it makes
24 it more accessible, if we don't have a better answer,
25 shame on us, and part of what we are talking about

1 today I think and always talking in terms of ATJ is is
2 there a better answer?

3 Third, and this is what I told the Solo and
4 Small Firm folks, I don't know whether it's true, but
5 this is what they argue in England. They said this
6 will actually be a benefit to solo and small firm
7 lawyers, because what solo and small firm lawyers
8 complain about most, billing, payroll, taxes, that
9 will be handled by Wal-Mart, or if you want to feel
10 more upscale, Costco, whoever.

11 I wanted to tell you that because I have told
12 the Board that, and now I have told Solo and Small
13 Firms that this is the most important thing for you to
14 be thinking about. It may not happen next year or the
15 year after that, but, you know, hang in there. We are
16 going to have to be grappling with some of those
17 problems, and I want to leave you with the image that
18 the author of the book called The End of Lawyers uses
19 to illustrate sort of what the world in which we are
20 now living. By the way, I don't think that lawyers
21 are ending, and neither does he, but it's a good book.

22 He talks about the training that the Black &
23 Decker Corporation does for its managers. All the new
24 managers come in, and they say the first question they
25 ask is, What is Black & Decker selling? And, you

1 know, what's our iconic thing that we are selling?
2 And everybody eventually gets around to saying it's
3 the Black & Decker drill, that's what people think
4 about, that's a brand, and ultimately they say, No,
5 what we are selling is this, and they put up a big
6 PowerPoint picture of a hole in the wall. They say,
7 That's what our clients want. They buy the drill, but
8 that's ultimately what they want. If there was a
9 cheaper way to get that hole in the wall, that's what
10 they are going to go to.

11 So I guess the point for us is that people
12 don't want a lawyer. They want their problem solved,
13 or better yet, prevented. And so it's our individual
14 challenge, and I think it's our collective challenge
15 as a Bar and as a Representative Assembly, to convince
16 the public, as the State Bar's campaign says, A Lawyer
17 Helps. That's what's coming, and I thank you all for
18 working with us in making sure that we get the answer
19 right. Thanks.

20 (Applause.)

21 CHAIRPERSON JOHNSON: Thank you very much,
22 Janet.

23 The next item is number 11, presentation by
24 the Master Lawyers Section Planning Committee. We
25 have two presenters with us today, two very

1 distinguished lawyers. Ron Keefe, past president of
2 the State Bar of Michigan, and Greg Ulrich, past
3 chairperson of the Representative Assembly. Mr. Keefe
4 and Mr. Ulrich.

5 MR. KEEFE: I was actually in a pretty good
6 mood until I heard Janet. We will get started
7 anyways. I am delighted to be here, because this is
8 the place I started, and the place I always end.

9 I am here today really to give a brief report
10 about the new Master Lawyers Section that will debut
11 tomorrow, and so Greg and I are going to do it. Greg
12 served with me as the co-chair of the planning group,
13 and there were a number of distinguished lawyers that
14 were in that group. I know Vince Romano worked with
15 us in the group, and thank you very much, Vince, for
16 your help. There may be some others that I missed
17 here today, but I apologize for that.

18 Greg will talk about some of the specifics,
19 but what I want to do is to start with a little
20 background, because I know lawyers like background.

21 When I began my term as president three years
22 ago on this site, I challenged at that time the senior
23 members of our Bar to see what they could do really to
24 apply their experience to make this profession of ours
25 to better serve the public and the needs of the people

1 of Michigan in particular, and I saw this sector
2 really as an untapped resource, and I asked those who
3 are planning on retirement to rethink that idea of
4 retirement and took the position really that
5 retirement from a job doesn't necessarily need to be
6 retirement from the profession.

7 And when we were talking about this and
8 looking at the demographics, we found that, and this
9 was three years ago, about 52 percent of the lawyers
10 in Michigan who were active resident members were 50
11 years and older, and 23 percent were 60 and older. So
12 this is, I think, a significant and dramatic shift in
13 our profession, which is consistent throughout the
14 country with other bar associations. I know the ABA
15 has similar statistics.

16 But I think it also presented us with an
17 opportunity that may not have been there before, and I
18 think maybe, I don't know if Charles talked a little
19 bit about pro bono needs in this state of ours, there
20 just aren't enough lawyers to go around. Certainly
21 there are for those that can afford them, but for the
22 rest of the crowd, it's not. It's pretty bare.

23 So one of the first things I did, along with
24 the Board of Commissioners, in November 2007 is we
25 established a Senior Lawyer Planning Group, Senior

1 Lawyer Section Planning Group, and the idea was to
2 explore and make recommendations to the Bar for
3 programs and services and structures within our Bar
4 association that really would provide a response to
5 this significant and continuing increase in the number
6 of lawyers who are over 60.

7 The planning group made its initial report to
8 the Board of Commissioners in January 2008, and at
9 that time they made a number of recommendations, and
10 one of those recommendations was to explore whether we
11 ought to create a new senior lawyer -- a new entity
12 within the senior lawyer structure, and it would be
13 similar, that the recommendation is that it would be
14 similar to the Young Lawyers Section.

15 That brings us to this moment, and, as I
16 said, Greg is going to talk a little bit about the
17 details of the new section, but after three years of
18 work with the planning group and with the Board of
19 Commissioners and the staff of the State Bar, of
20 course led by Candace Crowley and Anne Vrooman, we
21 have created and tomorrow we will transition from a
22 Senior Lawyer Section to Master Lawyer Section.

23 I am excited, of course, about this, because
24 I have been with it for three years now. I think it's
25 really the opportunities for senior lawyers under this

1 new section to do pro bono work, to start mentoring
2 relationships with new lawyers and establish programs
3 related to retirement and cutting back and even
4 closing down law practices. Those are some of the
5 programs we are looking at starting.

6 As I said, Greg is going to now flush out
7 those details of how this new section is going to
8 operate, but I wanted to get my licks in. I
9 appreciate very much your attention, and thank you.
10 We are looking forward to tomorrow. I am sure Greg
11 will talk about it. There will be a program, a very
12 nice ceremonial program tomorrow around 10:00, but I
13 will leave that up to Greg. Thank you.

14 (Applause.)

15 MR. ULRICH: That was Ron whispering to me,
16 It's show time.

17 I am not going to go through the minutia of
18 the section, because, frankly, that's something for
19 the section to not only deal with but also to be
20 developing over the next few years, the early
21 incarnation of the Master Lawyers Section.

22 The model that was examined was the Young
23 Lawyers Section. Young Lawyers Section, as you may
24 recall, is automatic membership up through age 35.
25 The opportunity, though, of that type of model is

1 that, without the necessity of dues for a section, it
2 draws in members of the Bar at an early point in their
3 career to help nurture, to help them in their own
4 expression of professionalism, their own engagement in
5 the practice, to network, to create friendships and
6 relationships.

7 When you get to the latter years, and when we
8 are looking at the Master Lawyers Section and the
9 criteria for that is going to be age 60 or 30 years of
10 service, you have a wealth of wisdom, a wealth of
11 experience, life experience, professional experience,
12 that only comes from the years, the intervening years
13 from young lawyer status to that point in the
14 professional career.

15 So to tap that was the objective and to bring
16 it to the point of being able to interface, to draw on
17 existing resources in the Bar, that is the Bar's
18 current operations, for instance, Practice Management
19 Resource Center, the Lawyers and Judges Assistance
20 Committee, areas that are existing within the Bar that
21 can dovetail with some of the needs that do develop,
22 frankly, over time. I am one of those who understands
23 what the aches and pains are that you start getting
24 once you get past 50.

25 There are a number of us who are in no way

1 thinking of leaving an active, professional life, and
2 whether it was because a family member practiced till
3 they were 90 or even were working in a nonlegal
4 setting to latter age, the opportunity is in our
5 profession, as in some others, to continue to be
6 vital, to be engaged, to be contributing not only to
7 the profession but to draw on contacts, resources,
8 relationships, however you want to call it, the
9 rain-making of latter years, the connections that
10 might help your community, those are all resources
11 that are inestimable and something I think all of us
12 would feel that is appropriate for us to offer.

13 When the committee met, and we have had a
14 good deal of resources from the Bar staff. Candace is
15 sitting back there, Anne Vrooman, even in more recent
16 time Danon Goodrum-Garland on bylaws drafting. We
17 drew on the best resources we could attain, and we
18 came up with some particular areas, and I am going to
19 cover just the areas, I am not going to go into the
20 details, but among them are we wanted to have some
21 means of supporting an attorney's ability to continue
22 to practice law, whether it was malpractice coverage,
23 whether it was a reduced workload, transitioning your
24 workload. You are still drawing clientele, but you
25 would rather that somebody else handle work. A lot of

1 us manage to work that out, but the idea was for the
2 Master Lawyers Section to be a resource for that.

3 There was a point when I was on the Ethics
4 Committee where the question came up about an attorney
5 whose spouse was holding onto the files in the
6 basement of the house and wouldn't release them, and
7 that's one of the areas, the transition of practice or
8 the conclusion of a practice where you would see the
9 master lawyers looking at it and solidifying the
10 process, maybe picking up on the more volunteer
11 process we have with the Attorney Grievance
12 Commission, but at least structuring it so there is an
13 easy transition and everybody in Michigan who is an
14 attorney in Michigan will know what to do.

15 The value of those who have a lifetime of
16 experience through communications, newsletters and
17 also looking at other bar associations or the
18 State Bar's affinity bars so that we can dovetail with
19 training and programs.

20 There is also the goal of contributing to the
21 community, and that's something that I would hope
22 would make any individual feel good about what their
23 role in the profession and their role in society is,
24 and the idea would be to provide opportunities of
25 pro bono much more than we have today. In some

1 respects that would dovetail with the existing
2 pro bono programs, but it would also be potentially
3 having programs that are community based, local bar
4 based so it's closer to home.

5 The program on Friday is not just a nuts and
6 bolts of let's do the transition from Senior Lawyers
7 to Master Lawyers. There is a significant program.
8 It starts at 10:00, and it's over here in the Grand
9 Gallery Overlook, Room C and D. Ed Pugh, who will be
10 coming on as the Master Lawyers Section chairperson,
11 will be welcoming people. Tony Jenkins, our new
12 president, will be moderator, and we'll have a group
13 of panelists who are going to be talking on the
14 community-based pro bono contribution that Master
15 Lawyers can make.

16 It's going to include Robert Grey, who is a
17 former president of the ABA; Michael Chielens, the
18 executive director of Legal Aid of Western Michigan;
19 David Shaltz, a pro bono lawyer and who is of counsel
20 of Chalgian & Tripp Law Offices; and Dick Fellrath,
21 who is a counsel member of the current Senior Lawyers
22 Section, and will become counsel member of the Master
23 Lawyers Section. The program is something that I
24 would invite all of you who will be staying over till
25 tomorrow to attend.

1 This is an opportunity that I hope in terms
2 of the name is not lost. It would have been fairly
3 easy to go in lock step with Senior Lawyer Section.
4 We have a number of positions in life -- senior vice
5 president, senior attorney, senior partner -- that
6 have very positive connotations. We did wrestle with
7 the negatives, and it was through the creative
8 collaboration of the committee that options started to
9 come up, and Master Lawyers was a focus on the mastery
10 of our profession, the skill set, the wisdom, the
11 self-confidence, the common sense of law that can be
12 brought forward and continue to contribute.

13 This isn't a payback in my eyes. This is a
14 continuation of moving forward, so I invite you on
15 Friday to attend. Attend the transition meeting, and
16 if there is anything that you have in the way of a
17 question, Ron and I are available, the committee is
18 available. The committee did an extraordinary amount
19 of work in meetings. Some of them, the members, are
20 commissioners, former commissioners, judges,
21 Judge Gribbs was on it, Judge Harold Hood. It was a
22 cross-section, and we hope that the product is
23 something that will remain valuable to the Bar in the
24 future. Thank you.

25 (Applause.)

1 CHAIRPERSON JOHNSON: Thank you very much,
2 Ron and Greg, for your presentation and your hard
3 work.

4 The next item is number 12, the update on the
5 Judicial Crossroads Task Force. We have again another
6 distinguished leader of the Bar. Our presenter today
7 is Mr. Ed Pappas, former State Bar president and
8 former member of this Representative Assembly.

9 MR. PAPPAS: Hello. Well, Elizabeth just
10 told me that I have 30 seconds.

11 CLERK GOBBO: And, Ed, I have got the clock
12 right here.

13 MR. PAPPAS: All right. Actually I am going
14 to give you very quickly a little bit of the history
15 of how we formed the task force, what we have been
16 doing over the past year, and where we are going. And
17 I am going to ask Justice Davis to spend a very short
18 time telling you what he has done with the judges, and
19 we will do this in a very limited time.

20 But to give you a little bit of the history,
21 about two years ago, in 2008 when I was
22 president-elect of the Bar, I met with a few judges
23 and lawyers about how we might increase judicial
24 compensation for state judges because state judges had
25 not received an increase in compensation, even a cost

1 of living increase, since 2001. That was an election
2 year, and we decided to wait until after the election
3 to form a larger committee to talk about strategy.

4 After the election, the governor in her State
5 of the State Address recommended that there be a ten
6 percent cut in the compensation of all public
7 officials, including judges. So we changed our focus
8 and we asked Barry Howard, who was my co-chair of the
9 task force, to represent the judges and the Bar in
10 front of the SOC Commission and the legislature, and
11 the SOC Commission recommended a ten percent cut in
12 the compensation of all elected officials, except
13 judges, based on constitutional reasons, and the
14 legislature followed suit.

15 We then had a meeting with a much larger
16 group of lawyers and judges at the State Bar offices
17 and decided because of the economic crisis that we
18 were facing in Michigan and because there were forces
19 looking to change the structure of our court system in
20 their own ways, we decided that if there was going to
21 be a change in court structure, if there was going to
22 be court reform, it should not occur, it should not be
23 done by the legislature, by the executive branch or by
24 the public, a few piecemeal initiatives, rather it
25 should be the judges and the lawyers who make those

1 important decisions.

2 And this wasn't just a state crisis. It was
3 a national crisis, and one of the judges at an ABA
4 convention said that if you are not at the table you
5 will be on the menu, and none of us wanted to be on
6 the menu of the legislature or anybody else.

7 So we formed this task force, which is made
8 up of 28 people, half judges, half lawyers. The
9 judges are represented from every court, the District
10 Court, Circuit Court, Probate Court, Court of Appeals,
11 and the Chief Justice of the Supreme Court sits on our
12 task force.

13 We also formed four committees. The Court
14 Structure and Resources Committee, which Justice Davis
15 has chaired, and that is made up of all judges, 24
16 judges, and he will talk a little bit about that
17 briefly. We also have an Access to Justice Committee,
18 a Technology Committee, and we have a Business Impact
19 Committee, and the committees have worked diligently
20 and very hard over the past year. The task force has
21 met a couple of times. The committees have already
22 made some recommendations that will be considered by
23 the task force in late October of this year, and I am
24 briefly going to tell you what some of these
25 recommendations are, because the recommendations allow

1 for a more efficient court system providing better
2 service to the public with much less resources. And
3 the recommendations include consolidating court
4 functions, and if there has to be a reduction in the
5 number of judges, it will be done based on reliable
6 data which the task force and SCAO have developed, and
7 it will be done only by attrition. Nobody is going to
8 lose their job.

9 Recommendations also talked about creating a
10 trial court judicial council with authority to
11 implement changes in our judicial system. Also
12 creating a justice advisory board to promote access
13 and fairness goals. We are also talking about
14 removing politics from the determination of judicial
15 compensation.

16 The recommendation talked about implementing
17 a statewide technology system. If we are going to be
18 more efficient, we have to have uniform technology
19 throughout the state.

20 Increasing the use of problem solving courts,
21 creating a pilot program to test the effectiveness of
22 business dockets, supporting statewide standards for
23 the delivery of indigent public defense, improving
24 child welfare outcomes and translation services.
25 These are just some of the recommendations that the

1 task force will be considering.

2 We believe that the recommendations are going
3 to be transformational. They are going to be
4 sweeping, and you are going to be hearing a lot more
5 about these recommendations in the future, and we are
6 going to be looking for your input and your support in
7 implementing these recommendations. We are going to
8 have an implementation committee that's going to go to
9 all the stakeholders, which includes the State Bar,
10 not only the Board of Commissioners, but the
11 Representative Assembly. We are going to go to the
12 legislature, the governor, municipalities, counties,
13 everybody who has an interest in improving and making
14 our court system more efficient.

15 And with that, I am going to ask
16 Justice Davis just to talk for a couple of minutes on
17 his work with the judges in connection with this task
18 force.

19 JUSTICE DAVIS: I can't tell you how pleased
20 I am to be in the presence of a group of lawyers. You
21 know, I was a circuit judge for 21 years, and for the
22 last five years I have been in the Court of Appeals we
23 almost never see lawyers. It's great to be with you.
24 It's sad but true. I have always heard of the
25 Representative Assembly, and I have never been here,

1 so it's a great privilege for me.

2 What you are hearing today is the face of the
3 future, and you should heed it well. The committee
4 that I chaired, Judicial Resources and Structure, was
5 comprised of eight judges from each of the three
6 benches -- probate, district and circuit -- and I
7 don't know how well you know your judicial history,
8 but 10 or 15 years ago you couldn't get three judges
9 from three different benches in a room without having
10 an argument in three minutes.

11 These judges met from September to June, the
12 second Tuesday of every month for a full day, and we
13 spent all the time from September up until January
14 looking at the system and looking at the economics of
15 Michigan as it stands today in trying to determine
16 what the future was going to look like before we took
17 our first vote. In January we began to vote on what
18 we thought we should be doing going forward, and we
19 came up with about ten recommendations which are
20 published by the State Bar. They are recommendations
21 to the overall task force, and all of them were
22 unanimous. And that is what we are going to be doing
23 going forward.

24 Now, what does that mean to you as lawyers?
25 There are going to be changes, but it's not going to

1 be dramatic in the sense that it's going to upend your
2 practice or it's going to upend the system as you know
3 it. That's the last thing that we want to do, but the
4 changes are intended to provide better service to the
5 people of the state of Michigan with the recognition
6 that we are going to have less public resources to do
7 that, and we must be prepared for that.

8 Sandburg said, I think, in a poem one time
9 that the fog crept in on cat's feet, and that's about
10 how this is going to go. But it's all a piece. In
11 the work that Ron is talking about today with his new
12 section, it's important. These are all kind of
13 collateral, but they all go together.

14 What Janet was talking to you about with this
15 book, *The End of Lawyers*, you really need to read
16 that. I have read it. It's the future. We are not
17 going back to the quill pen and parchment. It's not
18 going to happen. It's a world of technology, and we
19 must fit within it. And as the lawyers, you are the
20 ones who will explain to the public what we are doing
21 for their benefit, because that really is our
22 overriding mission, whether you are a lawyer or a
23 judge, it's to serve the public and to uphold your
24 oath of office.

25 So when we get these recommendations out, we

1 are going to be looking to you to help us implement,
2 and it's going to be good for you to do it, it's going
3 to be good for Michigan that we do it, and it's going
4 to be absolutely essential, and I know we can count on
5 you, and it's going to give me the opportunity to come
6 back and visit with you more, which I am looking
7 forward to. Thanks.

8 (Applause.)

9 CHAIRPERSON JOHNSON: Thank you very much,
10 Justice Davis and Mr. Pappas. We appreciate the hard
11 work that you and your committee have been doing this
12 past year.

13 The next item is number 13, recommendation to
14 add a new Representative Assembly standing committee.
15 At this time I would recognize the proponent,
16 Krista Licata Haroutunian, who is the chairperson of
17 the Special Issues Committee.

18 MS. HAROUTUNIAN: Hi, my name is
19 Krista Licata Haroutunian, and the issue at the moment
20 is the formation of a new standing committee of past
21 chairpersons of the Representative Assembly.

22 This item was brought before Special Issues,
23 and we voted unanimously in favor of the formation of
24 this committee in concept, which would allow for the
25 utilization of institutional memory for this body, and

1 on behalf of Special Issues we are asking for the R.A.
2 to refer this concept to the Rules and Calendar
3 Committee to allow for a more definitive outline and
4 purpose and direction and bylaw changes where
5 appropriate. The idea would be that this proposal
6 with the bylaw change would then come before the
7 Assembly for approval at the April meeting.

8 So, therefore, on behalf of Special Issues
9 and myself out of the 6th circuit, I move that the
10 concept of a new standing committee of past
11 Representative Assembly chairpersons be referred to
12 Rules and Calendar for their consideration and for
13 later presentation to the R.A. for consideration and
14 approval at the April meeting.

15 VOICE: Support.

16 CHAIRPERSON JOHNSON: Thank you very much,
17 Krista, to you and your committee. The motion, and I
18 heard a support. There has been a motion and a
19 support by the Special Issues chair to refer the
20 matter of the new Representative Assembly standing
21 committee to the Rules and Calendar Committee. Is
22 there any discussion?

23 Hearing none, all those in favor of the
24 motion to refer the issue of a new Representative
25 Assembly standing committee of past chairpersons

1 committee to the Rules and Calendar Committee, please
2 signify by saying aye.

3 Those opposed please say no.

4 Any abstentions?

5 The motion to adopt a new committee, a
6 standing committee of the Representative Assembly,
7 past chairpersons committee, to refer to the Rules and
8 Calendar Committee, has been adopted. Thank you very
9 much to Ms. Licata Haroutunian and to her Special
10 Issues Committee.

11 The next matter is number 14, our public
12 defense update. Speaking to you today is Elizabeth
13 Lyon, and, as most of you know by now, Elizabeth Lyon
14 is an incredible, hard-working, dedicated woman who
15 has kept this Assembly abreast of all of the policy
16 issues, and she has not only kept us aware, but she
17 has kept us two steps ahead of everybody else.

18 So, Elizabeth, it's with great pleasure I
19 invite you to address the Assembly.

20 MS. LYON: Thank you very much for that warm
21 welcome, and it's such a pleasure to be with you all
22 again this afternoon. Certainly it's always a
23 highlight to be able to present to you on important
24 policy matters that are being pursued and advocated
25 for by the State Bar of Michigan.

1 I do want to focus on public defense reform,
2 as we often do during our short time in this
3 presentation. But quickly before I get into that,
4 when we spoke last March, I talked to you all about a
5 potential sales tax on legal services rearing its head
6 again, that the State Bar had been advocating against
7 that. I am pleased to say that conditions look
8 favorable for the current legislative session that we
9 will not see a sales tax on services proposal, period,
10 which means we wouldn't see a sales tax on legal
11 services.

12 It will certainly be a new dynamic to be
13 considering come January 2011 with a whole new
14 executive branch and a very new House and Senate. We
15 are still trying to see if that threat will re-appear
16 in the next legislative session, and, quite frankly,
17 we appear to be, you know, we are poised to be
18 fighting that fight for some time until it's finally
19 dead.

20 Moving on to public defense. I think I have
21 been able to have conversations with many of you who
22 have a particular interest in this area. Quite often
23 I get the question, Is anything really going to
24 happen? This is such a big issue. And I have to tell
25 you, especially working in the day-to-day minutia of

1 trying to get very significant legislative reform
2 through that quite frankly helps a constitutional
3 right that we all believe in but then is on its face
4 to protect the rights of criminal defendants and will
5 cost a significant amount of money that is new, that's
6 not currently being spent, and a term limited
7 legislature with horrific budget problems, you rightly
8 ask the question, Will this ever get done? And it's
9 such a pleasure for me to come before you, because it
10 gives me the chance to list for you what we did the
11 last six months, and I can always happily arrive at a
12 conclusion that every time I come before you I can
13 report significant and positive movement forward.

14 I want to hit on three main things today
15 quickly, and then I can open myself up for questions.

16 We have talked before about House Bill 5676
17 that was introduced by Representative Bob Constant and
18 Justin Amash. You might know, he is from
19 Grand Rapids, that Representative Justin Amash won his
20 primary bid for a congressional seat and is pretty
21 much guaranteed the general election win given the
22 makeup of the district. He will be moving on to
23 congress, but he continues to be very passionate about
24 accomplishing something before he leaves in the new
25 year.

1 We have now gotten together through a
2 legislative work process that was established by Chair
3 of the House Judiciary Committee, Representative Mark
4 Meadows, we brought together in a new way that is
5 significant the Michigan District Judges Association,
6 the Michigan Judges Association and other groups who
7 have been working on this, and I am really pleased to
8 report that I think we are very close to a strong
9 consensus between those judicial associations and the
10 State Bar about what reform will look like in Michigan
11 and what are our consensus principles.

12 That might sound on its face like not a lot,
13 but actually when you have the voices of the judges
14 and the Bar and others joining, it is a very positive
15 and forceful thing. So we are working on a phased-in
16 implementation plan. We will not see 5676 as
17 introduced likely enacted. We will see a scaled down
18 version of it. We will likely have to go back to the
19 legislature for a phase two implementation, but we are
20 looking on a preliminary commission that will start
21 moving this ball forward in Michigan.

22 Another interesting development, the
23 State Bar has not been involved in the state
24 legislation that I talked -- excuse me, the state
25 litigation that has been going through our State

1 Appellate Courts, the Duncan lawsuit. I told you last
2 March that it was up before the Supreme Court for oral
3 argument in April. We were pleased to see on
4 April 30th an order issued unanimously that affirmed
5 the Court of Appeals ruling that would have allowed
6 that case to proceed.

7 We were surprised. I can say that on
8 July 16th we saw another order issued that rescinded
9 the April order by a vote of 4/3 that essentially
10 killed the case, if you will. It reversed the Supreme
11 Court in that the litigation not move forward, that it
12 should be remanded to the trial court for summary
13 disposition.

14 I am told by the litigation team that is
15 comprised of both lawyers here in Michigan and lawyers
16 in New York and who have brought this type of
17 litigation in other states that they are continuing to
18 pursue other litigation strategies and they haven't
19 given up yet.

20 The last thing I want to mention to you all
21 today, and it's incredibly timely. Perhaps I am
22 sharing with you some breaking news on this
23 development. Just this week on September 27th U.S.
24 Senator Patrick Leahy, who chaired the Senate
25 Judiciary Committee, introduced a bill that would be

1 the Justice Reauthorization Act. One of the things
2 that has really kept us motivated is help from our
3 federal government that we saw sort of talked about by
4 our U.S. Attorney General Eric Holder and other
5 officials in the Department of Justice. The
6 introduction of this bill embodies much of what we
7 expected from them in the form of help.

8 Important in this bill is that it would give
9 DOJ the authorization to sue states for repeatedly
10 violating the 6th amendment right to counsel, but it
11 has a two-year delayed effective date. So essentially
12 what it would do, it would give a carrot and stick
13 approach, basically give states two years to be
14 compliant, to fix any systemic issues, and after those
15 two years DOJ can start filing lawsuits against
16 states, and their ability to file lawsuits will
17 actually be very broad. They can file it against
18 individual defense attorneys, they can file it against
19 counties if we have county base system, or they can
20 file it against the whole state. This is significant
21 if it passes. It will also provide some assistance to
22 states for that two-year period in which to bring
23 their systems into compliance.

24 I can tell you through conversations I have
25 had with our friends in D.C. and Department of Justice

1 that Michigan is the focus of this legislation, that
2 the officials there are very -- what's a good word to
3 use -- unhappy with how things have been progressing
4 in Michigan, and they really, even in the press
5 release issued by some of the national organizations
6 cited Michigan as a prime example and a prime target
7 state to which DOJ would begin applying its authority
8 to these lawsuits if Michigan did not do something in
9 two years.

10 So I want to back up to what I told you
11 about, the idea of doing a phased-in approach. A
12 current strategy that we are pursuing is to use this
13 federal legislation to really convince the legislature
14 that they have to take a step forward. By doing a
15 phase one commission they really set up the structure
16 in which the state can have a new system reformed in
17 which to avoid a lawsuit. We like the stick of the
18 lawsuit approach. We do not like the lawsuit. So we
19 want to make sure that we use that to avoid the
20 lawsuit, because we certainly know that our state
21 can't afford that either.

22 So I am not sure if I have completely eaten
23 up all of my time. I am happy to answer your
24 questions either in this forum or individually. I
25 will be around the next few days if you want to find

1 me. I will leave that to Liz.

2 CHAIRPERSON JOHNSON: Thank you very much,
3 Elizabeth. And I would like to remind the Assembly
4 members today to take what you have learned today
5 about the various policy issues, take them back to
6 your circuits and continue the conversation with your
7 colleagues.

8 Next item is number 15, the American Bar
9 Association delegate report, and to give the report
10 today we have Ms. Vanessa Williams who is, we are very
11 proud to say, our Representative Assembly member who
12 is on the ABA Delegation.

13 MS. WILLIAMS: Thank you, Madam Chair.

14 As she indicated, my name is Vanessa
15 Williams. I sit in the Assembly from the 6th circuit.
16 I also serve as one of your State Bar delegates.

17 Just briefly today I would like to give you
18 just an update of what occurred at our annual meeting
19 in August in San Francisco, just some of the great
20 highlights of being able to be there. The ABA Medal
21 this year was present to Ruth Bader Ginsburg, and she
22 did address the house, so that was very nice.

23 As you all know, we changed the president, so
24 the presidential gavel was passed to Stephen Zack of
25 Florida. One of his focuses this year will be civil

1 education. He also had a great commitment to civil
2 rights.

3 House chair also changed to Linda Klein of
4 Georgia, and we heard from our new president-elect,
5 which is William T. Robinson of Kentucky.

6 One of the other highlights which was
7 something unusual, well, not unusual but really nice,
8 the State Bar of the house members from the state of
9 Alabama actually brought a recommendation to recognize
10 the 50th anniversary of To Kill a Mockingbird by
11 Harper Lee, so that was a very delightful presentation
12 for us to take part in.

13 For a highlight of the recommendation in
14 terms of rules and regulations and constitutional
15 amendments, most of the ones that I will talk about
16 will be the ones that passed, but I do want to bring
17 your attention to one that failed, because we talked
18 about this at our last meeting, and it was in regards
19 to amending the ABA Constitution of Rules and
20 Procedure in regards to providing each territory with
21 a house delegate.

22 As you may recall, currently some of the
23 territories do not have representation in the house.
24 Others may have one delegate, and then I think there
25 are two that share one delegate. The provision was to

1 give each territory one house delegate vote. That
2 provision failed, and it actually failed twice during
3 the meeting, so we will not have that. I am sure it
4 will come back again.

5 There was also a significant change to the
6 house of delegates' role in the accreditation process
7 for law schools. As you may recall some years back, I
8 think in 1999, the Department of Education indicated
9 that there needed to be a separate and independent
10 entity, and so the Counsel Section of Legal Education
11 and Admissions of the ABA, it's not of the ABA now,
12 it's an independent entity, but they would still bring
13 back appeals to the House of Delegates. So if a law
14 school did not receive its provisional accreditation,
15 they could appeal to the House of Delegates and the
16 House of Delegates would take a look at that and then
17 refer that matter back to the council.

18 Based on changes that took effect in July of
19 2010 from the Department of Education, the House of
20 Delegates can no longer be involved as an appellate
21 entity in the accreditation process. So the council
22 will make all decisions in terms of provisional and
23 then permanent accreditation as to the law schools and
24 would be that appellate entity or appoint an appellate
25 entity. The Houses of Delegates can no longer do

1 that. We will just receive notice of those decisions.

2 What we talked about before, new
3 implementation of dues, we talked about that at our
4 last meeting, and, as I told you, in February at the
5 midyear meeting there was a lowering of ABA dues for
6 judicial members, solos and nonprofit practitioners.
7 There was to be in August the lowering of dues for all
8 members, and that did not occur. That motion was
9 initially put on our agenda. It was withdrawn, and we
10 were told it was withdrawn for economic reasons but at
11 the midyear meeting the recommendation will come back
12 for a vote.

13 There were a number of different things
14 regarding civil education, urging states and
15 territories to provide funding for that. There was
16 also a recommendation passed to urge states and
17 territories to eliminate barriers to same sex
18 marriages.

19 In the criminal law arena we saw a lot of
20 action. There was a recommendation to urge the DOJ to
21 continue its commitment to investigate misconduct by
22 its lawyers. There was also a recommendation for
23 states and territories to provide unified or
24 consistent standards throughout the country for
25 different forensic laboratories, examiners to have a

1 nationwide database for fingerprint analysis.

2 And then one important to prosecutors, there
3 was a recommendation passed to request that trial
4 courts of an appellate court when making an opinion as
5 to prosecutorial actions that they distinguish between
6 simple errors and prosecutorial misconduct. There was
7 also a recommendation to provide a consistent judicial
8 standard in terms of amending the ethics portion of
9 the model fold in regards to judges.

10 And starting this new Bar year I have a new
11 appointment to the ABA's Commission on Youth at Risk,
12 so the next two recommendations are very near and dear
13 to me that I wanted to bring to your attention.

14 There was a recommendation to provide legal
15 counsel to juvenile offenders throughout the process
16 when there is some type of status hearing to determine
17 whether they would be tried as adults or as a youth.
18 And a last one was to increase the foster care
19 guardianship age to 21. And people might say, well,
20 what's the big deal with that?

21 Currently foster care children age out at 18.
22 In the state of Michigan we have a huge population of
23 foster care children, and there is some current
24 pending legislation to address some of the issues in
25 our state, but the Children's Defense Fund has found

1 that there is a correlation between the number of
2 foster care children and juveniles who end up in the
3 criminal system.

4 And so if you look at a state like Michigan
5 where we spend almost more than two times the amount
6 of money on prisons than we do on our education for
7 our kids, I think it's important that we try to break
8 one of these issues, which is the foster care system
9 that is a part of that pipeline to prison for our
10 youth, and so I think in our state, just as in many
11 other states across the country, it will be important
12 to urge that the foster care guardianship age is
13 increased to age 21, and that will provide those
14 children some more guidance through their adulthood
15 rather than at 18 them aging out into the system and
16 not really knowing where to go.

17 One last thing I will talk about is that
18 there was a recommendation to change Model Rules in
19 terms of trust accounts, and that change will just try
20 to align what the Model Rule requires with the new
21 banking laws that have occurred over the past couple
22 of years.

23 I do actually have recommendations with me.
24 If you wanted to take a look at those, you have my
25 contact information in your agenda today. If you ever

1 have any questions or concerns, you have the right to
2 give me a call and voice your opinion as to how you
3 think your State Bar delegate should vote, and if you
4 ever care to follow along with our annual or midyear
5 meetings, you can often catch them on the ABA website.
6 They do a live streaming, and just recently they
7 started where you could follow along if you tweet.

8 Thank you again for letting me come before
9 you. As always, let me know if you have any questions
10 or concerns. Thank you.

11 (Applause.)

12 CHAIRPERSON JOHNSON: Thank you very much,
13 Vanessa. We really appreciate your effort and the
14 work you do, not only on the Assembly, but with the
15 ABA.

16 I have been asked by the chairperson of the
17 next matter, the Special Issues Committee, if they
18 could have a two-minute recess for the Special Issues
19 Committee to meet briefly. If you will please not
20 stray far from your seats, we will, without objection,
21 resume this meeting in approximately two minutes.
22 Thank you.

23 (Break taken 11:36 a.m.-11:38 a.m.)

24 CHAIRPERSON JOHNSON: This meeting is again
25 back in session. Referring to the next item,

1 number 16, the update and consideration of the Revised
2 Uniform Arbitration Act. After a discussion of the
3 Special Issues Committee, the committee is not ready
4 to report today and the matter will remain in the
5 committee. I thank the Special Issues Committee and
6 their chairperson Krista Licata Haroutunian.

7 At this time the body will be breaking for
8 the inaugural luncheon. The inaugural luncheon will
9 go until approximately 2 p.m. We ask that you be back
10 here in your seats ready to begin at 2 p.m. We will
11 begin our session after lunch as close to 2 p.m. as
12 possible. This is the inaugural luncheon. As many of
13 you know, that sometimes goes a little longer, but we
14 will make every effort to be back here starting at
15 2:00.

16 Please remember, and you may have a little
17 time now before lunch, to fill out your committee
18 assignment requests for next year and get them to
19 either Victoria Radke or to Anne Smith.

20 I thank you. We are now in recess until
21 after the inaugural luncheon. Thank you very much.

22 (Lunch break taken at 11:40 p.m.-2:10 p.m.)

23 CHAIRPERSON JOHNSON: Would everybody please
24 find your seat so that we might get started. Thank
25 you very much. We are now back in session.

1 At this time I am very happy to introduce to
2 you Ms. Nicole DeVries of Access to West Michigan, the
3 group that we partnered with today here in
4 Grand Rapids for our Representative Assembly and
5 State Bar of Michigan food drive that we are holding
6 in conjunction with our Access to Justice fundraiser
7 as we celebrate the State Bar's 75th anniversary. As
8 those of you just heard Tony Jenkins remarks at the
9 inaugural luncheon, today more than ever we as lawyers
10 need to step up, whether it's in a food drive or our
11 Access to Justice fund reserve or in providing
12 pro bono programs, and today Ms. DeVries would like to
13 say a few words to us about our participation.

14 MS. DEVRIES: Thank you. Good afternoon,
15 everyone. My name is Nicole DeVries, like she said,
16 and I work for Access to West Michigan. I am the
17 poverty education director there. Access is a local
18 nonprofit serving the Kent County area, and we do
19 hunger and poverty work in our county. We help to
20 oversee the network of a hundred group entries here in
21 the Grand Rapids area and all over the county helping
22 to meet needs in our community.

23 So right now our patrons are serving over
24 7,000 households each month, so that's about 20,000
25 men, women, and children just in this area, so imagine

1 what it is across the state from where you all are
2 from as well. We also work with churches in the area
3 to help meet needs in their community, and we do
4 poverty education and advocacy work.

5 So I just wanted to thank you for your
6 involvement and thank you for those who donated food
7 and for all the work you are doing, and I think that's
8 really important that you guys are also involved in
9 these kind of issues that you are helping in your own
10 way. So I just want to thank you for that.

11 (Applause.)

12 CHAIRPERSON JOHNSON: Thank you very much,
13 Ms. DeVries, and thanks to all of you who have
14 participated and contributed to today, and a special
15 thanks to Board of Commissioners member and past chair
16 Bruce Courtade for helping put us in contact with the
17 Access to West Michigan food drive.

18 Moving on to the next item is number 18,
19 consideration of legislation for the Uniform
20 Collateral Consequences of Conviction Act. Our
21 proponent today is Mr. Martin Krohner, Assembly member
22 and member of the Committee on Justice Initiatives.

23 Mr. Krohner, if you would like to come to the
24 podium.

25 Additionally, Ms. Miriam Jane Aukerman is

1 also going to be a proponent.

2 MR. KROHNER: Thank you, Madam Chair, members
3 of the Representative Assembly. I am Martin Krohner,
4 co-chair of the Criminal Issues Initiatives of the
5 State Bar. With me is Miriam Aukerman, who is a
6 member of the Criminal Issues Initiatives, and she
7 will be doing most of the discussion about the
8 Collateral Consequences Act.

9 Ms. Aukerman is a member of the West Michigan
10 Legal Aid and heads up the reentry program for Western
11 Michigan Legal Aid. Also, she has developed through
12 their offices a weekend site that has been up and
13 running now for a few years that provides information
14 about various collateral consequences for criminal
15 convictions.

16 To keep the matter rolling quickly, I am
17 going to bring up Ms. Aukerman, who will head the
18 discussion, and hopefully both of us will hopefully be
19 able to answer some of your questions. Miriam.

20 MS. AUKERMAN: Thank you, Marty. Good to be
21 here today.

22 So I talked to some people a little bit just
23 now, and I want to first of all talk about why the
24 Uniform Collateral Consequences of Conviction Act is
25 important.

1 There are over a hundred million Americans
2 that have some type of criminal history record on
3 file. The estimate is one in three adults has some
4 kind of criminal history on file, that would include
5 arrests. One in four have a criminal record. There
6 are estimates between 13 and 17 million Americans have
7 been convicted of a felony. There are a lot of people
8 out there, probably people in this room, who have
9 criminal history.

10 At the same time we have this staggering
11 number of people who have criminal records. The
12 internet and technological changes have vastly
13 expanded access to that criminal record information.
14 As technological changes have made screening people
15 for records much easier, states have started imposing
16 more and more, and Michigan is no exception, more and
17 more collateral consequences on people who have
18 criminal records. These are real barriers. Not
19 talking about what private employers do or private
20 landlords, talking about state imposed legal barriers
21 to housing, to employment, to education, public
22 benefits, to licenses, and those kinds of
23 opportunities and benefits.

24 These collateral consequences, particularly
25 for lower level offenders, not necessarily so true for

1 people convicted of more serious offenses, but for
2 lower level offenders these collateral consequences
3 can be much more significant than the consequences of
4 the criminal penalties themselves. According to
5 Bureau of Justice statistics, nationally 60 percent of
6 those convicted of felonies are not actually sentenced
7 to prison.

8 For those individuals and for individuals who
9 are convicted of misdemeanors, the collateral
10 consequences may be much more important. We are
11 talking, you know, if you are looking at a short
12 amount of jail time or probation, something like
13 deportation or a loss of housing or loss of the
14 license that you need to do your job, the loss of the
15 opportunity to have contact with your children. All
16 of those things can be more significant to you as a
17 criminal defendant than the actual criminal sanction.

18 But the way that we think about criminal
19 sentencing and criminal consequence has really been
20 within a criminal framework in terms of what are the
21 criminal consequences while ignoring the fact that the
22 collateral consequences are so significant.

23 Defendants often don't know what those
24 consequences are, and there are hundreds of them.
25 They are scattered all through the MCL's. They are

1 scattered through federal law, and so it is, as a
2 practical matter, very difficult for attorneys to
3 provide advice about what those consequences are.

4 The other thing that's important to recognize
5 is that criminal sanctions are tailored to
6 individuals. We have sentencing guidelines. We look
7 at what the history was, what the nature of the
8 offense was, and the appropriate sentence is
9 determined.

10 Civil consequences don't work that way. They
11 are typically imposed automatically as a function of
12 law. You don't look individually should someone lose
13 their ability to work in a particular profession, just
14 boom, you have been convicted of this, you can no
15 longer work in this field. So they are not tailored
16 in the same way that criminal sanctions are, and what
17 happens as a result is that the collateral
18 consequences are often quite inappropriate and not
19 related to the person's offense or ability to work in
20 a particular field, pursue an education, or otherwise
21 access opportunities or benefits that are denied based
22 on the criminal record.

23 However, short of expungement or pardons,
24 which are in most cases not available, there aren't
25 mechanisms to relieve these collateral consequences,

1 so you have a consequence that's completely
2 inappropriate for the individual, and there is no way
3 for that individual to come back and say, you know
4 what, I am a great health care worker, and, yes, I had
5 a run-in with the law that has nothing to do with my
6 ability to work in this field, and I would like to be
7 able to continue to work in the field that I am
8 trained for and went to school for, you know, spent my
9 money on an education for. There is no way to go in
10 and ask for that in many, many cases. There are some
11 exceptions around licensing, but a lot of statutory
12 barriers are automatic.

13 Collateral consequences are a national
14 problem. This is not an issue that is unique to
15 Michigan, and so the Uniform Law Commission, a lot of
16 very bright legal minds from all across the political
17 spectrum -- criminal prosecutors, defense attorneys,
18 judges -- came together to try to identify how do you
19 address this very significant issue, and they
20 promulgated the Uniform Collateral Consequences of
21 Conviction Act. The Criminal Issues Initiative of the
22 State Bar then looked at this, convened a working
23 group. Basically the version that you have in front
24 of you is quite largely the same as what the Uniform
25 Law Commission adopted, what they promulgated. There

1 is some reference to Michigan law. There is a few
2 minor changes that are addressed in the materials, but
3 it's essentially the same thing.

4 What we are now asking the Representative
5 Assembly to do is to support and advocate for state
6 legislation that would implement the Uniform
7 Collateral Consequences of Conviction Act. There is a
8 sample of what that act would look like that's in the
9 materials, but I want to emphasize today we are
10 discussing, I think it's not helpful to discuss the
11 specific wording so much, rather we should look at the
12 overall principle of adopting legislation to address
13 collateral consequences. So I would like to focus
14 next on what that framework is in the legislation.

15 Basically what the UCCCA does, there are
16 four, I would say four central things. First of all,
17 it provides for the collection and compilation of
18 collateral consequences in one place so they are easy
19 to identify. I have been working in this area since
20 2003, it's what I do full time, and I still see
21 collateral consequences periodically that I was not
22 previously aware of or I didn't know were out there.
23 It's very, I think it would be tremendously helpful
24 for attorneys to have a place where they can reference
25 that material. As Marty mentioned, we have a website

1 where we have a lot of that information available, but
2 it's certainly not comprehensive.

3 There is federal requirements now that every
4 state creates a compilation, and the ABA is working on
5 that, and that will be sort of the nucleus of what's
6 required under the act, but that would, of course,
7 need to be maintained and updated over time. So
8 that's the first thing, making that, creating that
9 compilation so that information is available and
10 accessible.

11 The second thing is requiring notice to
12 defendants about what the collateral consequences are
13 at important points in the proceedings, which would be
14 adequate or formal notification of charges at plea or
15 sentencing, actually sentencing, and when leaving
16 custody.

17 The idea here -- two ideas here. One is that
18 at the sort of decisive state in making a decision,
19 for a defendant to make a decision, that person needs
20 to know not just what the criminal consequences are
21 but what the civil consequences are, because those can
22 be, again, much more significant. It could involve
23 deportation. It could involve loss of employment or
24 loss of housing, and those consequences can be very,
25 very significant. So it's important for there to be

1 notice.

2 That notice is not going to be the judge
3 sitting down and reading through the thousands, you
4 know, thousands of consequences that are out there but
5 providing defendants with information, a notice set
6 out in the act itself in Section 5 saying here are the
7 types of consequences you can experience and here is
8 where you go for more information so that people are
9 noticed that this is an issue for them.

10 And then, with respect to people coming out
11 of custody, they may have been in custody for a while,
12 they may not know that they can't have a firearm, or
13 they may be unaware that their right to vote is
14 restored when they leave, when they are finished with
15 incarceration. So it is providing that kind of
16 information, so people can act upon their rights and
17 also recommend what prohibitions apply to them/, so
18 that's the second piece. First collection, second
19 notification.

20 The third thing I think is basically to say
21 that if there is convictions that are not convictions,
22 a conviction that's been expunged or pardoned, if a
23 person goes through a diversion program and the case
24 is dismissed, that collateral consequence is not to be
25 imposed in those kind of cases. I think there are

1 defense attorneys, maybe prosecutors, in the room who
2 would be surprised to know, for example, that you can
3 have a case dismissed under 7411 or under the Holmes
4 Youthful Trainee Act and not have a conviction and
5 nevertheless be barred for life from working in
6 long-term care employment or something like that. So
7 it's giving people, if there isn't a conviction, there
8 shouldn't be a collateral consequence is the idea.

9 And fourth, the act creates mechanisms for
10 relief from these consequences. Again, these
11 consequences aren't tailored in a way that criminal
12 sentences are, and so it creates safety valves. There
13 are two types of mechanisms that the act envisions.
14 The first is an order for limited relief, and
15 basically what this does is it permits the court to
16 lift a specified sanction if there is not an
17 unreasonable risk to public safety.

18 To give you an example, the individual is
19 pleading guilty to a particular offense but if that
20 person has that conviction they would be barred upon
21 employment in their profession as a matter of law. So
22 the court would have the discretion to look at the
23 circumstances and say, all the other collateral
24 sanctions apply, but the automatic barrier here, the
25 automatic barrier that says you cannot work would not

1 an apply. Doesn't mean the employer can't fire that
2 person and say, I don't want you, doesn't prevent that
3 kind of private decision making, but it says, if the
4 employer continues to want that person, there is not a
5 legal barrier to that person continuing to work,
6 because they have gotten that order of limited relief.

7 The second is a certificate of restoration or
8 rights, and this is basically a more generalized
9 relief from collateral consequences that comes after a
10 period of time.

11 I should point out that these relief
12 mechanisms do not apply in three particular areas.
13 They do not apply on the sex offender registration.
14 They do not apply to driver's license, issuing motor
15 vehicle issues, driver license suspensions, and they
16 do not apply in the context of law enforcement
17 Department of Corrections employment. So those
18 barriers, a court could not lift those kinds of
19 barriers.

20 Those are the four things that I see as
21 central to what the act does, and you can look at
22 yourselves. It's obviously a complex piece of
23 legislation with a lot of different pieces to it.

24 What the act doesn't do I think is also very
25 important to focus on. The act does not provide a

1 basis for invalidating a conviction. The fact that a
2 person did not get notice, the fact that there is some
3 kind of collateral consequences out there, that is not
4 a basis for invalidating a plea, simply not. It does
5 not cause an action for money damages. It does not
6 affect the duty of an individual's attorney to that
7 individual, so for the defense attorneys out there who
8 are saying I don't know anything about collateral
9 consequences and I can't advise my clients about this,
10 it does not impose a duty. What it does is it creates
11 information that's available, but it does not impose a
12 duty on the defense attorney. It may, because the
13 defendants are going to get notices, it may prompt
14 more questions certainly, but it doesn't impose a
15 duty.

16 So let me just finish very quickly by saying,
17 again, this is a complex piece of legislation. I
18 would really like us to focus on the overall picture.
19 Should defendants be notified about collateral
20 consequences, should those consequences be collected,
21 and should there be a relief mechanism for those
22 consequences? That's what we ask you to look at
23 today.

24 MR. KROHNER: Thank you very much. Any
25 questions? Oh, I have to make the motion first, I am

1 sorry. Put the cart in front of the horse. Going to
2 get the language correct.

3 Motion being moved that the -- should the
4 Representative Assembly support and advocate for the
5 state legislation that would implement a Uniform
6 Collateral Consequences of Conviction Act?

7 CHAIRPERSON JOHNSON: Do I hear support?

8 VOICE: Support.

9 CHAIRPERSON JOHNSON: There has been motion
10 and support that the Representative Assembly support
11 and advocate for the state legislation that would
12 implement the Uniform Collateral Consequences of
13 Conviction Act. Any discussion?

14 MR. POULSON: Barry Poulson, 1st circuit. I
15 am a public defender, and I speak to this topic in
16 support of the proposal.

17 First of all, collateral consequences, as
18 described, are tremendously complex and perhaps became
19 more aware when the Supreme Court finally decided the
20 Dia (sp) case, and that said that attorneys like
21 myself in the public defense sector must notify
22 clients of their immigration consequences, and I think
23 the Supreme Court said a simple reading of the
24 information of the statute would tell you what you
25 needed to say.

1 I called an immigration attorney with the
2 seven pages in my hand, and that attorney -- I said,
3 can you give me this in a nutshell, and before they
4 hung up on me I could hear laughter. So just that one
5 tiny consequence is tremendously complicated, and yet
6 that's the requirement of my position. I get censored
7 by fatalism because I didn't tell a client the
8 situation, a client who might, by the way, be quite
9 evasive about their immigration status.

10 The second thing is that the compilation that
11 you described would be tremendously helpful, at least
12 I can go to someplace or point to someplace. I read
13 Attorney Kelly's letter, and I have to note that
14 research as of this morning, 18 percent of the people
15 in Michigan are illiterate, in some jurisdictions 49
16 percent, so I don't know whether written notice is
17 going to be adequate here, but I think the
18 notification to the client or to the attorney with the
19 client is going to be helpful too. There are
20 injustices that happen, and there are some
21 consequences that we haven't explored yet.

22 If you are convicted of this felony, I have
23 already been asked, does that mean I can't get renewed
24 on my MMA card? I mean, I am going to be stripped of
25 my MMA card. Can I have my MMA medicine in jail?

1 Well, maybe not smoke it, but can I have a tinch?

2 What about crossbow. Can I hunt with a
3 crossbow even if I can't hunt with a gun? These are
4 complex issues to our clients, so I am very supportive
5 of this measure. I recognize its incredible
6 complexity, but if the first step is simply
7 compilation and our broader discussion of these, I
8 think it will help a lot. Thank you.

9 CHAIRPERSON JOHNSON: Thank you very much,
10 Mr. Poulson. At the microphone over here, Judge Kent.

11 JUDGE KENT: Wally Kent, 54th circuit,
12 Tuscola County. He is a public defender. I am a
13 Probate juvenile court judge, and over the course of
14 the last 34 years have learned that we all make
15 mistakes. I suspect if those of us here today would
16 examine our consciences we could say to ourselves
17 there but for the grace of god go I, and there are all
18 things that we are fortunate enough to perhaps not to
19 have been caught at or punished for.

20 One of the things I have learned in the
21 course of my experience as a judge in juvenile court
22 is that people's brains mature rather slowly and, in
23 fact, the experts would tell us that people's brains
24 are not mature until probably the age of 25 or so. If
25 you look at statistics, the vast majority of offenders

1 are under 25, and yet they have to live the rest of
2 their lives with the consequences of what they did as
3 a result of their youthful, I almost say stupidity,
4 but I would rather say immaturity.

5 There is a collateral consequence, not only
6 to these offenders, but to society. These offenders
7 are condemned to a life of low production at best, and
8 society must make up for the deficits of their
9 opportunities by supporting them as public charges or
10 supporting their families as public charges.

11 Way back in law school, and I won't tell you
12 how many years ago, Jerrod Isro (sp), who's a
13 wonderful professor of criminal law, taught me that
14 there were at least four R's to criminal law, and I
15 would suggest that they are paired. We may look at
16 either rehabilitation and restitution or we may look
17 at retribution and restraint.

18 Many of the advanced societies in Western
19 Europe are far more advanced than we already, and yet
20 their criminal experiences are far less than ours.
21 That is, their criminal rates are far lower than ours.
22 If we don't do something like this, our offenders are
23 condemned to become recidivists, much like those
24 persons who can't get their driver's licenses back
25 because of driver's rehabilitation fees.

1 I would suggest that this is the first step
2 toward correcting what has been an insensitivity to
3 the needs of society, not just the needs of the
4 offenders, but the needs of society as a whole, and so
5 I whole heartedly support this resolution.

6 CHAIRPERSON JOHNSON: Thank you very much,
7 Judge.

8 MR. KRIEGER: Thank you, Madam Chair,
9 Nick Krieger from the 3rd circuit. I would like to
10 move that we commit the matter to the Special Issues
11 Committee.

12 VOICE: Support.

13 CHAIRPERSON JOHNSON: There is a motion to
14 have this go to the Special Issues Committee. Is
15 there a support for that?

16 VOICE: Support.

17 CHAIRPERSON JOHNSON: There is a motion and
18 support to have the motion before us on collateral
19 consequences of conviction to go to the Special Issues
20 Committee. Is there any discussion?

21 VOICE: Could I speak in favor of that, and
22 the reason I would like it to go to committee is so
23 that we can vet it a little more. My name is
24 John Reiser, 22nd circuit, Ann Arbor, Michigan.
25 Apologize.

1 I know you are talking about big picture
2 thinking, but we have got 12 pages front and back,
3 maybe more, about some pretty detailed stuff, and
4 while I am certainly in favor of notice of additional
5 legal consequences, kind of exchange advice of rights
6 pursuant to what we have done now given Pinea (sp) V
7 Kentucky, some of the stuff I just don't know what it
8 means.

9 For instance, under Section 10, an individual
10 convicted or adjudicated for an offense may petition
11 for an order of limited relief from one or more
12 collateral sanctions related to employment, education,
13 housing, public benefits, or occupational licensing.
14 And I know that sex offender registration doesn't
15 count, but one of the collateral consequences of being
16 a sex offender is that you can't live near a school.
17 Well, residency is different than registration, so can
18 someone apply to live near a school and could a judge
19 do that? And I also don't know what authority that
20 district court judges or circuit court judges are
21 going to have to weigh in on administrative matters or
22 what experience.

23 So I think this needs a little bit more
24 reflection by our group, and I would support giving it
25 to the Special Issues Committee so that they can come

1 back with a report after we have all had a chance to
2 reflect on it and weigh in a little more. Thank you.

3 CHAIRPERSON JOHNSON: Thank you, Mr. Reiser.
4 Gentleman over here at the microphone.

5 MR. LINDEN: Good afternoon. Jeff Linden,
6 6th circuit. I have a question really, and it
7 relates --

8 CHAIRPERSON JOHNSON: Does it relate to the
9 motion?

10 MR. LINDEN: It relates more to the motion to
11 refer to Special Issues Committee in that is the prior
12 motion that's pending that we are recommending
13 consideration and discussion of uniform act in this
14 form that we have been provided or that we are
15 recommending that the legislature adopt this language,
16 because if we are only recommending that the issue be
17 considered and discussed and debated and modified,
18 then I don't see the need for the Special Issues
19 Committee at this juncture. But if we are
20 recommending to take a position on the language that's
21 in this book, then I would agree with the motion, and
22 I think that's, for me it's a sticking point of
23 clarification.

24 CHAIRPERSON JOHNSON: I am going to let
25 Mr. Krohner speak to that. Thank you very much.

1 MR. KROHNER: Thank you, Mr. Linden. Members
2 of the Representative Assembly. In answer to
3 Mr. Linden's question, the verbiage that's attached is
4 advisory only, advisory only. It is not what we are
5 asking to be submitted to the legislature, but what we
6 want to do is to have the motion pass so that we can
7 at least get the ball rolling to have the legislature
8 to devise an act. They want to base it on what has
9 already been promulgated by the Uniform Committee
10 already, as Ms. Aukerman stated, minds a lot greater
11 than a lot of ours because of the breadth and depth of
12 the group that worked on it, then that's fine, but
13 this is not the final language. It is only a guide.
14 I hope that answers your question.

15 CHAIRPERSON JOHNSON: Thank you very much,
16 Mr. Krohner. Does that answer the question,
17 Mr. Linden? Thank you.

18 Over to the microphone here.

19 MR. BARRON: Richard Barron. I just wanted
20 to speak against the motion to refer. I would refer
21 the body to the history on item 16, the RUAA referral
22 was over a year ago, and the Assembly has not received
23 a decision on that. It seems to me whether we are in
24 favor of a proposed uniform state statute is not one
25 of the more difficult issues that we should have to

1 entertain. I think we ought to decide that we are in
2 favor of it or we are not.

3 CHAIRPERSON JOHNSON: Thank you very much.
4 Microphone here.

5 MR. ROMANO: Vince Romano, 3rd circuit. Part
6 of my ability to decide whether or not we should refer
7 it or proceed with it today has been confused by the
8 last little discussion we had. How will the language,
9 the verbiage that's in front of us that precedes this
10 position that we vote on, how will that be associated
11 with the future of advocating for state legislation?
12 In other words, does the language that we are looking
13 at become a part of our advocacy? If it does, then we
14 do have some questions.

15 MS. AUKERMAN: My understanding is that what
16 is attached is a sample. That sample was what was
17 endorsed by the Criminal Issues Initiative of the
18 State Bar. What we are asking the Representative
19 Assembly to do is advocate for passage of a Collateral
20 Consequences of Conviction Act, not necessarily tied
21 to this specific language, because I don't think,
22 frankly, one can ever come to consensus on language in
23 a group this large. That's something that the
24 legislature -- there is going to be a lot of
25 opportunities to define some of this language down the

1 road and for different groups to weigh in. I don't
2 think this will ever get out of this body if it's a
3 question of adopting particular language.

4 CHAIRPERSON JOHNSON: Thank you very much.
5 Yes, at the microphone.

6 MR. MCCLORY: Michael McClory from the 3rd
7 circuit. I am speaking as the prior chair of the
8 Probate & Estate Planning Section where we have had
9 experience with the Uniform Act and different
10 legislation. You want to be careful about anything
11 getting out. I respect what you are saying about it
12 could be something different, but oftentimes
13 legislatures can kind of run with something without
14 perhaps giving it as much examination, and this is not
15 a fair analogy, but it's like saying we want to save
16 Social Security, but there is a tremendous amount --
17 it's really not a fair example, but there can be
18 policy differences, and even though I am on the
19 Special Issues Committee, and we have already got
20 plenty to do and we are not looking for more work, I
21 think it would be prudent to refer that down and to
22 look at some of the, even the general parameters to
23 make sure what we are, in fact, endorsing if we want
24 to put other different qualifiers in so we can reach
25 an informed consensus. I agree we can't craft

1 legislation. We can look at what's in the Uniform
2 Act, which can serve a significant template, and the
3 only other question I had was, has this been enacted
4 by any other states at this point? It just came out
5 July 2009, but I don't know if you guys know that.

6 MS. AUKERMAN: I know it was passed by the
7 senate in Wisconsin. Elizabeth Lyon would know the
8 latest on where it's been passed, but I don't know
9 that.

10 MR. MCCLORY: I know it's been a while, and
11 it's a slow process, but I think it might be a little
12 prudent for us just to look a little more closely at
13 this.

14 CHAIRPERSON JOHNSON: Thank you very much.

15 MR. CHADWICK: Tom Chadwick from the 8th
16 circuit. I move the previous question. In other
17 words, I ask that we close debate and vote on the
18 motion pending, that is the motion to send this to the
19 committee. I believe that my motion requires a second
20 and a two-thirds vote but is not debatable.

21 VOICE: Support.

22 CHAIRPERSON JOHNSON: Motion and support to
23 close the debate on this matter. There was support
24 over here? Yes, thank you. There is a motion on the
25 floor to close the debate which is not debatable. We

1 need a two-thirds vote.

2 All those in favor of closing the debate on
3 the motion to send this proposal to the Special Issues
4 Committee, please signify by saying aye.

5 All those opposed say no.

6 The ayes have it. The debate will be closed
7 on the motion to send this proposal to Special Issues.

8 There is a motion and support on the floor to
9 have the proposal of the consideration of legislation
10 for the Uniform Collateral Consequences of Conviction
11 Act to be sent to the Special Issues Committee. All
12 those in favor, please signify by saying aye.

13 All those opposed say no.

14 I think we are going to need to have a count
15 on that. I will again ask you, and when I ask you,
16 will you please stand and remain standing until the
17 officers and the tellers that have been asked to count
18 have the numbers.

19 Please all those in favor please stand now.
20 This is all in favor of having it go to the Special
21 Issues Committee.

22 (Vote being counted.)

23 CHAIRPERSON JOHNSON: Those people may sit
24 now. All those opposed to sending the matter to the
25 Special Issues Committee, please stand now.

1 (Vote being counted.)

2 CHAIRPERSON JOHNSON: Thank you to the
3 tellers, and you may be seated now. The motion
4 passed. The proposal on consideration of legislation
5 for the Uniform Collateral Consequences of Conviction
6 Act will now go to the Special Issues Committee.
7 Thank you, Mr. Krohner, Ms. Aukerman, for your
8 assistance in this matter.

9 VOICE: What was the vote total, if we could?

10 CLERK GOBBO: The approximate vote was 59 to
11 43.

12 VOICE: Thank you, sir.

13 CHAIRPERSON JOHNSON: The vote was 59 to 43.

14 Moving on to the next item, number 19,
15 consideration of ensuring equal access to court and
16 administrative proceedings. The proponent is
17 Michael J. Blau, Assembly member, and Thomas
18 Thornburg, the Committee on Justice.

19 MR. BLAU: Thank you, Madam Chair.
20 Michael Blau, 6th judicial circuit. I stand before
21 the Assembly this afternoon for a proposed resolution
22 regarding equal access to identification
23 documentation, and I have the pleasure of introducing
24 Tom Thornburg to provide some background regarding
25 this issue so that we can discuss and take action on

1 it, and Mr. Thornburg is co-managing attorney with
2 Farm Worker Legal Services.

3 MR. THORNBURG: Thanks, Mike. As Mike noted,
4 I am co-managing attorney of Farm Workers Legal
5 Services. I also represent an assistant project of
6 ours, the Michigan Immigrant Rights Center. We are
7 both statewide programs, nonprofit programs, with six
8 attorneys and four law grads and assorted legal
9 assistants based out of Kalamazoo. I am also a member
10 of the Justice Policy Initiative and have been a
11 member of its ad hoc identification subcommittee, and
12 the subcommittee studied the need for photo I.D.'s in
13 order to access justice in Michigan following a 2006
14 report by the Brennan Center for Justice, New York
15 University, that found millions of Americans do not
16 have government-issued photo I.D., such as a driver's
17 license or passport, especially the poor, elderly, and
18 minority. So for over six months earlier this year,
19 the I.D. subcommittee of Justice Policy Initiative
20 reviewed the effects of having no government-issued
21 photo I.D. on immigrant litigants, witnesses, and
22 participants in our justice system.

23 We informally surveyed other practitioners
24 and courts and other sections. For instance, we got
25 this response from the State Bar of Michigan

1 Administrative Law Section. Quote, it is state policy
2 to require that persons entering state office
3 buildings produce photo I.D., including facilities
4 within which administrative hearings are held. As a
5 result of our six-month review, the JPI adopted the
6 position that's in your materials in July, which calls
7 on the Representative Assembly to adopt a resolution
8 calling for the Secretary of State to promulgate an
9 administrative rule that reflects the legislative
10 definition of legal presence under MCL 28.291(3), as
11 amended in 2008, with the purpose that eligible
12 immigrant residents of Michigan can obtain
13 state-issued photo I.D. documenting their identity.

14 I will give you a little background. Some of
15 you will certainly remember in 2008 following the
16 attorney general's opinion that only United States
17 citizens and lawful permanent residents could legally
18 be Michigan residents for purpose of obtaining a
19 driver's license or a state I.D. The legislature came
20 back and amended the Motor Vehicle Code, as well as
21 the statute regarding state I.D.'s to include
22 residents who can document their legal presence in the
23 United States. Again, the legislature amended the
24 Motor Vehicle Code and the I.D. Act specifically to
25 include Michigan residents who can document their

1 legal presence within the United States.

2 The legislature also required the Secretary
3 of State to adopt rules pursuant to the Administrative
4 Procedures Act after noticing comment to administer
5 the statutory amendment. Later in 2008, the Secretary
6 of State issued guidance in the form of a chart
7 published on the website without taking formal rule
8 making in which the Secretary of State specified
9 acceptable documents, which exclude many, many
10 government issued documents that a legally present
11 Michigan resident would have.

12 As a result, it's estimated that tens of
13 thousands of legally present Michigan residents are
14 prohibited from obtaining a state identification card,
15 which, of course, is universally recognized, along
16 with a driver's license, and required for security
17 purposes to access courts and other government
18 buildings or just where justice is administered or
19 government services are provided, and also many legal
20 processes require notarization of applications and
21 affidavits which in turn require that the affiant
22 produce a government issued identification documenting
23 his or her identity to the notary.

24 I have listed in the proposal that's in your
25 materials some common categories of excluded Michigan

1 residents, those who are excluded by the present
2 guidelines under which the Secretary of State operates
3 to determine whether to grant an I.D. to a Michigan
4 resident. They might include some that you are
5 familiar with. For instance, beneficiaries of
6 approved visa petitions who are awaiting available
7 visas.

8 As you may know, residents of Michigan who
9 are applying to become lawful permanent residents of
10 the United States are often in a queue for between two
11 and 12 years after their initial petition has been
12 approved and before they have a visa that's available
13 for them under the quota system that the federal
14 Department of Homeland Security employs.

15 Another category, residents in deferred
16 status granted by the United States customs or
17 citizenship and immigration service to battered
18 immigrants under the Violence Against Women's Act and
19 other victims of serious crimes after approval of
20 their petitions. There is still a lag time before
21 they would he ever get a document that would be on the
22 Secretary of State's list.

23 Another category are immigrants who have been
24 granted asylum and refugee status by the United States
25 Government. They actually would not necessarily have

1 a document from the Secretary of State's list.

2 Workers and students with approved
3 nonimmigrant visas. Forgive me, I am not an
4 immigration lawyer. We have immigration lawyers in my
5 shop. But those are recognized as those visas that
6 start with letters like, the H1B VISA or the student
7 visa and all those visas who have applied timely for
8 another approval but whose visa has expired. There is
9 also a lag time, and those folks don't have the
10 documentation that's required to get state I.D. issued
11 to them currently.

12 And, finally, people who are bona fide green
13 card holders. They are lawful permanent residents.
14 They hold an unexpired version of the green card,
15 that's the I551, that's just not recognized by the
16 Secretary of State as acceptable proof of legal
17 presence, and as I was preparing this yesterday a
18 family of farm workers came into my office in
19 Kalamazoo that included Mrs. Garcia, who was
20 complaining that for a year she has been trying to
21 take all of her documents to a Secretary of State
22 branch to get a photo I.D. She didn't want a driver's
23 license. Her grandson drives her, but she had had a
24 previous photo I.D. and it had expired, and she uses
25 it for all sorts of purposes, to access offices that

1 she needs to. She is on Social Security. She has
2 been a lawful permanent resident of this country for
3 over 25 years, owns a home, but cannot get a state
4 I.D.

5 So we looked at all the documentation she
6 had, and we sent her to the Kalamazoo branch of the
7 Secretary of State thinking that, well, maybe there is
8 a difference with that branch from the others, and
9 sent a law grad with her to explain that the version
10 of the green card that she holds is a valid version,
11 it just happens to be an older version that did not
12 have an expiration date. Even with our office's
13 assistance she was denied the I.D. yesterday because
14 of the Secretary of State's overly restricted
15 documentation requirements.

16 By calling for the Secretary of State to
17 pursue formal rule making regarding the definition of
18 legal presence for state I.D.'s, the Rep Assembly can
19 promote equal access to government I.D.'s and
20 ultimately equal access to justice.

21 MR. BLAU: So I would like to move that the
22 Representative Assembly adopt a resolution to support
23 equal access to identification documentation,
24 specifically that the Secretary of State should
25 promulgate an administrative rule reflecting the

1 definition of legal presence so that eligible
2 noncitizens may obtain state issued photo I.D.'s
3 document their identity.

4 VOICE: Support.

5 CHAIRPERSON JOHNSON: There is a motion and
6 support. The motion is that the Representative
7 Assembly adopt the resolution to support equal access
8 to identification, that the Secretary of State should
9 promulgate an administrative rule reflecting the
10 legislative definition of legal presence so that
11 eligible noncitizens may obtain state issued photo
12 I.D.'s documenting their identity.

13 Is there any discussion? At the microphone
14 here, please.

15 MS. HAROUTUNIAN: Madam Chair, Ed Haroutunian
16 from the 6th circuit. I have a question of
17 clarification, and that is the issue as set forth
18 says, Should the State Bar of Michigan adopt the
19 position calling for the support of equal access to
20 identification documentation, and then, as Mr. Blau
21 though indicated in the motion, he said specifically
22 that the Secretary of State, and that language is on
23 the following page, and I would just want to make sure
24 that it was clear that in making reference to the
25 words "for the support of equal access to

1 identification documentation" that those words really
2 meant that the Secretary of State should promulgate an
3 administrative rule reflecting the legislative
4 definition of legal presence so that eligible
5 noncitizens may obtain state issued photo I.D.'s
6 documenting their identity, and am I correct in that
7 point, and then I would like to make another point.

8 MR. BLAU: I wish at this time to withdraw
9 the motion as brought before the Assembly and to
10 provide instead that the Representative Assembly adopt
11 a resolution to support equal access to identification
12 documentation.

13 MS. HAROUTUNIAN: So the latter language is
14 not a part of the motion, or the resolution?

15 MR. BLAU: Just the language that I recited.

16 CHAIRPERSON JOHNSON: Procedurally, there had
17 been a motion and then a support on that. I would
18 need unanimous consent from this body to allow the
19 withdrawal of that motion.

20 All those in favor of allowing the proponent
21 to withdraw his previous motion, please signify by
22 saying aye.

23 Any opposed?

24 Any abstentions?

25 Thank you. That motion will be withdrawn,

1 and we will allow the proponent to state an additional
2 motion. Mr. Blau.

3 MR. BLAU: That motion then would be should
4 the Representative Assembly adopt resolution to
5 support equal access to identification documentation?

6 CHAIRPERSON JOHNSON: Thank you. Is there
7 support?

8 MR. REISER: Did he say the resolution or a
9 resolution? I am sorry, I didn't hear it. That says
10 the above resolution.

11 MR. BLAU: A resolution.

12 CHAIRPERSON JOHNSON: I believe he meant
13 "the".

14 There is a motion on the floor. Is there
15 support?

16 VOICE: Support

17 CHAIRPERSON JOHNSON: There is a motion and
18 support to the motion that the Representative Assembly
19 adopt the above resolution to support equal access to
20 identification documentation. Is there any
21 discussion? The microphone here.

22 MS. HAROUTUNIAN: Madam Chair, Ed Haroutunian
23 from the 6th judicial circuit. I would respectfully
24 indicate that in my judgment that that proposition is
25 just too doggone broad, and I think that if, in fact,

1 there is the desire to go with a proposition that in
2 my judgment, not that it matters to this Assembly, but
3 my judgment would be that the Secretary of State
4 should promulgate an administrative rule reflecting
5 the legislative definition of legal presence, period.
6 The latter words would attempt to suggest that that's
7 the result that is being secured from the Secretary of
8 State.

9 Our task, I think, and what's being asked, I
10 think, is that the Secretary of State promulgate an
11 administrative rule reflecting the legislative
12 definition of legal presence. We don't know what the
13 Secretary of State will do in that definition process,
14 and I don't think that we should suggest what the
15 Secretary of State should do. I think we should
16 simply say what I think is the essence of this
17 proposition is that the Secretary of State ought to
18 set forth the legal definition of legal presence.

19 CHAIRPERSON JOHNSON: Mr. Haroutunian, what
20 you are saying is that what you would want are the
21 words "so that eligible noncitizens may obtain
22 state-issued photo I.D.'s documenting their identity"
23 omitted?

24 MS. HAROUTUNIAN: Madam Chair, right now the
25 motion is, as I understand it, that the Representative

1 Assembly adopt the position calling for the support of
2 equal access to identification documentation. I am
3 suggesting that I don't know what that means, okay.
4 Maybe I am alone in that regard, but I don't know what
5 that means. I am suggesting that what it apparently
6 means is that, and what's being wanted, is that the
7 Secretary of State should promulgate an administrative
8 rule reflecting the legislative definition of legal
9 presence. That's what's wanted here, and that's
10 what's being asked be voted upon, but I think that,
11 therefore, the motion needs to be in that sense and
12 then to vote on it one way or the other.

13 CHAIRPERSON JOHNSON: Mr. Reiser.

14 MR. REISER: John Reiser, 22nd circuit,
15 Ann Arbor. Mike, you have got my support. I support
16 this in concept. Whether it's done by the Secretary
17 of State administratively, I guess that might depend
18 what happens in the fall election, I don't know,
19 whether it's done by the legislature through their
20 branch of government, I don't care. My concern is
21 that on the bottom of the second page of tab number 19
22 we refer to the above resolution, so I think we need
23 to incorporate that by reference somehow. The above
24 resolution A, which we just struck for some reason, or
25 is it the whole body of the above resolution starting

1 the synopsis, the background. So I guess what is it
2 that we are voting on specifically that we want
3 somebody else to do? Thank you.

4 CHAIRPERSON JOHNSON: Thank you, Mr. Reiser.
5 Mr. Blau, do you have a comment on that?

6 Mr. Blau has indicated that it is to cover
7 the paragraph immediately above the word opposition
8 where it says, "The Secretary of State should
9 promulgate an administrative rule reflecting the
10 legislative definition of legal presence so that
11 eligible noncitizens may obtain state-issued photo
12 I.D.'s documenting their identity. That is the above
13 resolution that the motion was discussing.

14 Mr. Krieger.

15 MR. KRIEGER: Thank you, Madam Chair.
16 Nick Krieger from the 3rd circuit. I think this makes
17 a lot more sense in the context of urging the
18 Secretary of State to adopt an administrative
19 regulation, because otherwise, as has already been
20 stated, it's kind of ambiguous. So I think it's best
21 if we reference that language specifically in the
22 resolution.

23 My only concern is that, as you were stating
24 before, the Secretary of State put something on the
25 website apparently without notice and comment, and, if

1 I am not mistaken, under Michigan's APA there is an
2 exception to notice and comment for interpretive
3 rules, which this would probably be, interpreting a
4 legislative phrase, legal presence, so I would
5 actually think it would be best if we put in there
6 after an opportunity for notice and comment and public
7 participation. I think that would accomplish what we
8 really want here, which is for us or other interested
9 organizations to be able to submit concerns, comments,
10 proposals, things of this nature to the Secretary of
11 State before she or he promulgates a rule. I guess it
12 will be a she regardless, but before she promulgates a
13 rule. That's all I wanted to say.

14 CHAIRPERSON JOHNSON: Judge Kent.

15 JUDGE KENT: Wally Kent, 54th circuit. It's
16 abundantly clear to me that the end goal is to make
17 sure that anybody who is legally within the country
18 and particularly within the state of Michigan has
19 access to appropriate photo I.D. The problem is that
20 the Secretary of State, perhaps the legislation as
21 well, has been poorly drafted and excludes some people
22 who properly should be able to obtain that I.D.
23 because they are legal aliens, not illegal aliens, but
24 because of poor draftsmanship they are not included.
25 I have to agree with Mr. Haroutunian that this as

1 presented and even as amended still is not clearly
2 drafted. I suggest, but do not move, and invite
3 comment from others that perhaps this should be tabled
4 for redrafting and brought before the body next time.

5 CHAIRPERSON JOHNSON: Thank you very much.
6 Is there any further discussion? Mr. Barton.

7 MR. BARTON: Bruce Barton, 4th circuit. As I
8 understand what's on the floor at this time, and I
9 don't understand what's on the floor, but I heard a
10 motion that was substantially the original motion
11 which was withdrawn, and then we started talking about
12 instructing the Secretary of State, and I did not hear
13 that in the original, in this second motion, but
14 regardless, at this time I am opposed to the
15 resolution.

16 This is the policy-making body of the
17 State Bar of Michigan. We are faced perhaps with a
18 policy problem, but I don't see it as our function to
19 instruct the Secretary of State how to handle the
20 problem or even to change the present situation
21 regarding the problem. Basically for that reason I am
22 opposed to the motion, and I would suggest that if
23 somebody came back in April with a little more clear
24 language, with a little more clear direction, I might
25 change that opposition, but as of this time I am

1 opposed.

2 CHAIRPERSON JOHNSON: Was that a motion to
3 have this referred to Drafting?

4 MR. BARTON: There is a motion to refer on
5 the floor?

6 CHAIRPERSON JOHNSON: I am saying was that a
7 motion?

8 MR. BARTON: No, it is not. I am suggesting
9 the motion be voted up or down.

10 CHAIRPERSON JOHNSON: Thank you.
11 Mr. Courtade.

12 MR. COURTADE: Bruce Courtade, 17th circuit.
13 I move that we refer this to Drafting.

14 VOICE: Support.

15 CHAIRPERSON JOHNSON: There is a motion on
16 the floor and a support to have this matter referred
17 to the Drafting Committee. Is there any discussion on
18 that motion?

19 Hearing none, all those in favor of having
20 this matter referred to Drafting, please signify by
21 saying aye.

22 Recognize the gentleman at the microphone.

23 MR. KOENIG: Alan Koenig from the 9th circuit
24 in Kalamazoo. I don't think this needs to go to the
25 Drafting Committee. I think this is pretty simple. I

1 agree with Mr. Reiser that I think this is a, and with
2 the proponents, this is a very important matter that's
3 been ignored, and I would suggest, I was going to
4 suggest before the motion, and I will just put this
5 out there and not move at this time, that Mr. Blau
6 again retract his motion, and I would suggest -- I
7 think this is form over substance. I think if we can
8 incorporate the language of the proposal in the middle
9 of the page --

10 CHAIRPERSON JOHNSON: Sir, the discussion can
11 only be on the current motion, which is should it be
12 referred to Drafting?

13 MR. KOENIG: Thank you, Madam Chair. I would
14 oppose that for reasons I have started to articulate.

15 CHAIRPERSON JOHNSON: Thank you very much.
16 There is a motion on the floor and support for this
17 matter to be referred to the Drafting Committee.

18 All those in favor please signify by saying
19 aye.

20 All those opposed say no.

21 I believe we are going to need to take a vote
22 on that. Please, when you do stand, stand until you
23 are told not to any further.

24 All those in favor of referring the matter to
25 the Drafting Committee, please stand at this time.

1 (Votes being counted.)

2 CHAIRPERSON JOHNSON: Thank you very much.

3 You may sit down.

4 All of those opposed to sending the matter to
5 the Drafting Committee, please stand at this time.

6 (Votes being counted.)

7 CHAIRPERSON JOHNSON: Thank you. You may sit
8 down. The motion carries 66 to 34 that the proposal
9 will be sent to Drafting. Thank you very much,
10 Mr. Blau, Mr. Thornburg. Thank you very much.

11 The next item is number 20. The record will
12 reflect that there is a typographical error in this
13 proposal, item number 20. You all should have
14 received an e-mail blast or a written notice that the
15 matter should be consideration of proposed resolution
16 requiring disclosure prior to a judicial election.
17 The word "judicial" should be inserted. Without
18 objection, I will direct the clerk and our court
19 reporter properly note that insertion of the word
20 "judicial."

21 This is number 20, consideration of proposed
22 resolution requiring disclosure prior to a judicial
23 election of the source of the funding for all
24 expenditures for electioneering communications, and
25 the proponent on this matter is John P. Mayer.

1 MR. MAYER: Thank you, Madam Chair. I am
2 John Mayer, member from the 3rd circuit.

3 By way of full disclosure, I have been a
4 member of the Board of Directors of the Michigan
5 Campaign Finance Network, MCFN, for the past five
6 years, serving as secretary of the Board for the past
7 two years. MCFN is a nonpartisan, nonprofitted
8 coalition of organizations, foremost of which is the
9 League of Women Voters of Michigan, and individuals
10 concerned about the influence of money in politics and
11 the need for campaign finance reform in Michigan. You
12 can see the whole range of MCFN activities and
13 publications on the internet at MCFN.org.

14 Disclosure of sources of funding for
15 expenditures for electioneering communications in
16 judicial elections serves two essential purposes.
17 Before the election it allows voters to evaluate the
18 sources of funding for all electioneering
19 communications in deciding how to vote on judicial
20 candidates, and, for as long as the elected judge may
21 serve, it allows litigants and attorneys to determine
22 whether a request for a motion for recusal of an
23 elected judge is well founded.

24 The situation is particularly timely in light
25 of two very recent U.S. Supreme Court decisions,

1 Caperton against Massey Coal Company and Citizens
2 United against the Federal Election Commission.

3 Caperton involved an expenditure of
4 \$3 million by Massey to elect the state Supreme Court
5 justice who promptly cast the deciding vote reversing
6 a \$50 million verdict against Massey. The court, the
7 Supreme Court, quoted language from a prior decision
8 requiring recusal where, quote, the probability of
9 actual bias on the part of the judge is too high to be
10 constitutionally tolerable, closed quote. The court
11 went on to say that the risk that the contribution
12 engendered actual bias, actual bias, was sufficiently
13 substantial that it, quote, must be forbidden if the
14 guarantee of due process is to be adequately
15 implemented, closed quote.

16 The extraordinary spending in Caperton
17 involved independent expenditures, not a contribution
18 directly to the judge's campaign committee; therefore,
19 the constitutional holding in Caperton requires an
20 elected judge to disqualify himself or herself in a
21 case involving an extraordinary campaign financial
22 supporter is relevant to spending in all of its many
23 forms, to campaign spending in all of its many forms,
24 not just to contributions directly to the judge's
25 campaign committee.

1 The Michigan Campaign Finance Act at
2 MCL 169.201 has a huge hole in it, because it does not
3 require disclosure of the source of funding for third
4 party issue advertisements. Only advertisements by
5 candidate committees or political parties are required
6 to be identified in any way that is comprehensible to
7 voters in a timely way so that the bias of the
8 advertiser can be evaluated prior to the voter casting
9 the vote. Information which might compel recusal of a
10 judge sitting on a case involving a substantial
11 campaign contributor is not only not available in a
12 timely way before the election, it may never be
13 revealed.

14 In Citizens United the court held the court
15 has an interest in providing the electorate with
16 information about the sources of spending for
17 election-related communications so that citizens can
18 make informed decisions in the political marketplace.
19 Plaintiff Citizens United claimed that the disclosure
20 requirements should apply only to the functional
21 equivalent of expressed advocacy, vote for, vote
22 against. The court emphatically disagreed.
23 Justice Kennedy writing for himself and seven other
24 justices said, quote, the first amendment protects
25 political speech, and disclosure permits citizens and

1 shareholders to react to the speech of corporate
2 entities in a proper way. This transparency enables
3 the electorate to make informed decisions and give
4 proper weight to different speakers and different
5 messages.

6 The Citizens United case, by invalidating
7 state laws prohibiting substantial contributions by
8 corporations of labor unions, is already increasing
9 the flow of big money into campaigns in general and
10 judicial campaigns in particular. Michigan voters,
11 and especially Michigan litigants, are entitled to
12 know which individuals, companies, or unions are
13 contributing to which electioneering communications
14 and how much they are contributing. In order for the
15 disclosure to be effective, it must be made
16 sufficiently before an election to be publicized and
17 scrutinized by all interested parties, especially
18 voters and litigants.

19 I urge you to support the resolution as it
20 appears on the board. Thank you. I will take
21 questions.

22 I move that the State Bar of Michigan adopt
23 the following resolution calling for an amendment to
24 the Judicial Campaign Finance Act, sorry, the Michigan
25 Campaign Finance Act, requiring disclosure prior to a

1 judicial election of the sources of funding for all
2 expenditures for electioneering communications, and
3 the language follows "resolved" there.

4 VOICE: Support.

5 MR. COURTADE: Point of order. The amendment
6 which the chair made earlier, did that include the
7 language here not only to the title but the language
8 in the bottom paragraph?

9 CHAIRPERSON JOHNSON: Yes, thank you,
10 Mr. Courtade. Any time it says "election", the word
11 preceding that should be "judicial". This only
12 relates to judicial elections. Thank you.

13 Is there support?

14 VOICE: Yes.

15 CHAIRPERSON JOHNSON: There is a motion that
16 the State Bar should adopt the following resolution
17 calling for an amendment to the Michigan Campaign
18 Finance Act requiring disclosure prior to a judicial
19 election of the sources of funding for all
20 expenditures for electioneering communications.

21 Resolved, that in order to implement recent
22 United States Supreme Court decisions in Caperton
23 versus Massey Coal Company and Citizens United versus
24 Federal Election Commission, the Michigan Campaign
25 Finance Act and related statutes should be amended to

1 require disclosure prior to an election of the
2 sources -- excuse me, a judicial election -- of the
3 sources of funding for all expenditures for
4 electioneering communications. Is there any
5 discussion? The microphone here, Mr. Haroutunian.

6 MS. HAROUTUNIAN: Madam Chair, Ed Haroutunian
7 from the 6th judicial circuit. I have a question. Is
8 this proposal one in which the Representative Assembly
9 can take a position based upon Administrative Order
10 2004-01 from the Michigan Supreme Court? There is a
11 reference here to the five items, and the one that
12 might be applicable seems to be the improvement of the
13 functioning of the courts, and if that's the issue, I
14 think that there is a serious question with regard to
15 how that's been defined, and I would think that this
16 particular proposal is one that crosses the line, but
17 that's my opinion.

18 CHAIRPERSON JOHNSON: Thank you very much,
19 Mr. Haroutunian. I believe, and I don't see Cliff
20 Flood here at the moment, that he reviewed that
21 section so that it was, he deemed that suitable for
22 this body to review and that it was Keller
23 permissible, but thank you for that question,
24 Mr. Haroutunian.

25 At the microphone over here, Mr. Buchanan.

1 MR. BUCHANAN: Robert Buchanan from the 17th
2 circuit. I have a couple questions to the proponent,
3 and this is just for clarification. I guess I am
4 unclear as to what advance notice you are requiring or
5 seeking. In other words, is this practical, because
6 you are asking that expenditures for electioneering
7 communications be disclosed prior to the election, and
8 the question is in a realistic election we see ads
9 until the very day of the election, so is this, from a
10 practical standpoint, feasible?

11 And then the second thing is I guess I am a
12 little unclear as to the motivation. Is the concern
13 that you want to disclose who the supporters were so
14 that if there is litigation we know who they are and
15 we can object because of bias, or is the motivation
16 otherwise, we are trying to inform the voters of who
17 it is that's actually funding this campaign message so
18 that they can weigh that in their vote.

19 So those are my questions as far as
20 motivation and clarification and timing of the
21 disclosure.

22 CHAIRPERSON JOHNSON: Thank you,
23 Mr. Buchanan.

24 MR. MAYER: I would say that the answer to
25 your second question is both, that the possible -- I

1 referred to it in my remarks -- but the possible
2 motion for recusal in the future, the disclosed
3 information would be relevant to that issue, and the
4 voters need to know it also. As to your first
5 question, there is at least one state, I believe it's
6 Wisconsin, that has in their law covering very similar
7 material a realtime reporting requirement after ten
8 days before the election, that the party required to
9 report would have to go online, I suppose it would be
10 the Secretary of State's website in our case, and say
11 we just gave \$50,000 to so-and-so's campaign, or in
12 the case of a third party, which that's one of the
13 main things this legislation is about, the third party
14 as defined in the amended act would have to do the
15 same thing. They would have to say we have just, in
16 compliance with the law, we are reporting that we have
17 just made such a contribution.

18 CHAIRPERSON JOHNSON: Microphone over here.

19 MS. SADOWSKI: Elizabeth Sadowski, 6th
20 circuit. I would suggest that it's important to adopt
21 a proposal requiring heightened disclosure of campaign
22 financing in judicial campaigns so the public can at
23 least have some better assurance that they are going
24 to be heard and judged by honest brokers and not
25 perhaps pawns of special interests or even the

1 perception of having somebody who is a pawn of a
2 special interest in opposition to their position
3 judging them, so I would certainly support this
4 motion.

5 But that said, all the campaign financial
6 disclosures and transparencies in the world are not
7 going to be worth the paper they are written on if the
8 voting public does not pay attention to that
9 information about judicial candidates. If lawyers, of
10 course, were the only ones to vote for judges, we
11 would certainly have a well-informed voting pool.
12 Unfortunately, the general public is not so well
13 informed. It's as if we all had to vote for the
14 hospital staff, the operating staff of a local
15 hospital. Everyone would be elected with the last
16 names of Jordan or Casey or something, because that's
17 something that happens not infrequently in judicial
18 campaigns now. People are elected on the basis of
19 gender or ethnicity instead of their capacity and
20 abilities.

21 I would suggest that this lack of knowledge
22 about the characters and capabilities of our judicial
23 candidates is the fault of lawyers. In fact, we do
24 the public an injustice by denying them our knowledge,
25 our unique knowledge, of the abilities of judicial

1 candidates, thus I would suggest an offer, a friendly
2 amendment. The amendment would say, Be it resolved
3 that attorneys be urged to affirmatively communicate
4 to clients and the general public notice of a judicial
5 election and information as to the judicial
6 candidate's qualifications.

7 CHAIRPERSON JOHNSON: I am sorry,
8 Ms. Sadowski, unfortunately that is more than four
9 words, and we cannot accept that at this time. It
10 must be in writing, but we will note your comments.

11 MS. SADOWSKI: Thank you.

12 CHAIRPERSON JOHNSON: You are very welcome.
13 At the microphone over here.

14 JUDGE KENT: Wally Kent, 54th circuit.

15 Unaccustomed as I am to public speaking, I
16 rise in support of this as well. I agree with almost
17 all of Ms. Sadowski's comments. And it may be clumsy
18 to have realtime reporting, but it's still very
19 important. We witnessed some very difficult campaign
20 things coming out of third parties two years ago for
21 the Supreme Court, and as a practical matter I suspect
22 that it is the Appellate Courts and the Supreme Court
23 which will be impacted most heavily by this
24 resolution.

25 I don't care which of the candidates you

1 might have supported, that kind of campaigning cuts
2 both ways, and it could cut against your candidate
3 next time. It would be a tragedy if we continue to
4 allow third parties or others to hide behind anonymity
5 by making last minute contributions which could have a
6 tremendous impact on an election. For that reason,
7 even though there may be practical issues to be
8 overcome in order to achieve realtime disclosure, it
9 is very important to make the effort that is being
10 supported by this resolution. I urge its adoption.

11 CHAIRPERSON JOHNSON: Thank you very much.
12 Next the gentlemen on the microphone.

13 MR. CHADWICK: Tom Chadwick from the 8th
14 circuit. I want to rise also in support of adoption
15 of this proposal. I believe that it is carefully
16 circumscribed to solve the problem at hand, that is
17 the litigant who goes to court and does not know the
18 source of judicial funding at the time he is in front
19 of that judge. I don't know that this problem that's
20 also been identified of timely information for voters
21 can be solved. That is a practical problem. I would
22 respectfully disagree with the proponent that it would
23 be solved, that it can be solved by the proposal
24 that's here.

25 But I believe the proposal that's in front of

1 us, as I have read it carefully, and it seems to me
2 only applying to that situation where a litigant is in
3 front of a judge and has the information of the source
4 of funding for that judge's campaign, and because of
5 that wording I would support the proposal.

6 CHAIRPERSON JOHNSON: Thank you very much.
7 Any further discussion?

8 Hearing none, all those in favor of the
9 motion that the State Bar of Michigan adopt the
10 following resolution calling for an amendment to the
11 Michigan Campaign Finance Act requiring disclosure
12 prior to a judicial election of the sources of funding
13 for all expenditures for electioneering
14 communications. Resolved, that in order to implement
15 recent United States Supreme Court decisions in
16 Caperton versus Massey Coal Company and Citizens
17 United versus Federal Elections Commission, the
18 Michigan Campaign Finance Act and related statute
19 should be amended to require disclosure prior to a
20 judicial election of the sources of funding for all
21 expenditures for electioneering communications.

22 All those in favor of the motion, please
23 signify by saying aye.

24 All those opposed say no.

25 Any abstentions.

1 Thank you. The motion, and for practical
2 reasons, I will not repeat that motion again, the
3 motion carries. Thank you very much. Thank you,
4 Mr. Mayer.

5 The next item is number 21. At this time, in
6 accordance with Assembly Rule 8.3, I would ask that
7 the chairman of the Nominations and Awards Committee,
8 Mr. Jeffrey Nellis, to make his report.

9 MR. NELLIS: Good afternoon again. We are
10 here next to consider essentially the nomination or
11 the next Representative Assembly clerk. Our committee
12 has received one letter of interest. That was from
13 Dana Warnez who is from Center Line, the 16th circuit.
14 Her information is located under tab 21. So at this
15 time I would like to open up the floor for formal
16 nominations.

17 MR. CHIOINI: My name is Carl Chioini, and I
18 am from the 16th judicial circuit, and I am pleased to
19 nominate Dana Warnez for the Representative Assembly.

20 All of you might have known Dana, who is
21 seated right here. As part of the Assembly, I have
22 known Dana since she was an attorney for over 14
23 years. One of the things that -- all of you can see
24 what's in the resume, but I want to recall what
25 Janet Welch said this morning about someone who is

1 going to be in charge or lead the Assembly, someone
2 who is truly dedicated to the profession, dedicated to
3 the Bar, and dedicated to the Assembly.

4 She is going to work tirelessly. She has
5 worked tirelessly for all of us on the Assembly. She
6 has worked tirelessly on the local level. She has
7 this devout professionalism that we all like to see in
8 the Assembly, so I would like to nominate Dana Warnez.

9 CHAIRPERSON JOHNSON: Thank you very much,
10 Mr. Chioini. At this time all those in favor of -- I
11 am sorry, are there any nominations from the floor?
12 There was support?

13 VOICE: Support.

14 CHAIRPERSON JOHNSON: Thank you. Are there
15 any nominations from the floor? Hearing none, all
16 those in favor of Dana Warnez for the clerk of the
17 Representative Assembly please signify by saying aye.

18 Those opposed, say no.

19 Any abstentions?

20 Hearing none, the motion passes for
21 Dana Warnez to be the new clerk of the Assembly.
22 Congratulations.

23 (Applause.)

24 CHAIRPERSON JOHNSON: Now to item number 22,
25 which is a very special matter today, and I would ask

1 that Chief Justice Kelly come forward for the swearing
2 in of Victoria Radke as the clerk of our Assembly. I
3 am sorry. No, chairperson of the Assembly. Thank
4 you. You can do the clerk too.

5 Chief Justice Kelly, as you know, has been a
6 great supporter of the Assembly. Just last year I was
7 so privileged to have her swear me in as the
8 chairperson of the Assembly, and I am so very grateful
9 that she has agreed to come today and swear in a
10 wonderful leader of the Bar, somebody who has given
11 already many years of service to this Assembly, and we
12 are very honored to have the Chief Justice swear in
13 Victoria Radke.

14 CHIEF JUSTICE KELLY: Thank you so much.
15 Before you get up, I just want to say a word. I know
16 it's been a long day. I am a former member, as you
17 know, of the Representative Assembly, and partly
18 because of that I have a high regard for this group
19 and for the role it plays in the State Bar and in the
20 greater judicial and legal community.

21 Today Victoria Radke takes the helm, and I am
22 very happy to administer the oath of office to her.
23 Being chair of the Representative Assembly is a
24 tremendously important role. The Assembly is, of
25 course, where the Bar promotes and decides its policy,

1 an important charge indeed. Moreover, being chair
2 calls for, well, the tact of a diplomat and the
3 unshakeable tranquility of a Dalai Lama, and the
4 toughness of a Big Ten football coach. The term
5 herding cats comes to mind. No offense intended, mind
6 you. This is simply to say that it's no easy task to
7 keep 150 lawyers on task and focused.

8 But I am confident that Victoria is well
9 prepared for this challenge. She is a veteran of the
10 Assembly, as you know, having been elected in 2002 to
11 represent the 47th circuit. She served two terms as
12 president of the Delta County Bar Association and many
13 State Bar committees have been beneficiaries of her
14 time and talents, including the Bar Leadership Forum,
15 the Upper Michigan Legal Institute, and the Domestic
16 Violence Committee. Her community has also been the
17 richer for her involvement, and she has, among other
18 things, served for seven years as the coach for the
19 local Youth in Government High School Mock Trial Team,
20 and as an attorney with experience in both the public
21 and the private sectors, she knows the challenges our
22 membership faces.

23 So I would be pleased now to administer the
24 oath, Victoria, and ask you to come forward. Please
25 raise your right hand.

1 I do solemnly swear --
2 VICE CHAIR RADKE: I do solemnly swear --
3 CHIEF JUSTICE KELLY: -- to support the
4 Constitution of the United States --
5 VICE CHAIR RADKE: -- to support the
6 Constitution of the United States --
7 CHIEF JUSTICE KELLY: -- and the Constitution
8 of this state --
9 VICE CHAIR RADKE: -- and the Constitution of
10 this state --
11 CHIEF JUSTICE KELLY: -- and the Michigan
12 Supreme Court Rules relative to the State Bar of
13 Michigan --
14 VICE CHAIR RADKE: -- and the Supreme Court
15 Rules relative to the State Bar of Michigan --
16 CHIEF JUSTICE KELLY: -- and that I will
17 faithfully discharge the duties --
18 VICE CHAIR RADKE: -- and that I will
19 faithfully discharge the duties --
20 CHIEF JUSTICE KELLY: -- of Chair of the
21 Representative Assembly of the State Bar of
22 Michigan --
23 VICE CHAIR RADKE: -- as Chair of the
24 Representative Assembly of the State Bar of
25 Michigan --

1 CHIEF JUSTICE KELLY: -- to the best of my
2 ability.

3 VICE CHAIR RADKE: -- to the best of my
4 ability.

5 CHIEF JUSTICE KELLY: Congratulations.

6 VICE CHAIR RADKE: Thank you.

7 (Applause.)

8 VICE CHAIR RADKE: I want to thank everybody
9 for this great opportunity, and I would like to follow
10 in the footsteps of Charles Toy in saying I look
11 forward to being a servant of this body and leading
12 you for the next year. Thank you so much.

13 (Applause.)

14 CHAIRPERSON JOHNSON: Congratulations,
15 Victoria. At this time we would like to take an
16 opportunity to acknowledge some of our long-time
17 Representative Assembly members who are unfortunately
18 going to be leaving us from the Assembly as they are
19 term limited right now. As I call your name, if you
20 would come up so that you may receive your
21 certificate. Kent Bieberich, Michael Boucher,
22 Winnifred Boylan, Don Hiltunen, John Hubbard,
23 Dawn Klida, Timothy Laitur, Suzanne Larsen,
24 Richard Paul, Gregory Stremers, Charles Trickey, III,
25 Victoria Valentine.

1 And then a few special thank you's to the
2 following people. Robert Buchanan, who unfortunately
3 is going to be leaving the Assembly because he was
4 elected to the Board of Commissioners, and, as I have
5 already told him, the Assembly has lost a good worker.
6 Tom Evans. Judge Gregg Iddings, Vince Romano, and
7 Marcia Ross.

8 And, again, I would like to say a special
9 thanks to the committee chairs who have worked so hard
10 this year, and if the five of you will please stand to
11 be recognized for all the hard work that you have done
12 this year, Jeff and Krista and Marty, Mike.

13 I would like to now call up to the podium
14 Krista Licata Haroutunian. This plaque is to
15 Krista Licata Haroutunian with appreciation for
16 service to the Representative Assembly as the
17 2009-2010 chairperson of the Special Issues Committee.
18 Congratulations.

19 (Applause.)

20 CHAIRPERSON JOHNSON: John Reiser, if you
21 would like to come up to the podium, please. I would
22 like to present this plaque, which says, To John W.
23 Reiser, with appreciation for service to the
24 Representative Assembly as the 2009-2010 chairperson
25 of the Assembly Review Committee. Congratulations.

1 (Applause.)

2 CHAIRPERSON JOHNSON: Rob Buchanan.

3 MR. BUCHANAN: We do this in the 17th
4 circuit. Bruce, I follow in your lead.

5 CHAIRPERSON JOHNSON: It's a new art form.

6 This plaque says, To Robert J. Buchanan, with
7 appreciation for service to the Representative
8 Assembly as the 2009-2010 chairperson of the Drafting
9 Committee, and I would like to personally say we are
10 so proud of you to be on the Board of Commissioners.
11 We know that you will serve the Representative
12 Assembly well on the Board, so congratulations.

13 (Applause.)

14 CHAIRPERSON JOHNSON: Marty Krohner. The
15 plaque reads, Martin P. Krohner, with appreciation for
16 service to the Representative Assembly as the
17 2009-2010 chairperson of the Hearings Committee.
18 Thank you very much, Marty.

19 (Applause.)

20 CHAIRPERSON JOHNSON: Mike Blau. The plaque
21 reads, Michael J. Blau, with appreciation for service
22 to the Representative Assembly as the 2009-2010
23 chairperson of the Rules and Calendar Committee.
24 Mike, thank you very much for all of your hard work.

25 (Applause.)

1 CHAIRPERSON JOHNSON: Jeff Nellis. The
2 plaque reads, Jeffrey C. Nellis, with appreciation for
3 service to the Representative Assembly as the
4 2009-2010 chairperson of the Nominating and Awards
5 Committee, and I would just like to say, Jeff, you and
6 your committee did a great job, again 100 percent
7 participation, so thank you for your hard work.

8 MR. NELLIS: Thank you.

9 (Applause.)

10 CHAIRPERSON JOHNSON: I have also been asked
11 by Anne to remind you that you need to be filling out
12 your attendance slips. Make sure that you do not
13 forget to fill those out when she passes them out to
14 you, because if you are here you want to be counted.

15 VICE CHAIR RADKE: I hope you will all get a
16 chance to see this up close. It's absolutely
17 gorgeous. State Bar of Michigan honors Elizabeth M.
18 Johnson, Representative Assembly Chairperson
19 2009-2010, Vice Chairperson 2008-2009, Clerk
20 2007-2008, in appreciation for distinguished service
21 to the Assembly, the State Bar, and to all Michigan
22 lawyers, September 30th, 2010. We are so honored to
23 give this to you. Thank you for your service,
24 Elizabeth.

25 (Applause.)

1 CHAIRPERSON JOHNSON: Thank you very much,
2 Chairperson Victoria Radke, and thank you very much to
3 all of you. It has been a great privilege serving as
4 your chairperson of the Representative Assembly this
5 year. I have learned so much from all of you with
6 your dedication and passion to our profession and for
7 this Representative Assembly. To you, my dear friends
8 and colleagues, I thank you for everything. It has
9 been a honor to serve, and I thank you from the bottom
10 of my heart. Thank you very much.

11 (Applause.)

12 CHAIRPERSON JOHNSON: Seeing as there is no
13 further business to come before this body, I would
14 entertain a motion to adjourn.

15 VOICE: So moved.

16 CHAIRPERSON JOHNSON: Is there support?

17 VOICE: Support.

18 CHAIRPERSON JOHNSON: Hearing none, all those
19 in favor of the adjournment, please signify by saying
20 aye.

21 Opposed no.

22 Hearing none, this meeting is adjourned.

23 (Meeting adjourned at 3:57 p.m.)

24

25

1 STATE OF MICHIGAN)
)
2 COUNTY OF CLINTON)

3 I certify that this transcript, consisting
4 of 152 pages, is a complete, true, and correct transcript
5 of the proceedings had by the Representative Assembly on
6 Thursday, September 30, 2010.

7
8 October 18, 2010

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

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