STATE OF MICHIGAN
STATE BAR OF MICHIGAN

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

AT HEADTABLE:

KATHERINE KAKISH, Chairperson
ELIZABETH MOEHLE JOHNSON, Vice-Chairperson
VICTORIA A. RADKE, Clerk
JANET WELCH, Executive Director
HON. JOHN M. CHMURA, Parliamentarian
ANNE SMITH, Staff Member
<table>
<thead>
<tr>
<th>1</th>
<th>CALENDAR ITEMS</th>
<th>PAGE</th>
</tr>
</thead>
<tbody>
<tr>
<td>2</td>
<td>Call to order</td>
<td>3</td>
</tr>
<tr>
<td>3</td>
<td>Certification of quorum</td>
<td>3</td>
</tr>
<tr>
<td>4</td>
<td>Adoption of proposed calendar</td>
<td>4</td>
</tr>
<tr>
<td>5</td>
<td>Approval of 9-18-08 summary of proceedings</td>
<td>4</td>
</tr>
<tr>
<td>6</td>
<td>Address by Chief Justice Marilyn J. Kelly</td>
<td>7</td>
</tr>
<tr>
<td>7</td>
<td>Filling of vacancies</td>
<td>22</td>
</tr>
<tr>
<td>8</td>
<td>Remarks by Chairperson Katherine Kakish</td>
<td>25</td>
</tr>
<tr>
<td>9</td>
<td>Remarks by President Edward H. Pappas</td>
<td>37</td>
</tr>
<tr>
<td>10</td>
<td>Remark by Executive Director Janet K. Welch</td>
<td>48</td>
</tr>
<tr>
<td>11</td>
<td>Public Defense Update by Elizabeth Lyon</td>
<td>61</td>
</tr>
<tr>
<td>12</td>
<td>Approval of 2009 Award Recipients</td>
<td>81</td>
</tr>
<tr>
<td>13</td>
<td>Informational Report on Proposed MCR 8.127 - Attorney Solicitation</td>
<td>86</td>
</tr>
<tr>
<td>14</td>
<td>Changing Face of the State Bar of Michigan</td>
<td>101</td>
</tr>
<tr>
<td>15</td>
<td>Consideration of Proposed Amendment of MCR 8.115 - Cell phone Usage in Court Facilities</td>
<td>110</td>
</tr>
<tr>
<td>16</td>
<td>Consideration of MCR 2.516 Instructions to the Jury</td>
<td>123</td>
</tr>
<tr>
<td>17</td>
<td>Consideration of Revised Uniform Arbitration Act</td>
<td>153</td>
</tr>
<tr>
<td>18</td>
<td>Adjournment</td>
<td>177</td>
</tr>
</tbody>
</table>
Lansing, Michigan
Saturday, April 18, 2007
9:30 a.m.

RECORD

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

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

I now recognize Clerk Radke.

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

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

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

CHAIRPERSON KAKISH: Any support?
VOICE: Support.

CHAIRPERSON KAKISH: Any discussion?

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

Any opposed, say no.

Any abstentions, yes.

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

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

VOICE: So moved.

VOICE: Support.

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

Hearing none, all those in favor say aye.

All those opposed, say no.

Any abstentions.

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

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

Chief Justice Kelly was raised in Detroit and
graduated Mackenzie High School. She earned a bachelor's degree from Eastern Michigan University, and after a year's graduate study at the Sorbonne University of Paris, France, she received her master's degree from Middlebury College in Vermont.

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

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

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

Chief Justice Kelly is a member of the Oakland County Bar Association where she has been active as chair of the Family Law Committee and co-chair of the President's Task Force on Approved Dispute Resolution. She was an arbiter for the American Arbitration Association and a panel member of the State Attorney Discipline Board. She is editor of
the 6th edition of Michigan Family Law that is
published by ICLE.

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

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

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

In 2003 Chief Justice Kelly received the
Eleanor Roosevelt Humanities Award from the State of
Israel Bonds Attorney Division. In 2005 she was
honored by Wayne State University as one of the University's outstanding alumni.

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

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

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

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

(Applause.)

CHIEF JUSTICE KELLY: Thank you, Ms. Kakish. What a warm welcome. I certainly appreciate it. Good morning to you.
I must say standing here I do have a sense of deja vu. It was about 20 years ago that I sat where you are sitting, and I was practicing law, and I remember wondering whether the work we do on the Assembly did get noticed or much less appreciated by the Michigan Supreme Court.

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

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

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

This morning I will give you an update on
some recent developments on the Supreme Court,
including our administrative work and some of my goals
as Chief Justice. It's my hope that you will find
something in my report today that will interest you or
engage you, recognizing that as members of the
profession our ultimate responsibility is to the rule
of law and the justice system that makes it possible.
You can and should, both as individuals and as an
organization, play an advisory role to the
Supreme Court and to our administration of the system
of justice here.

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

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

The waiver of dues for State Bar members in
full-time military service adopted by our Court in
October 2008 also originated with the Assembly, as did
rules regarding electronic service and others that
have been adopted by the Court in the same or nearly
identical wording as proposed by the Representative Assembly.

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

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

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

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

For some years the Michigan Supreme Court has had a public administrative process in the sense that
we publish possible Court Rule changes and other administrative proposals for comment and that we hold public hearings. To me it made no sense that we would hold part of our process in public but keep the administrative conferences behind closed doors. So I welcome this change.

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

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

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

At the risk of telling you what you already know, I will go quickly over how the Court's administrative process works.
When the Court receives a proposal for a Court Rule change, there is an initial period of study and discussion among the justices. At our public conference we decide what action to take. For example, whether to publish the rule for comment, and, if so, whether the proposed rule does then go on our website, and it's also distributed to the media and to the State Bar.

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

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

And then, once the period expires, typically the matter is brought back to the Court's agenda for a public administrative hearing, and these are the ones that are open to anyone, and anyone can come to those and comment.
I believe that this is an additional opportunity that you want to take advantage of, if you haven't already. Certainly the Bar Association takes advantage of it, and the details of each administrative hearing are published on the website, released to the media, and made available to the State Bar. Then following the hearing, the Court votes on the proposed change, again in public. The Court may adopt the proposal as written, it may amend it, or it may decide not to adopt it in any form at all. Our decision is definitely influenced by the comments we have received, both written and at the hearings.

It's fair to say that one of the most high profile administrative matters before the Supreme Court right now is the question of our recusal policy. As you know, we don't really have one, not one in writing.

I guess over the years it's been thought appropriate that the Court should write rules for other judges in other courts but not for itself, but as I have got into this, I must tell you there is some explanation for this. It's a good bit more complicated than one might expect at first blush.
unwritten rule for a challenged justice to decide him
or herself whether to recuse, and that has been the
final decision that's gone out under an order of the
court, and I think many practicing attorneys have not
known, and I didn't know early, that this was really
not a ruling so much of the Court as of that
individual justice.

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

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

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

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

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

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

So if you go to the Supreme Court's website and look under the resources tab, you will find a link which will take you to the proposed Court Rule, and it
will take you to ADM 2009-4, which is the rule with
instructions on how to submit comments.

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

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

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

Earlier this year the Pew Center on the
States released a report entitled One in 31: The Long Reach of American Corrections that underscores the dire need we have for alternatives to incarceration. The report’s conclusion was that we have reached the point where the skyrocketing rate of imprisonment is not having the desired effect, and we are not gaining better public safety and certainly not preventing recidivism.

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

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

Common sense says that it would be far better and far less costly to make available to nonviolent, low risk offenders services that would help them avoid landing in trouble again. And one very promising answer to this problem is the problem solving or therapeutic court movement.
In Michigan the therapeutic court's approach, this approach is most evident in the 89 drug and sobriety courts that we have instituted throughout the state. Some focus, you may know, some focus on adults, others on juveniles, and still others on drunk driving offenders or parents whose substance abuse leads to child abuse and neglect.

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

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

One of the challenges we now face is to continue funding for these programs. The judicial branch faces a two percent reduction in general fund and a loss of $550,000 for the Mental Health Court Pilot Project, and we may lose federal funding for our drug and sobriety courts, so I have asked the Legislature for federal stimulus money for our drug and mental health courts in the event of budgetary
shortfall, and I believe that any investment we make in these courts will be well rewarded for the offenders whose lives are turned around, for the public's greater safety, and for the taxpayers.

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

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

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

Other projects include online payment of traffic tickets, a statewide system for trial court
case management, video conferencing for prisoners, and electronic filing of court documents. And we are particularly excited about the judicial data warehouse, well on its way to becoming a statewide repository for court data for both pending and closed cases.

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

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

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

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

Recently with the closing of the Detroit Police Crime Lab we have had to confront the very real possibility that there may be innocent people, more than in the past, serving prison terms as the result of faulty evidence. And reviewing these cases has a price tag, and I have asked for stimulus money for
that project, but in the months to come it's going to
be up to all of us to find ways to improve the system,
ways that are cost effective.

I don't pretend here to have all the answers,
but I do know I have some, and you have others, and
together we can find the answers needed, and I hope
that I can count on your help in doing that. Thank
you.

(Applause.)

CHAIRPERSON KAKISH: Chief Justice Kelly, may
I extend on behalf of the Representative Assembly our
many, many sincere thanks for you being here today.
Thank you very much. Also, Chief Justice, we hope
this is the first of many, many times that you will be
again before the Representative Assembly.

I would like to take a second to thank MGTV,
the Michigan Government Television, for recording this
event, and now they are going to need to dismantle
their camera, so perhaps this would be a good time for
us to take a five-minute break and allow the TV crew
to pack up. Thank you.

(Break was taken 10:00 a.m. - 10:09 a.m.)

CHAIRPERSON KAKISH: We will resume the
meeting now, and the Assembly is back in session.
The next item on the calendar is filling
MR. NELLIS: Good morning, everyone. I am Jeff Nellis from the 51st circuit, and it's been a real privilege to serve as the chair of the Nominating and Awards Committee, and before I get started filling vacancies, I would briefly like to thank and recognize the folks on the committee who have helped us do our work. We have been quite busy and have had some interesting issues to deal with, so if you could stand, Tom Evans 5th circuit, Rick Paul from Oakland County, Eilsia Schwartz from Missaukee and Wexford County, and we also have associate members Kevin Lesperance from Kent and Andrea Monnett from Marquette.

Again I really appreciate all the help.

(Applause.)

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

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

(Appause.)

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

VOICE: Support.

CHAIRPERSON KAKISH: Hearing support, any discussion? Yes.

MR. KRIEGER: Nick Krieger from 3rd circuit, Wayne circuit. I appreciate everything Jeff did, and I am sure all these people are great. I would just note for the record that insofar as the 3rd circuit nominees are concerned, the State Bar bylaws were not
followed with respect to their nominations, and I realize I didn't object within 20 days, as required by the bylaws, but maybe we could amend our rules so that in the future we do things consistently with the rules concerning the State Bar and the State Bar bylaws.

Thanks.

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

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

Any opposition?

Any abstentions?

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

(Applause.)

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

The next item on the calendar is item number five, and that happens to be the remarks from the Chair, and there is quite a lot to report on since we
last met in September, and you will hear more about
the developments that have occurred since the
September meeting later on through the number of
presentations that are scheduled for this morning.

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

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

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

The second challenge goes to the heart of our
profession, and it goes to the heart of the
constitutional rights of a segment of the population
of Michigan, and that is the constitutional violations
to the due process rights of indigent criminal
defendants.

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

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

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

Here this body, the final policy-making body
of the State Bar of Michigan, may have to take a
closer look at what policies should be taken for the
Bar in light of the expected changes within the makeup
of the Bar's membership. In other words, the makeup
of who the attorneys in the state of Michigan are.
Anne Vrooman, who is the director of research and
development, will be giving a presentation later this
morning on the changing face of the State Bar's
membership.

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

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

The second item I would like to tell you
about is that I am very honored to announce that a
project which was initiated by Ed Haroutunian during
his chairmanship of the Assembly back in 2006-2007 and
which was carried on by the immediate past chair, Bob
Gardella, has now come to completion.

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

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

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

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

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

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

We continue to carry on in this mission, and that mission is actually carried on in many different levels. One of these levels involves the officers of the Assembly. To my left is Vice Chair Elizabeth Johnson, and next to her is Clerk Victoria Radke, and I have to say that these two remarkable lawyers are a credit to this Assembly, and since the September
meeting they have contributed far more than their
duties call in helping with the day-to-day work that
actually led us to today's meeting and has laid the
ground for upcoming future meetings.

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

JUDGE CHMURA: Thank you.

(Applause.)

CHAIRPERSON KAKISH: And, of course, another
level that the Representative Assembly works, without
doubt, is through the State Bar leadership, and
sitting next to Judge Chmura is the Executive Director
of the State Bar, Janet Welch, and I can't begin to
tell you how much she really is relied upon in making
sure that the interests of the Assembly are being met.
I thank you, Janet, for everything that you do. Thank
The Assembly also relies on the hard work of the Bar staff. We have several Bar staff members around the room, and hopefully you will get to meet each and every one of them. One of them is sitting right next to Janet here, and we wouldn't be able to operate from day to day without the hard work and the expertise and the dedication of Anne Smith, who is the administrative assistant.

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

So as to maintain -- and I move on to a different level of how this Representative Assembly works. So as to maintain the vital coordination between the State Bar itself and the Representative Assembly, the Supreme Court Rules concerning the State Bar call for eight Board of Commissioners to serve as Assembly members, and at this point I would like all those commissioners to stand and let the members know who you are. Can you please stand. Don't be shy. Charles Toy, Tom Rombach, Julie
Pershtman, and our president, Ed Pappas. Thank you so much for all the work you do.

(Applause.)

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

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

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

A member can easily come into this room knowing exactly how he or she is going to vote on one
of the action items, no doubt about it. The member has done his or her homework, has contacted their constituents, know exactly what the constituents may or may not think about the proposal and has decided that, okay, once this action item comes in I am going to vote this way or that way on this proposal.

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

I have always left this room, left these meetings as a result with a sense of great, great pride to be a lawyer. And a great, great pride and a feel of honor to be a part of this membership of highly dedicated, highly committed, highly
professional, and highly courteous members of the Representative Assembly.

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

I want to extend my sincere thanks and appreciation to you for being out there in the legal community promoting the work of the Assembly and serving as the State Bar's voice. My many thanks and appreciation to you for serving as the vital link between the Assembly and the lawyers in your circuit and with the State Bar sections, local Bar associations and affinity groups and all of you who are currently serving as Assembly liaisons. Your work is so important. I can't even begin to emphasize how important your work is in representing the Assembly and being the voice of the State Bar of Michigan within your constituents, and many thanks and appreciation to you for taking the time out of your very busy schedules and time out of your personal lives on Saturday and for your generous gift of time
and talent to our profession by serving the Assembly
as a member. Thank you very much.

(Applause.)

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

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

However, all of the above information that I
have read to you it is found in Ed's bio. That can be
found on the State Bar's web page. What his bio does
not say is his energy, dedication, and leadership
skills as State Bar President, how he leads the Board
of Commissioners with both vision and practical common
sense and a little bit of humor thrown in, and how he conveys his pride in the profession and spreads the message of the State Bar's good work all over Michigan. It was indeed an honor to witness Ed's work during the Upper Peninsula tour and to see how he related to the media up there and how he related with the membership in promoting everything good about the State Bar of Michigan. Ed.

(Applause.)

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

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

JUDGE CHMURA: You need a two-thirds
PRESIDENT PAPPAS: I think I am going to pass on that and stick with my ten minutes.

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

What I would like to talk to you about today is a number of things that the State Bar is working on, and I want to say this, the Representative Assembly is an important part of the State Bar of Michigan. You heard the Chief Justice say that, and I believe that the Court does believe that. The Board of Commissioners believes that, and we have been working on increasing our communication with the officers of the Representative Assembly and the officers of the State Bar of Michigan and the State Bar staff, and that's because we together, it's important to advance the interests of the lawyers in the state of Michigan, it's important to advance the interests of the citizens of the state of Michigan and our justice system, and we can all do that together.
And I see Ed Haroutunian just came to hear me speak. I always say when I work with Ed is that two Eds are better than one.

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

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

And I want to start with Access to Justice. You heard Chief Justice Kelly mention that the Court is very interested in that. Matter of fact we had a meeting with her and others about some of the things we can do together, the Court and the lawyers. But
Access to Justice has been a top priority of the State Bar for many years, and it still is a top priority today, and our goal is to continue to establish a permanent endowment that will fund legal services for those who can't afford legal services in civil cases well into the future. And today, as of today, together with our partners, the State Bar, the State Bar Foundation and legal aid organizations throughout the state, have raised more than $9 million for Access to Justice.

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

I also want to talk a little bit about law-related education. Informed citizens are crucial to the independence of our judiciary, and it's, I believe, our responsibility as lawyers to educate nonlawyers about the importance, not only of their legal rights under the law, but the importance of the judicial branch of government itself, which is the only branch of government which includes lawyers and
judges that protects individual rights and individual liberties, and we have many, many great programs throughout the state by local Bar associations and local courts that mainly present these programs on Law Day and Constitution Day, and we thought why not bring all these programs together so everybody can learn from each other to see what great things people are doing throughout the state and expand law-related education throughout the state.

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

The other area I want to talk about before I get into what we are doing on the tough economic times that Kathy had mentioned is professionalism, because in tough economic times lawyers and law practices by
necessity have to treat their practices as a business, and it is a business, but we always have to remember that it's a profession first and a business second. So we want to promote professionalism throughout the state, and we started a project with the law schools, because I think it's really important for lawyers to connect with future lawyers, and we started a professionalism orientation program. We are going to start it at Cooley Law School, on May 8th is going to be the first one, and this is going to involve lawyers and judges to come out and work with new law students about the importance of professionalism in the practice of law.

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

And, lastly, let me just talk about the tough
economic times, and Kathy mentioned this. We are undergoing probably the toughest economic times that any of us have faced in our own lives, and lawyers are not an exception to the hardships. There are many lawyers I have talked to around the state that are struggling. They either don't have enough work or they are actually out of a job and they are looking for work, and the State Bar has been looking at this issue since I have become president, and we have some long-term programs that we put into place.

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

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

For example, in Michigan we are bringing a lot of energy companies into the state, alternative
fuel technology, and energy law and environmental law
are going to be hot areas of the practice of law in
Michigan. Lawyers who educate themselves and become
experts in that area can develop an additional
practice to what they are doing, and that's the type
of thing we are going to be working on with ICLE. In
our September annual meeting you will be seeing that
ICLE has a whole program developed for lawyers to help
them in tough economic times, and we are going to be
working with them on other seminars in that area.

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

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

They have a center with 12 computers where
lawyers and staff can come in and learn about new
technology. They can learn about the management
practices. We have not only at the center, we have
expert staff that will go out, they do seminars
throughout the state, they do private consultations.
And I have told this story before, but I want to tell the story about how important technology is, because I had a case against a lawyer from Traverse City, has a small firm, and I asked him how often he came down and practiced in southeast Michigan, and he says he practices all over the state and all over the country because he developed a blog site where he writes articles on current issues in his field of expertise, and he has companies and individuals from all over the country looking at his blog site. They consider him the expert in this area in the state of Michigan and maybe in the country, and he has got business more than he can handle. And, interestingly, his expertise was sort of my expertise, so I am just trying to look at what he is doing for the future. But technology is very, very important.

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

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

We want to promote that so that the citizens
of our state, the nonlawyers, know all the good things
that lawyers do, and I think that's going to help
lawyers in the long run, because this is a statewide
program that we will be working with local Bar
associations and courts and anybody else. In fact, I
have handed a ton of T-shirts out to people when I
have spoken, and I have told them to wear it to court,
and I had meetings with the Chief Justice, the Chief
Justice the other day, and I told her, I said I have
been telling lawyers to do that, and I have been
telling them that the Chief Justice of the
Supreme Court says that you can wear that T-shirt into

court, and she did not say no, she smiled. I

appreciate all the work you do, and thank you. Thank

you very much.

(Applause.)

CHAIRPERSON KAKISH: Thank you very much, Ed.

Next are the remarks from the Executive

Director, Janet Welch. We do have quite a few new

members on the Representative Assembly, and I would

like to let you know a little bit about who Janet

Welch is and what she does here.

Janet oversees the day-to-day operations of

the State Bar. She implements the policies that are

set by the Representative Assembly and the Board of

Commissioners, and she directs the efforts of the

State Bar staff.

Now, Janet's background in state government

is extremely valuable to the Representative Assembly

and to the State Bar. This is particularly true when

it comes to the issues that this Assembly votes on.

She has a good working relationship with the

Supreme Court and with the Legislature and with key

figures in the Lansing government, and she does have a

deep understanding of how the government works. And

that is very, very vital to the work of the
Representative Assembly here to make sure that our proposals and resolutions reach maturation.

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

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

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

MS. WELCH: Thank you very much, Kathy.

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

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

Because of that it's not surprising that I am asked on a regular basis how is the State Bar doing financially, and I am pleased to be able to tell you that we are doing just fine. I am telling you so I don't have to have 150 individual conversations with all of you, and because I can affirm the same thing
that I told you in September, which is that we are on
target with our budget projections, and there is no
reason to expect that we will be coming back to you
any time soon to ask for a dues increase.

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

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

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

The second new goal that's been added to the
Strategic Plan I want to call to your attention is
that we have committed to taking positions on and
advocating concerning public policy issues at the
national level to the extent that the positions
promote the interest of the legal profession and the
public in Michigan.

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

And, finally, the last new goal of some
magnitude is that the Strategic Plan now requires us
to adopt and promote practices that are
environmentally sustainable. This is not an issue
that really was on the radar screen when the Strategic
Plan was developed several years ago, but it is front
and center now and in our thinking about the ways in
which we provide all services, and you are about to
get an example of that in the mail when you receive
your new member directory.
It is smaller, because as a result of a very comprehensive member survey, user survey, we were told that there were portions of the bound version of the member directory that were not used very much and it costs a lot of money to print, costs a lot of money to mail, so you have a smaller version. The paper it's printed on is more environmentally friendly than what you have gotten before, and at the same time that we are doing that we are also updating the member directory, so it is a more useful resource online, and for those of you who use the online directory you are obviously getting much more up-to-date information than when you use the bound directory.

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

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

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

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

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

The other way is we have a website which is going to be unveiled at the same time that the May Bar Journal comes out, so you are getting a sneak preview of this, and I am going to take you through a formal
presentation that will be available on the website and
that we hope that you will take advantage of in
helping to be ambassadors for the program.

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

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

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

The program promotes lawyers doing good works
in two ways, by inspiring other lawyers who may not
have begun that work by the good role models that are
already out there and providing the tools to help them
do it more easily.

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

The State Bar staff will be assisting local
Bars and anyone who wants to participate in the
program by helping prepare news releases. We will be
doing articles about the ways in which lawyers can
help and do help, public service announcements.

Again, and tying this into law-related education,
because a lot of ways in which lawyers help is by
going into the community and educating about the legal
system and through special events and meetings.

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

When you go on to the website, it will tell
you as a lawyer how to connect to providing meaningful
pro bono help, what assistance there is out there for
you to do pro bono, how to donate to the Access to Justice fund, how to get the gear which will help advertise the good works that you are doing, and we also want this website to be a repository of stories about the good things that lawyers are doing out in the community so that we can help push those back out and show the world what good guys we are.

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

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

The benefits of participating in A Lawyer Helps, obviously there is the satisfaction of doing good, but the A Lawyer Helps program will also give participants the products that will promote the message and that will give marketing assistance and
publicity, and all this is available through a resource and tool kit on the website.

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

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

So we have boilerplate language that we need to have tagged to the use of the program in order to preserve its integrity and coherence so there will be consistent messages, and I think the next slide has the cobranding language that we are asking everyone to use. Lawyers make a difference for people and society. They solve legal problems, provide free
legal help to the poor, and give time to many other community efforts.

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

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

But the insider story is that we really had to work out a way in which pro bono, which is at the heart of what we do, not get lost by the community service stuff that lawyers do that is, frankly, more photogenic for the program. If you are out in the community and you have a baseball cap and are on the sidelines coaching a soccer team that says A Lawyer Helps, that's more photogenic than when you are in your office doing a pro bono case, because in your office doing a pro bono case it's like not a pro bono case.
So that's the inside story. We are very, very careful that as we promote the program that pro bono and financial contributions stay front and center.

I am driving Nancy crazy by ad libbing here. So part of the program and part of what we are asking you to do if you use this presentation to promote the program is to educate everyone about what pro bono is and, of course, elements of pro bono is that it's free or reduced fee legal services for low income individuals and groups. It isn't, as some lawyers would hope it would be, a program that includes clients who don't pay their bills.

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

We want to remind lawyers that financial donations are a part of the pro bono obligation, and it is a way that lawyers like me who probably would be a hazard in the courtroom doing pro bono can fulfill the ethical standard.
And because Access to Justice fund is our vehicle for lawyers and others to donate to support legal aid, the A Lawyer Helps site will also have a link to contributions to the Access to Justice fund. So there are going to be two ways online that people can contribute to the Access to Justice fund, the Access to Justice fund site and the A Lawyer Helps site. But this will look familiar to those of you who have contributed online through the current page.

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

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

And we are going to make it easy for you to tell your stories to us and through us to the whole state about what you are doing and what others in your community are doing, what other lawyers in your
community are doing to help support the program.

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

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

(Appplause.)

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

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

Elizabeth.

MS. LYON: Good morning. It's a pleasure to
be with you all this morning and to provide you with
an update of some significant steps that have been
taken since your September gathering in our efforts to
reform how legal services are provided to indigent
persons for criminal proceedings in our state.

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

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

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

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

Another very significant step that was taken in March, the speaker of the House, Andrew Dillon, and chair of the House Judiciary Committee, Representative Mark Meadows, appointed a special committee on indigent defense. Two members of the House were appointed to that group. Representative Bob Constan, who is an attorney from Dearborn Heights, was appointed to chair that group, and then Representative Justin Amash, who is a republican from Kentwood, also
an attorney, who was appointed to work with
Representative Constan in this effort.

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

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

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

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

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

That hearing took place on March 26. It was a hearing before the House Judiciary Staff Committee on Crime, Terrorism, and Homeland Security chaired by
Congressman Bob Scott. The title of the hearing was Representation of Indigent Defendants in Criminal Cases, a Constitutional Crisis in Michigan and Other States. So the title certainly implies that Michigan was used as a poster child of what is really occurring on a national level as a constitutional crisis.

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

The hearing then focused on sort of what can we do about it. We know that it's a crisis, what can we do about it? There were five witnesses at that hearing. The State Bar of Michigan was represented by
two of our past presidents, Mr. Dennis Archer and Ms. Nancy Diehl. Mr. Archer also represented the American Bar Association and Ms. Diehl the Wayne County Prosecutor's Office.

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

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

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

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

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

I know there are certain things that have been proposed by the American Bar Association, American Civil Liberties Union, and the National Council of Criminal Defense Attorneys and other folks also looking for perhaps opportunities under JAG and Byrne grants on the federal level. There are prosecutorial resources provided to the state, and we are looking at perhaps being able to match what
resources are being provided to the states for prosecutors but also public defenders, so lots of interesting things happening there.

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

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

There are a couple other events, if you want to get involved and I can entice you to join us in this important effort as individuals, certainly to
further the actions you have taken as a Representative Assembly. There is on May 21st a three-day long conference in Lansing on public defense that the State Bar of Michigan is cosponsoring. The theme this year is Reforming Michigan's Public Defense System: The Economic, Social and Human Benefits. Again, it's a really great program. We are bringing national speakers to look at this. There is going to be panel discussions.

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

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

MS. HAITH: Good morning, everyone. My name LaNita Haith. I am from the Oakland County 6th
circuit. I am the immediate past chair of the
Criminal Law Committee in Oakland County.

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

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

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

MS. LYON: I am more than happy to carry that
message and will do so, and I think that you very
appropriately pointed out that this is not the fault
of criminal defense attorneys, and, in fact, when I
talk with criminal defense attorneys, I am so
respectful and enamored with them and the work that
they do and how they try so hard to work to represent
their clients well, and I think when we do have this discussion, it's really important to point out that our current system has counties providing these services and county funding and how can counties effectively do that when they are faced with budget cuts, and even narrowing it down more than that that, not even on the county level, but sometimes courtroom to courtroom there is a different way of providing these services.

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

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

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

MS. LYON: The Criminal Defense Attorneys
Association of Michigan is on board with us. We talk regularly with that association, and I appreciate very much your passion and your looking at this issue, and certainly we know that we need to look to other states and other national experts in addressing this problem, and those folks are coming to the table, and they are ready to help Michigan look at what would be the best solution for our state that's state specific that addresses our specific needs.

CHAIRPERSON KAKISH: Yes.

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

I am not saying that defenders offices are not a good solution. Don Johnson in Wayne County, how could it be solved any differently. It's a huge operation with huge number of cases, but in the situation of a county defender, I am reminded most recently of an arraignment Judge Smith had in our county asked a young defendant if he had had an
attorney for his conviction in another county, and he
said, oh, no, Your Honor, only a public defender. And
the judge assured him that perhaps this person was
also an attorney. I am not faulting the judge here.

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

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

MS. LYON: I think that -- a couple of
comments. I think that when we look -- there has been
no fix for Michigan that has been really set in stone
yet. I think it's still in the discussion forum. A
couple of thoughts.
I agree with you based on the research that I have seen that a public defenders office will not make sense for all of Michigan. That certainly when we look at the geographic expanse of our state, looking at the U.P. and other things, it doesn't make sense to have staffed public defense offices in all areas of our state. I think when we move forward with the fix it will be with a mixed system. So I think that in larger areas like Detroit where it's shown economically to make sense to have a staffed public defense office that we will consider that an option. I think when we look to other areas of the state where it makes sense to continue with contract public defenders, we need to have something that isn't a low bid contract system so that your contract includes things like the resources that you need, includes caseload standards, includes adequate pay and other things.

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

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

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

MS. CLARK-KREUER: Rhonda Clark-Kreuer from the 29th Circuit, and I would just like to touch on the comments of the two other Assembly members. I happen to come from, while I represent both Clinton and Gratiot County, my practice is in Gratiot County, which is one of the smallest counties and number of attorneys in the state. We have a very small number of attorneys who practice. You might say that there are 30 members that are practicing there, but if you look at the attorneys who are doing this work, I can count on my two hands, actually less than two hands, who do the criminal court-appointed work.
We are not doing it to make money. We are not doing it out of necessity for our own purse, we are doing it because if we don't do it there is absolutely nobody in our county who is doing it. And we are paying. There are a number of us who do pay the WestLaw and the ICLE partnership to get access to those tools.

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

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

You know, I work extremely hard, and I don't
like it when my indigent clients, you know, oh, you
are just a court appointed. I go as much and
sometimes far above and beyond because I am concerned
about representing them and also concerned when you
are doing D.O.C. cases that your I's are dotted and
your T's crossed.

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

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

I think we have seen now, you know, Michigan
is only one of seven states nationally that does not
provide state funding for trial level indigent
defense, and certainly we see the national experience
compel us to know that there has to be some state
level of preparations, because the counties cannot fund it on their own. So we are definitely moving in that direction so that you can have the resources that you need so that you are not paying for WestLaw out of your pocket, those type of things.

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

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

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

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

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

I am not a betting person --

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

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

I don't have a sense of what the specific thing is at this point that will go forward. I do know that there is an interest to do something. We have already had meetings on the U.S. Senate side as
well to make sure that once we have reached that
chamber we are in the right direction.

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

MR. EVANS: Thank you very much.

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

We are running behind schedule, so I would
like now to bring up item number nine, which is
approval of the 2009 award recipients.

Mr. Jeff Nellis.

MR. NELLIS: Good morning again. The
Nominating and Awards Committee, we have essentially
two functions. As you saw earlier, that first
function is to fill our vacancies, and the second
function is to go through the process of nominating,
coming up with candidates for the awards that the
Representative Assembly gives out every year, and I
would just like to thank so much Kathy Kakish, Liz
Johnson, Victoria Radke and also Anne Smith, who has
really been a big help to our committee and helping us in fulfilling our functions.

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

The first award is the Michael Franck award. It's given annually to an attorney who has made an outstanding contribution to the improvement of the profession. This year's nominee is an attorney, Dan Bonner from Muskegon. If you are not from the west side of Michigan, you may not recognize this individual, but if you look in the materials that we
have provided, this is a gentleman who is almost, shall we say, universally recognized, not only for his competence, but also for his civility. He is the managing attorney for the Muskegon office of Legal Aid. He is what we might call a poverty attorney.

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

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

The first individual is an attorney from Ann Arbor named Kelly Burris. She is an accomplished
patent attorney, but she does something very unique and something that very few of us are able to do, and that is she donates her time, her money, and her airplane to be involved in a nonprofit project called Angel Flight, and what they do is they essentially donate air flights to hospitals out of state and that type of thing for people who obviously could not otherwise afford to do that to take them to specialized hospitals, and that's just, you know, a really neat accomplishment and something that very few people are in a position to be able to do.

Our second nominee Brian Barkey from Flint, and he, also from the practice side, is a very accomplished mediator and case evaluator, and he has been recognized for his accomplishments in those areas, but he also is very involved with the community service and has essentially been the driving force behind the community holiday dinner, which has served literally thousands of free holiday dinners to underprivileged people. He has also been involved in donating countless hours to the Bobby Crim fitness program, which if any of you live around Flint, the Bobby Crim race is a real big deal, and it has turned into more than just a race now. He mentors people. He provides hours and hours to these folks.
So today I am really proud and honored to ask this body, and I am moving that this body accept these individuals for the respective awards. I think when you think about it, these attorneys exemplify the type of attorney that we would all like to be, and I think we all try to hold ourselves to that standard, and they are also, you know, they are the type of people who really make a great impression to the general public. We can always -- our public reception could always use a boost, so to speak, and these people are wonderful ambassadors for our profession. So I make that motion at this time.

VOICE: Support.

CHAIRPERSON KAKISH: Hearing a second, we will --

VOICE: Second.

CHAIRPERSON KAKISH: It was seconded, correct?

VOICE: Yes.

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

Hearing none, all those in favor say aye.

All those opposed say no.

And any of those abstaining.

The ayes have it. The motion carries, and it
is adopted.

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

VOICE: So moved.
VOICE: Second.
CHAIRPERSON KAKISH: Any discussion? All those in favor say aye.
All those against.
Hearing none, and so that motion carries, and, therefore, we will now go to item number 12, and that's the informational report on attorney solicitation, and its proponent is Elizabeth Sadowski from the 6th circuit.

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

Our family law council members have asked me
to come and present to you something of a dilemma that we have. You know, of course, that old story about how a family law attorney, a criminal law attorney has a bad person acting his best and a family law attorney has a good person acting his level worst. It's really true.

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

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

We fear that this is going, that this type of conduct is going to promote more violence, more
kidnappings, more financial abuse, but we have a
dilemma, and in the words of Princess Leia, Help us,
Obi-Wan Kenobi.

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

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

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

That is why in the fall you are going to be
asked to wrestle with this problem. This is a prelude to what will happen soon.

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

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

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

We know that we need to do something to stop this problem. We are pretty sure it's going to get worse, not better, and once somebody is injured or
killed or a child kidnapped because they have been
alerted prior to being able to be served with process
or restrictive order, when that happens the question
is going to be, as our chair of our section Carlo
Martina has said, there is going to be a hue and cry,
why didn't somebody do something about this? Where
was the law? Where was the State Bar? How can people
get away with this? What can we do to protect
ourselves from this type of misconduct happening
again?

It's a dilemma, and we need your help. We
need to fix this, and we need to do it within the
confines of the constitutionally protected rights of
speech and advertising that the Shapiro case tells us
about. We ask you to give this a lot of
consideration. I know there is a lot of people here
who practice family law, and you probably have had
familiarity with this problem too. If you don't, if
it hasn't come to a neighborhood near you, it will,
because this is too easy to do. It's just too
inviting to be able, with the electronic age in which
cases are filed online, it's too easy to troll them,
and it's just too easy -- and it's hard to resist the
inclination to do more business, to put business above
professionalism these days in these hard times.
I thank you very much for your time. I hope you will give this matter your profound consideration, and I know, because with all the smart people here, we will figure something out. Thank you.

(Applause.)

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

Did I do that right?

CHAIRPERSON KAKISH: Yeah.

MS. SADOWSKI: All right.

MR. DUNN: Good morning. I am Bill Dunn.

Chair Kakish reached out to me as chair of the Professional Ethics Committee of the State Bar to get the views of the committee on this proposal which came to us in alternatives as Court Rule or as a change of Rule 7.3.

I cannot speak for the Ethics Committee, because the Ethics Committee meets on this coming Friday and will consider this for the first time formally at that point, but I can provide a little background from the perspective that I believe is fair.
First, this rule comes to you as a Court Rule today in its proposed form. As I have said, I have seen it in alternative forms, Court Rules or a change of Rule of Professional Conduct.

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

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

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

This proposal has two purposes. One is to restrain lawyer solicitation, trolling for clients,
and the other is to somehow in that manner prevent spousal abuse.

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

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

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

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

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

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

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

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

(Applause.)
CHAIRPERSON KAKISH: I understand there are two more speakers who are coming to address this informational report. The next one is Kristen Robinson.

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

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

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

But there are cases, and family law cases are different. I mean, we have children involved, we have domestic violence, we have people trying to hide assets and move funds and irreparable harm can happen. We already have a Court Rule in place, so we know the court and the state recognizes that there is a need for ex parte relief, so if we can show the court that, in fact, we are concerned about irreparable harm being precipitated by the notice itself, then, in fact, we can petition the court and get ex parte orders, and that's what we are trying to prevent here is an end run around getting that ex parte relief. Because the fact of the matter is it sometimes takes days, sometimes weeks to get that
ex parte order granted. So in that window of time this defendant is served before we can get our ex parte order entered this irreparable harm that we are trying to prevent is going to happen.

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

(Applause.)

CHAIRPERSON KAKISH: Victoria Kremski from Thomas Cooley Law School.

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

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

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

Third point, the proposal as written is overbroad. It wouldn't withstand constitutional scrutiny. The rule should be narrowly tailored to encompass the specific situations that are of concern, allegations in cases where there are allegations of
domestic violence, allegations where perhaps one of the potential defendants is mentally or emotionally unstable and could do harm to themselves or others.

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

(Applause.)

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

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

What I am here to say though is, as I read this proposal over, I thought it had some overbreadth
to it, and I think domestic violence is a paramount issue that should be addressed. I invite anyone to talk to me, because one of the things I would like to know, has anybody explored the issue of trying to get a way in which you can file a domestic or a divorce action under seal with the court in order to avoid these concerns and then unseal it after the person is served. So some sort of fashion where if there is an issue of you are going to be abused or child is going to be taken or assets are going to be hidden, if there is a way to do this under seal until the person is served to prevent all this harm, and then you don't have to get into the overbreadth that I saw when I read this. So I would like anybody to talk to me about that, and I wonder if anybody has ever explored that.

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

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

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

We are way behind schedule. It is almost ten
minutes past 12, and according to the calendar we should be starting lunch. I would entertain a motion, one, to eliminate our break, ten-minute break that was scheduled previously, and I also would entertain a motion that the presentation by Anne Vrooman be postponed to after lunch and that we do take lunch at this point.

VOICE: So moved.

VOICE: Support.

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

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

All those opposed say no.

Any abstentions?

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

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

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

The next item on the calendar is a presentation on the changing face of the State Bar of Michigan, and that is item number 11 on the calendar.
This presentation will be given by Anne Vrooman
State Bar director of research and development. Anne.

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

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

It has helped us to take what we learn from
this and use that to link it to target strategies for
target populations identifying the large number of baby boomers that we have that you will see as they are nearing retirement, as well as what the demographics look like for new lawyers coming in. So with that we can start with the first slide.

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

But this is the overall picture, and once you become a member of the State Bar and are in the system, you are in this pie chart somewhere forever. We will be focusing today mainly on the active membership, but you can see all the other categories. So taking that active piece then, we can boil it down into active Michigan residents and then active non-Michigan residents, and for most of our discussion today we will be talking about the active Michigan resident Bar members, but we need to pay attention to that non-Michigan members, and with a lot of things you heard about in the economy, that's a number that we really want to keep an eye on. Are there members
moving out of Michigan for other opportunities, law
school graduates, things like that. Actually that is
a number that grew this year by about one percent.

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

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

Focusing in then on that private practice
area and what we know about firm size, which again is
self-identified and broken into the solo, small,
medium, and large in there, it's pretty interesting, because when you look at the solos and the smalls and you add those together, it makes up to pretty close to 70 percent of what private practice attorneys are.

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

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

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

The gender, overall gender composition of the membership of the State Bar is about 70/30, so about
70 percent male and 30 percent female, but you can see how this is changing. So when you look at the members that joined in 2007, it's getting much closer to a 50/50 split. So, again, you can see that in the coming years the gender, the leadership, what it will look like in law firms and all throughout the professions is getting much closer to that.

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

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

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

I am moving through this pretty quickly. I
hope you can spend more time later when you have more
time to look at this.

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

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

So overall -- actually, maybe, Nancy, back up
to that last one -- overall you can see that, you can
see that European dissent in the overall composition
is about 85 percent with other race and ethnic
categories making up the pretty small remainder, but
when you move to the joins in 2007 you can see that
that number has shifted pretty significantly with
European dissent making up only about 61 percent and significant increases in the other racial and ethnic categories, and I might point out that actually the Asian Pacific Islander category has been the category that has grown pretty significantly in the past couple of years, and I think yesterday an action on the Board was to recognize the new local Bar association or special Bar association of South Asian members.

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

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

And this is really a snapshot in five-year intervals, so what this means when you are looking at it, this would be the number of people who joined in these target years, so 1980, 1985 and so on in each of these ethnic categories and, again, just taking snapshots through those years.
This is information that we keep about law schools and where our members went to law school, graduated from law school, and, again, this is the overall picture. You can see that Wayne State actually has the largest number of members, and University of Michigan the smallest number of members as part of our database. You can see that others, so people who didn't go to Michigan law schools, comprise a pretty significant portion of the Bar.

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

This information is about sections, and overall we wanted to know what percentage of members belong to any section, so this is just a picture of no section versus being in one or more section, and remember that this is the overall active Michigan residents. So thinking back to that pie chart where only 50 percent or about 50 percent are in private practice and the other 50 percent are in other things, so occupations that, you know, sections may not be of
interest to them in their professional life. The split for them is a bit -- almost 60 percent, so 58.4 percent belong to one or more sections and then 41 percent belong to no section.

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

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

I would point you to the black and white handout that you received, and the very last page of that is actually an update for you. It's a snapshot of 2008, again, just boiled down so that you could get
a sense of the numbers using the racial and ethnic
categories and gender categories for the new joins of
2008.

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

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

Thank you.

(Applause.)

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

This is not an action item that we as an
Assembly typically see. Here the Civil Procedures and
Courts Committee is asking the Assembly for permission
to advocate its own position on a proposal that the
Assembly voted on last year at last year's April meeting. The proponent is Dan Quick from the 6th circuit.

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

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

The first is the underlying language in the first sentence which clarifies that phones which include photographic, video, or audio recording capabilities be permitted. That's been included, because in practice sometimes the sheriffs don't understand that all means all, and so making this expressed in our opinion would be helpful.
The second substantive change appears near the bottom of the rule, and this is the sentence starting with nothing in the subrule limits the court's authority to impose other reasonable limitations.

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

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

VOICE: So moved.

VOICE: Support.

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

Yes.

MR. LINDEN: Jeff Linden, 6th circuit. In the proposal, the last substantive comment that you
made, the nothing shall limit the court's authority to impose other restrictions, how do you propose that that doesn't necessarily gut the earlier change? For example, if a judge were to say audio, video, or other recording capable cell phones defacto aren't allowed, and you have established that they are, then they basically undo the other portion of the rule. Why do you have what I see as a conflict in there?

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

MR. QUICK: In just two comments, briefly. The first is, of course, there are two levels of problem here. One is at the courthouse doors
generally, and we think the uniform rule that has
these provisions in it will be helpful at that level,
but then within specific courtrooms I guess it's my
hope that by virtue of the word other reasonable
limitations, that that is construed to not permit
somebody to completely vitiate the rule by banning
everything. At least our sense is that the vast
majority of courts recognize the modern technology
that the attorneys carry around and access on a
regular basis. I am not sure I necessarily see it as
an internal conflict.

CHAIRPERSON KAKISH: Thank you. Next.

MR. BARTON: Bruce Barton, 4th circuit.

Knowing how nitpicky some lawyers can be, I move an
amendment, and I think it's within our limits, that
the underlying language, beginning with including,
read as follows: Including, but not limited to, those
with photographic, video, or audio recording
capabilities. I think the intent is obvious.

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

MR. QUICK: Sure.

MR. RAINE: Paul Raine, 6th circuit.

CHAIRPERSON KAKISH: Excuse me. It was
accepted as a friendly amendment to add the words "but
not limited to." Is there a second?

VOICE: Second.

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

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

MR. KRIEGER: Point of order.

CHAIRPERSON KAKISH: Yes.

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

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

MR. RAINE: May I proceed?

CHAIRPERSON KAKISH: Yes.

MR. RAINE: The sentence that begins with "if silenced," seems to me it's going to be difficult for any counsel to make certain that any transmission do not interfere with any court recordings unless we can encapsulated the phone somehow to prevent any kind of
electronic or electromagnetic radiation from interfering with the court recording devices. It seems like you would have to just shut cell phones off completely. I would suggest maybe striking that sentence.

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

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

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

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

VOICE: Second.

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

VOICE: There is a motion on the floor.

CHAIRPERSON KAKISH: There was a second.

Now we open the debate to this amendment.
JUDGE CHMURA: Just so you understand, the discussion has to be on whether the motion should be amended, not under the underlying merits of the motion as amended and passed, only on whether the motion should be as amended and seconded by this gentleman here. It's a narrow question that you are debating right now.

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

CHAIRPERSON KAKISH: We are not looking at what we voted last year. What we voted stands. What we are doing here is the determination or the decision to grant the committee, which is the Civil Procedure and Courts Committee, permission to advocate its own stances. What we are doing here is just to give them permission for them to go ahead and say that this is their viewpoint, because the cell phone issue was already before the Supreme Court, it was published for a public comment, and the Civil Procedure and Courts
Committee now took a look at it and realized that it wanted to expand on it, but in doing so it needs our permission to do that. Does that answer your question?

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

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

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

MR. BARTON: May I have a parliamentary ruling by the parliamentarian. Are we talking about -- if we are talking about language in this proposal not underlined, are we talking about a motion to reconsider, because we passed the language that we are now trying to amend at a previous meeting.
JUDGE CHMURA: That's right, and, unfortunately, I don't know, because I wasn't at the previous meeting, so I don't really know what was passed. If there was a question that was passed at the previous meeting which you are attempting to do by motion that's in the agenda is to change what was passed at the previous meeting, yes, it's a motion to reconsider, but I don't know that that's the case, not having been here the previous motion. It's not the case. I am told that's not the case. The Chair has to make that ruling since she would be in a better position right now. So it's a main motion essentially, as amended.

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

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

VICE CHAIR JOHNSON: Who was the second?

VOICE: I withdraw my second.

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

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

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

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

MS. VANHOUTEN: I am not against allowing
them to state their position. I am just saying I
don't think our committee can change what their
position is.

        JUDGE CHMURA: Then vote no.

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

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

        CLERK RADKE: Yes.

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

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

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

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

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

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

MR. MEKAS: And he did accept it?

CHAIRPERSON KAKISH: And he did accept it,
yes.

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

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

All those opposed.

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

All those in favor say aye.

All those opposed say no.

Those abstaining say yes.

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

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

MR. REISER: Unfortunately for me this is one you folks do have the authority to amend. Hopefully you will be too tired after lunch to do much of it, but good afternoon, my name is John Reiser. I am an assistant prosecuting attorney in Ann Arbor,
22nd circuit, Washtenaw County. Prior to that I was an assistant prosecuting attorney in Oakland County, 6th circuit, so hello to many of my friends and hello to Matt Abel as well, who is my good friend. That's why he gets a separate call out.

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

Now, the modifications proposed are a part of the Prosecuting Attorneys Association of Michigan's proposal, and as an assistant prosecutor, I would ask that you keep in mind that my job is on the line were this not to pass. I am only kidding about that, because prosecutors care about justice, about the prosecution's rights, about the defendant's rights as well. We have to. The Court Rules direct to us do that. The Michigan Rules of Professional Conduct direct us to do that, and these modifications are an extension of that policy pronouncement, and it hopes to maintain the integrity of the adversary process.
We are talking about the right to confront your witnesses. When a juror is using a blackberry, a trio, an I-phone, a 3G network, when the juror is going to Google, when the juror is looking up stuff online, that's your client's, you defendant attorneys' right to confront the witness. That is your client's right to have 403, you know, whether it's relevant, 404(B), 609, improper impeachment. So that's really what we are talking about. Some of these things that they are doing violate the constitution and violate the party's rights.

I mentioned some of the things that jurors have. There was a recent article in the New York Times published on March 17th, 2009, after Pam had put this proposal together, and I don't know if you folks get the New York Times either in paper or online and read it. Did anyone here read that article? You folks know a little bit about what I am talking about. They talked about an eight-week federal drug trial in Florida where one of the jurors, it was found out that that juror had gone and looked at something that was specifically excluded by the judge, and one of the other jurors brought it to the court's attention, and when the judge made inquiry, the judge found out that, oh, yeah, eight of us other jurors
have been doing that too, and then that eight-week
trial, which you can imagine, rightfully so, was
mistried, the jurors researched evidence specifically
excluded.

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

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

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

How many people here when you have a case
come up where you have got a witness you don't know
anything about, what do you do? You Google them. I
am not going to ask whether you have Googled yourself,
but I know you have Googled witnesses. And now what you are doing is you are going to Facebook to find out who are their friends, what are they saying, is this a person of substance, and now you are going to Linked In, and you are going to names and you are going to My Space, and you are going to -- I don't know who you will go to next year, but you are going somewhere. So what we are trying to do is prevent the juries from doing some of the things they might be doing.

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

Summarizing some of the comments, Barry Gates who is a practitioner in my county, I have got his notes here, thanks. He is an orange. He is wearing
orange today, orange paper. He says that there are
useful suggestions. He says we should include other
jurors. One of the comments by Allen Lanstra, he says
that we should include anyone. So I suspect that that
will be subject to some modification or discussion.

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

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

So with that I don't know if I move or if I
ask someone to move for it or is there any discussion
first? I am being told -- I am getting a little help here, but on procedure. Is there a -- I guess do we need to have it on the floor, the motion, and then we can ask me questions?

VOICE: You make the motion.

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

VOICE: Support.

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

VOICE: Support.

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

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

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

CHAIRPERSON KAKISH: Can you give us a
second.

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

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

MR. REISER: I would accept that friendly amendment.

VOICE: Put a second comma.

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

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

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

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

We don't want them looking at us, our witnesses or our defendants, our clients, correct, and
there might be a way to capture that sentiment in just
one of these items.

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

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

(Laughter.)

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

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

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

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

MR. WEINER: James T. Weiner from the 6th
circuit. I was doodling as we were talking and
MCR 2.516 (B)(1)(d)(i), seeking information about a
party, or witness or attorney involved in the case.
It's a very general statement, so they just -- and
nothing about the personal interests, just seeking
information.

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

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

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

            VOICE: Second.

            CHAIRPERSON KAKISH: Support?

            VOICE: Support.

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

            JUDGE KENT: Wally Kent, 54th judicial
circuit. Allen Lanstra in his letter, quite
appropriately I think, commented that (d) as
introduced seems to suggest that only electronic
research outside court would be prohibited, and I
would like to offer a friendly amendment that should
not -- I am going to need a little help, because I
didn't write it down -- attempt by any means to obtain
information about the case.
So strike the words use a computer, cellular phone, and so forth, and simply substitute the phrase "attempt by any means to obtain information about the case when they are not in court."

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

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

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

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

VOICE: That doesn't do it.

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

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

MR. REISER: I think the word capability.

JUDGE KENT: Or any other means.

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

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

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

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

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

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

MR. HAUGABOOK: Terrence Haugabook, 3rd circuit.

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

MR. REISER: Yes, ma'am.

CHAIRPERSON KAKISH: Is it supported?

VOICE: Support.

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

MR. HAUGABOOK: Terrence Haugabook, 3rd circuit. Looking at B(1)(a), if we could, I agree with everything that's been done thus far, but with
B(1)(a), instead of having discussed the case with others, including other jurors, how about just that they shall not discuss the case until deliberation begins? I think that's plain and simple, don't discuss it until deliberation begins. What's not clear about that, that you can't discuss the case before deliberation?

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

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

VOICE: No.

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

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

VOICE: The juror is reporting.


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

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

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

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

MR. STEMPIEN: Correct.

MR. REISER: Accepted.

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

VOICE: Support.

CHAIRPERSON KAKISH: Seconded.

VOICE: Second.

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

Yes, ma'am.

MS. WASHINGTON: Good afternoon, everybody.

Erane Washington, 22nd circuit. John, this is very friendly. I haven't come up with the language for it yet, but as you were speaking about Facebook and Twitter, you are using the term discuss, and I am trying to remember where that was. When Twitter and Facebook, what they are doing is actually disseminating the information, so I don't know if discuss covers what you are trying to protect against, which is putting a status post that says I am listening to a juror who is not credible. So maybe we
need some language in here that deals with the
dissemination of information about the case as well.

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

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

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

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

CHAIRPERSON KAKISH: A friendly amendment was
made to add the words "or disseminate" to, as
Mr. Reiser indicated, subsection (B)(1)(d).

Mr. Reiser accepted it as a friendly amendment. Is
there support?

VOICE: Support.

CHAIRPERSON KAKISH: Second?

VOICE: Second.

CHAIRPERSON KAKISH: Okay. Now, this
proposal as it now stands is open for discussion.

Yes, sir.

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

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

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

VOICE: Second.

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

JUDGE KENT: Wally Kent, 54th circuit. I
share the concerns that the gentleman from the 6th
circuit had regarding (B)(1)(a), discuss the case with
others. I would like to offer a friendly amendment, with other jurors or any other persons. I think that -- I would like to include the other jurors, just so they know they cannot do it when they, for instance, are waiting in the jury room or something going on during recess, but I would like to have something in there that makes it clear they can't discuss it among themselves or with anyone else. I am open to any suggested language, but I think "with other jurors" is not inclusive enough?

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

VOICE: Discuss the case with anyone.

JUDGE KENT: With any persons, including other jurors.

CHAIRPERSON KAKISH: Judge, that was already --

JUDGE KENT: Was it there?

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

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

CHAIRPERSON KAKISH: Thank you, Your Honor.

MR. PAUL: Rick Paul from the 6th circuit.
Could you scroll to (B)(1)(d). I have a proposed friendly amendment to that section. Where it says use a computer or cellular phone, et cetera, to disseminate or obtain information about the case when they are not in court, I would propose deleting the phrase "when they are not in court," because, as I understand it, there are concerns about jurors sitting in a jury room, at lunch, in a courtroom, wherever they may be in court, disseminating that kind of information. Therefore, I would propose that that phrase be stricken.

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

VOICE: I second.

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

VOICE: Second.

CHAIRPERSON KAKISH: Support?

VOICE: Support.

CHAIRPERSON KAKISH: Discussion on the proposal as it now stands?
MR. LESPERANCE: Kevin Lesperance, 17th circuit. I want to go back to the idea of disseminate. I like that idea, but I think that that word might be too complicated for average jurors, and I think I would propose a friendly amendment to change it to communicate, so communicate information or share or something along those lines. Share, I would like a friendly amendment --

MR. REISER: I would rather not go share.

MR. LESPERANCE: How about communicate?

MR. REISER: I would accept -- I have heard disclose. Anything other than tweet is fine with me, which is a verb for Twitter.

MR. LESPERANCE: Disclose.

MR. REISER: Disclose I would accept.

MR. LESPERANCE: I think disseminate is -- okay, thanks.

CHAIRPERSON KAKISH: The friendly amendment was accepted to replace the word "dissemination" with "disclose" and it was accepted. Support?

VOICE: Support.

CHAIRPERSON KAKISH: Second? Did I hear that?

VOICE: Second, yes.

CHAIRPERSON HAROUTUNIAN: Yes, thank you.
Discussion?

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

VOICE: Support.

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

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

VOICE: Second.

CHAIRPERSON KAKISH: I heard a second.

VOICE: Support.

CHAIRPERSON KAKISH: Okay. Thank you, Linda.

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

If we could just go back to (a). If your concern is that people are going to be blogging, tweeting, or what have you while the case is going on, I am concerned then about the part "until deliberation
Because, let's say they are deliberating over three days and one guy wants to go home and reach out every night and talk about the idiot that's holding up, you know, they are holding off 11 to 1 or something like that. So I have a concern right there about the section of "until deliberation begins." Maybe we could come up with something where until the case is over or until you your duties are concluded in this case, or something like that.

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

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

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

VOICE: This is pre.

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

MR. HAUGABOOK: What about the person who is sitting there waiting to be impaneled and hasn't been
sworn and they start doing these things beforehand because they are sitting there and they don't get picked that day, jury deliberations go over until the next day. You are talking about this rule here that it only comes into effect after the jury is sworn and before evidence.

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

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

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

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

MR. REISER: Yes, sir.

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

MR. HAUGABOOK: My thing is if that's your concern, all right, then even if there is an instruction that's going to tell them that, it's going to tell them that at the end of the case. What I am saying is day one, you have heard three witnesses, you go home. Boy, I am writing to my friends on Facebook. Let me tell you just what went on in court. Okay.

Deliberations have not begun. It's day one of trial, the conclusion of day one. You go home, you tweet to everybody, you reaching out to everybody. If this is a rule that you want to tell the jurors about, as long as they are going to be sitting on the case and serving until conclusion of the case, you just told them you can't discuss this until deliberations begin.

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

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

MR. HAUGABOOK: Delete it, yes.
MR. REISER: Is that your friendly amendment?

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

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

MR. REISER: They could deliberate.

MR. HAUGABOOK: Right.

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

CHAIRPERSON KAKISH: Support?

VOICE: Support.

VOICE: Second.

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

MR. HILLARD: Martin Hillard, 17th circuit.

I was just going to point out, instead of getting rid of "until deliberation begins" you needed to get rid of the comma after "jurors," because the phrase "until deliberation begins" modifies jurors, not others. So
it would be discuss the case with others, comma,
including other jurors until deliberation begins.
Thus implying they can discuss with other jurors after
deliberation begins but still they can't discuss it
with others at any time during the trial.

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

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

MR. REISER: Sure they can.

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

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

MS. LARSEN: Suzanne Larsen, 25th circuit. I
just want to make a comment about what the gentleman
over there was taking about a minute ago when he was
talking about jurors before they are sworn in or going
to jury selection. I mean, anything that goes on in
jury selection, I could go in the courtroom and
listen, even as someone who is not potentially going
to be a juror and I could share that information.
That's all public information. It's only when you get
into the witnesses that you are concerned with the
evidence as to what's going on and what they are
finding out on their own. So I guess I wouldn't see
that as a concern.

MR. REISER: About jurors?

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

MR. REISER: Except this --

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

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

MR. ARD: Josh Ard, 30th circuit. One of the
things that is little bit of a problem here, and,
John, I don't have a good solution to it, is that if
you have a potential juror who is sitting there and
doing this, that there ought to be some way of
catching that and say, fella, you are not on the jury.
And I don't know if anybody is asking, by the way,
have you been tweeting about your experience here,
have you been researching the people, the attorneys
who are involved in this case, because that would seem
to contaminate them as jurors, and they haven't gotten
any instructions that they are not supposed to do
that.

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

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

VOICE: Voir dire.

MR. ARD: Well, I mean, maybe not change the
Court Rule, but just give some instruction to, guys,
if you are going to be picked, you are not going to be
able to do this, and if you do, we find out about it,
you are not getting on the jury.
MR. REISER: Josh, I think what you are talking about is under (B)(1), the main part. Right?

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

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

MR. ARD: After the jury is sworn.

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

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

VOICE: Call the question.

CHAIRPERSON KAKISH: Somebody called the question.

VOICE: Support.

CHAIRPERSON KAKISH: Question is called, support.

Those in favor say aye.

Those opposed.

Any abstentions?

Therefore, the ayes carry. Therefore, the question is called, and now we are to vote on whether or not to adopt this proposal as it now stands with the various friendly amendments.
All those in favor say aye.

All those opposed say no.

Any abstentions.

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

(Applause.)

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

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

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

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

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

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

MR. BARRON: Good afternoon. I am last. I intend to be concise, and I hopefully am addressing a non-controversial issue. I am here as a representative of the Alternate Dispute Resolution Section of the State Bar of Michigan and, in particular, on behalf of two lawyers from Oakland
County, Bill Weber, who is the chair of the Effective Practices and Procedure Section of the ADR Section, and Marty Weisman, who was the ad hoc chair of the RUAA Evaluation Subcommittee.

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

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

So what is the RUAA? Basically it is a successor uniform act to the Uniform Arbitration Act, which is, I think, approximately 50 years old and is essentially the basis for the Michigan arbitration
provisions found in the RJA of this state, Judicature Act.

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

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

Since my knowledge of the act is limited, Attorney Kieran Marion from the commission in Chicago is here today to summarize the changes that are made in the act and answer any questions that the body may have for him. After that I will be moving the endorsement of the act.
MR. MARION: Thank you, Richard, and thank you all for the opportunity to be with you this afternoon. I am actually from Michigan, and it's always good to get back and see home.

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

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

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

As was mentioned, Michigan's version is found at the Revised Judicature Act and that's 600.5001
through 5025, if anyone wants to take a look at that.

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

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

This particular act actually took nearly five years for study and drafting to be completed. It was very carefully weighed and deliberated, discussed many
of the issues, and to make sure that the product that was produced was a very balanced and well crafted product.

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

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

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

The intent, as Richard mentioned, is to clarify the application, to clarify arbitration procedures in light of 50 years of case law and
various developments in the field of arbitration that have come up in the intervening years.

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

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

Questions of arbitrability, whether or not a matter is arbitrable, are clarified in the act. Substantive questions as to arbitrability are
designated for the courts, while procedural
arbitrability is for the arbitrator, such as whether
or not a condition for arbitration has been met.
Those questions are decided by the arbitrator.

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

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

But in its discretion those actions can be
consolidated. In the court's discretion, in the
arbitrator's discretion the claims can be consolidated
if they arise from the same transaction, common
issues, create the possibility of conflicting decisions, and if there is a risk -- the risk of undue delay essential for the process doesn't outweigh the prejudice of not actually consolidating those actions.

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

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

It gives the arbitrator the authority -- it clarifies they have the authority to issue subpoenas
for witnesses and production of records if necessary, to issue protective orders of disclosure of confidential information, so it gives them leeway to act to get the necessary information but to also preserve the confidential nature, if necessary.

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

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

If there are questions, we will be happy to
MR. BARRON: I would move the Assembly recommend or adopt the act --

VOICE: Second.

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

CHAIRPERSON KAKISH: Thank you very much.

It's seconded. Is there any support?

VOICE: Support.

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

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

I don't have any problem with stating separately, but if we are going to seek balance in
this, then if the arbitrator denies punitive damages
or exemplary relief in cases where punitive damages
are available under the claims alleged, we should be
asking for the same justification.

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

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

Next, going down further -- so I don't think
they should be allowed, consumer claims, employment
claims, tort claims, civil rights claims, in any
instance despite it being allowed in 1955.

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

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

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

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

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

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

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

CHAIRPERSON KAKISH: Mr. Ard.

MR. ARD: Yes, Josh Ard of the 30th circuit.
I second what the previous speaker said. Arbitration
is just fine when both parties give informed consent
to it, but what we have now is arbitration, even when one party to a contract had no idea that there was a compulsory arbitration clause buried in the boilerplate, and what happened was the Renquist court for the first time read a 1925 federal statute that mandated that. At the time when the original arbitration act was passed, the assumption was that people actually had to agree to arbitration, and when you look at what's happening now, even the card, the credit card that's offered by the State Bar has a compulsory arbitration provision in it.

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

I have had the same experience in looking
over other uniform laws. It takes a lot of work to 
look at them and see what makes sense for Michigan. 
And I certainly want to hear from attorneys whose 
clients are most harmed by compulsory arbitration, 
employment law, consumer law, and see what they say 
before I would agree to supporting this as is.

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

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

I would suggest that we defer voting on this 
until an actual bill is introduced and more sections 
have an opportunity to weigh in. If we have to make a 
vote today, I am not willing to buy a pig in a poke,
and I would have to vote no.

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

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

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

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

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

CHAIRPERSON KAKISH: Yes, sir.

MR. LARKY: Madam Chair, my name is Sheldon Larky. I am with the 6th circuit. I am going to vote in favor of this resolution. As everyone in this room probably knows, Michigan became a state in 1837, and in 1838 we enacted our first arbitration statute. We have had arbitration in this country well over -- well every since our state has been involved as a state.
The reason I am in favor of this is two-fold. I am a full-time ADR provider. I like the idea that there is going to be uniformity in those jurisdictions where I may be arbitrating and have the ability to know that I have the proper authority to do it.

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

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

CHAIRPERSON KAKISH: Thank you. Yes, sir.

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

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

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

CHAIRPERSON KAKISH: Yes, Judge.

JUDGE KENT: Wally Kent, 54th circuit. I am
not sure I see any merit for being consistent with
everybody else. Why should we be the followers? Why
can't we be the leaders and table this motion as
suggested by Mr. Ard until we have a chance to pick it
apart. We can be in the forefront of defending the
rights of the people whose rights would be trampled if we were to adopt this resolution.

CHAIRPERSON KAKISH: Is that a motion, Judge?

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

VOICE: Second.

VOICE: Support.

JUDGE CHMURA: Let me make a point of clarification.

MR. KRIEGER: Point of order, Madam Chair.

JUDGE CHMURA: No, wait.

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

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

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

What you can do, if you want to put this off to another time, is to make a motion to table to a definite time. But there is a problem with that, because under Robert's Rules of Order, you can only do
that if we meet quarterly. We don't meet quarterly.

We only meet twice a year.

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

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

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

VOICE: Support.

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

JUDGE KENT: Thank you. I accept that
suggestion.

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

CHAIRPERSON KAKISH: Support?

VOICE: Support.

CHAIRPERSON KAKISH: Any discussion?

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

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

VOICE: Call the question.

CHAIRPERSON KAKISH: Pardon?

VOICE: Question is called.

VOICE: Question.

CHAIRPERSON KAKISH: Question, you may.

VOICE: The question has been called.

VOICE: Is there a second?
VOICE: Second.

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

VOICE: Yes.

CHAIRPERSON KAKISH: I need a second for that.

VOICES: Second.

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

All those in favor say aye.

All those opposed.

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

All those in favor say aye.

All those opposed.

Any abstentions?

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

The last item on the agenda is the adjournment, but before we go, there are three
housekeeping matters. One, the attendance slips that you need to sign in should be distributed to you, and a reminder for those who need to fill out their expense vouchers as well. Anne Smith will be providing that for you.

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

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

(Proceedings concluded at 2:45 p.m.)
STATE OF MICHIGAN  
COUNTY OF CLINTON  

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

May 12, 2009
Connie S. Coon, CSR-2709
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