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 9, 2011, at the hour of 9:30 a.m.

AT HEADTABLE:

VICTORIA A. RADKE, Chairperson
STEPHEN J. GOBBO, Vice-Chairperson
DANA M. WARNEZ, Clerk
JANET WELCH, Executive Director
HON. JOHN CHMURA, Parliamentarian
ANNE SMITH, Staff Member
<table>
<thead>
<tr>
<th>CALENDAR ITEMS</th>
<th>PAGE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Call to order</td>
<td>3</td>
</tr>
<tr>
<td>Certification of quorum</td>
<td>4</td>
</tr>
<tr>
<td>Adoption of proposed calendar</td>
<td>4</td>
</tr>
<tr>
<td>Filling of vacancies</td>
<td>4–8</td>
</tr>
<tr>
<td>Remarks by Chairperson Victoria A. Radke</td>
<td>8–13</td>
</tr>
<tr>
<td>Remarks by President W. Anthony Jenkins</td>
<td>13–20</td>
</tr>
<tr>
<td>Remarks by Executive Director Janet K. Welch</td>
<td>20–27</td>
</tr>
<tr>
<td>Demographics &amp; Economics of Law Practice Survey</td>
<td>27–40</td>
</tr>
<tr>
<td>Results present by Anne Vrooman</td>
<td></td>
</tr>
<tr>
<td>Public Policy Update by Elizabeth Lyon</td>
<td>40–47</td>
</tr>
<tr>
<td>ABA House of Delegates Report by Vanessa</td>
<td>47–49</td>
</tr>
<tr>
<td>Peterson Williams</td>
<td></td>
</tr>
<tr>
<td>Approval of 2011 Award Recipients</td>
<td>49–53</td>
</tr>
<tr>
<td>Recommendation to Add a New Representative</td>
<td>54–59</td>
</tr>
<tr>
<td>Assembly Standing Committee - Past Chairperson's</td>
<td></td>
</tr>
<tr>
<td>Committee</td>
<td></td>
</tr>
<tr>
<td>Consideration of Legislation for the Uniform</td>
<td>59–91</td>
</tr>
<tr>
<td>Collateral Consequences of Conviction Act</td>
<td></td>
</tr>
<tr>
<td>Consideration of Ensuring Equal Access to Court</td>
<td>91–98</td>
</tr>
<tr>
<td>and Administrative Proceedings</td>
<td></td>
</tr>
<tr>
<td>Adjournment</td>
<td>99</td>
</tr>
</tbody>
</table>
Lansing, Michigan
Saturday, April 9, 2011
9:30 a.m.

RECORD

CHAIRPERSON RADKE: The Representative Assembly meeting will now come to order, please.

Briefly, before we start the official business that's on the agenda, I am hoping that everybody noticed this beautiful trophy up here. It is my great pleasure to announce that the Board of Commissioners and the State Bar staff retained the bowling challenge trophy, keeping it away from the Young Lawyers Section for another year. May we have a round of applause for the Board and staff.

(Applause.)

CHAIRPERSON RADKE: Oh, and, by the way, we raised $350 for Access to Justice.

(Applause.)

CHAIRPERSON RADKE: You are aware of John Chmura, our parliamentarian who will be presiding over the procedures we will use today.

The first thing I want to do today is to thank you all for coming. I want to move this along as quickly as we possibly can. And for those of you who don't know, Dana Warnez to my far left, our clerk;
Steve Gobbo, our vice chair; John Chmura, our
parliamentarian; and Janet Welch, Executive Director
of the State Bar; and of course Anne Smith, our staff
person for the Representative Assembly.

I would like to know from Ms. Warnez whether
or not we have a quorum present.

CLERK WARNEZ: Yes, we do.

CHAIRPERSON RADKE: Thank you. Having a
quorum present, we would now entertain a motion for
adoption of the proposed calendar, Mr. Blau.

VOICE: So moved.

MR. BLAU: Good morning, Madam Chair,
Mike Blau, 6th judicial circuit. I would move for the
adoption of the proposed calendar.

VOICE: Support.

CHAIRPERSON RADKE: Thank you. Any
discussion? None being heard, all in favor.

Any opposed?

Thank you, we will move on.

Mr. Jeff Nellis, I will entertain a motion
for filling the vacancies.

MR. NELLIS: Good morning, everyone. Once
again I am here to fill our vacancies. We have been
really lucky the last few years. Our goal always is
to have 100 percent participation in this body. By
that I mean all of the circuits have a representative. And we have always felt that by having the entire group, all the circuits filled, that it really adds a degree of legitimacy to our body, and, once again, I am very pleased to announce that we have managed to fill all the vacancies. It can be kind of a time consuming and difficult prospect because we have people move or new jobs or that type of thing, so we get to a point where sometimes we have to make some appointments at the last minute.

But, once again, my committee, who I am going to introduce in a minute, has been wonderful in helping and basically combing the regions to find people who are willing to do this. And I just want to say with the new folks that we have coming in today, I really appreciate you being here, and I think you are going to find that your time on the Assembly is very worthwhile, so I wish you the best of luck.

Before we get started, I do want to list, and if I could have you stand, the members of the committee. First is Kathleen Allen, 17th circuit. Hold the applause till the end. Eilisia Schwarz from the 28th circuit. Anne McNamara from the 47th circuit. John Mills from the 6th circuit, and Lanita Haith from the 6th circuit also. Give them a
round of applause.

(Applause.)

MR. NELLIS: Also, I personally would like to thank Victoria, Steve, Dana. We had a lot of phone conferences, and they were involved in every single one of them. Anne Smith. Nobody really understands or appreciates how much time and effort Anne puts in to making these meetings come together, so give them a round of applause.

(Applause.)

MR. NELLIS: At this time, and you should have this in your packet, but at this time I am going to read the new proposed members. From the 6th circuit Dennis Flessland of Farmington Hills. Also the 6th circuit, Alana Glass from Auburn Hills; 6th circuit, Ava Ortner from West Bloomfield; 12th circuit David Mechlin from Houghton. And, David, thank you very much. It is difficult -- for those of you who know Michigan geography, Keweenaw Peninsula, way up there, finding somebody to come to these meetings is a bit of a task. We appreciate all of you, but this is an interesting one to try and get filled.

14th circuit, Dave Kortering of Muskegon; 17th circuit, Victoria Vuletich of Grand Rapids; 19th circuit Kathryn, or as I know her, Kate Glancy,
Manistee; 22nd circuit, Elizabeth Jolliffe from Ann Arbor. I know she is an old member who is coming back. A returning member.

29th circuit, Kristen Krol from DeWitt; 30th circuit, Kimberly Breitmeyer of Lansing; 31st circuit, Daniel Damman of Port Huron; 31st circuit, T. Allen Francis of Port Huron; 37th circuit, Alisa Parker, Battle Creek; 38th circuit, James Barlett, Monroe; 42nd circuit, Joseph Sepsey, Midland; 46th circuit, Everette Ayers of Grayling; 48th circuit, Matt Antkoviak from Allegan County; 54th judicial circuit, John Bishop from Vassar; 56th judicial circuit, Jessica Fox from Eaton Rapids.

You see we had a lot of them to fill this year. What I tell them also is don't forget to run during the elections, because what ends up happening and why we oftentimes have so many circuits to fill is people forget to run.

At this time I would entertain a motion to formally appoint the named individuals I have just read to be approved as members of the Representative Assembly for the respective circuits. So I will entertain that motion at this time.

VOICE: So move.

CHAIRPERSON RADKE: Support?
VOICE: Support.

CHAIRPERSON RADKE: Any discussion? All in favor.

New members, you may now take your seats, your circuits. Thank you.

Thank you, Jeff. Thank you, committee. Just a little side note of interest, we had someone who resigned this last week, and that seat was filled. So you know how hard Jeff and his committee worked.

Most recently you all received an electronic survey regarding the procedures of the Representative Assembly and about the Representative Assembly calendar. We were looking for input from our members as to what they wanted to see at these meetings.

First of all, I want to thank everybody who responded to that survey, and I now want to give you a little overview of the results.

The majority have asked and want information from the ABA and the State Bar of Michigan public policy people to present their reports in electronic summaries, and we are going to be working on that to make that happen. They want us to continue the reports and comments from the president, the executive director and the R.A. chair to be made in person.

Thank you. And the majority overall like the way
things are being done, and so we will continue that, but we are going to tweak it a little bit.

We not only looked at your answers to the survey questions, we looked at those substantive comments that you made, and, as a result of that, in the past week you have all received an electronic newsletter from Janet Welch, and I have heard some favorable comments about that. I would like to continue to receive feedback from you about that, if you would like that information flow to continue.

Also, we are going to work on providing you with more info electronically based on the comments and, again, please provide us with some feedback. Email me, email Janet Welch, email Anne Smith. Let us know your comments about receiving information in this regard. We think that it will be very helpful to you and provide you with additional information to provide to your circuits and your Bar members.

There are changes in law practice that are coming at a faster pace, and so we are going to strive to provide you with some timely information between meetings to help you.

As you are now aware, the State Bar of Michigan has in excess of 41,000 members. In case nobody did the math, except me, that means that you
each represent about 275 of your colleagues when you come and sit in this Assembly. Now, I know that doesn't work out by circuit, but I am just letting you know that I want you to keep that in mind as you debate and as you cast your votes for the proposals that will be presented today in a little while, as well as in the future.

I also want to remind you once again that this is the policy-making board for the State Bar, and what you do has long-term implications for the State Bar and how things are handled down the road. And if you don't think that that's the case, please come and attend a Board of Commissioners meeting, which you are all more than welcome to attend, and you will see that we have debates about whether or not things should come back to this Assembly because the board is looking at maybe going in a different direction and can't because we have set a policy that says they can't go in that other direction.

Please fill out your R.A. committee preference sheets. Those are due shortly. I will remind you again that if you do not fill out a preference sheet, you will not be considered for an appointment to a section or a Representative Assembly committee.
Something new we started last year was -- I am working with Julie Fershtman. Julie, I would like you to stand up so everybody knows who you are wherever you are. There she is, back there.

Julie is the incoming president of the State Bar, and wherever possible we are going to try and appoint an R.A. member to the State Bar Committee. So that means you also have to fill out that electronic selection form you got from Julie Fershtman about two weeks ago. So please do that if you are a Bar junkie like some of us are and you want to continue helping us through committee work.

All right. If your tenure as an R.A. member is up or you were duly appointed to fill a vacancy, you have to fill out another petition and turn it in by April 30th, otherwise this may be your one and only meeting or you will be done in September. So please get those petitions in as quickly as you possibly can.

You are going to hear from Bar staff today about the Economics of Law Practice Survey, the reports and recommendations of the Judicial Crossroads Task Force. I wanted to remind you we have a few copies of each of those reports on the table outside this room, but they are also available on the State Bar website, and I want to remind you please go
to the website. You are going to find a whole lot of information there that will help you do your job as a Representative Assembly member.

In addition, I would like to remind you that you should take all this information back to your circuits, tell them that they can find more information on the State Bar website, and while you are there, remind them that we have services and programs that can help them at their desk. And the State Bar has been striving to do this. For example, there is Casemaker. It's free. Your Bar dues at work. Use Casemaker. It will help you locate those cases that you are looking for. It's very easy to use. It's very fast. That's just one of them.

There is also the Career Center that just got started, so if you are looking for a change in career or know somebody who is looking for a job, send them there to the website or have them call a staffer at the State Bar to talk to. There is a lot of information, there is a lot of help out there. You need to get that word out to your local Bar associations.

I also want to take this opportunity, and I know that we had a complaint about this on the survey, to thank all of the committees that work so hard to
put these meetings together for you. Now, I think it's important that we recognize those Representative Assembly committees for all of their hard work. I am not going to take the time to name them all today. You know who they are. There is a list in your book of who those committee chairs are, or on the website. And like Jeff, whose face you see frequently because of what he does on the Nominating and Awards Committee, and Mike Blau, you know who those people are, but there are other committee members that you don't see that I talk to, Steve talks to, Dana talks to on a regular basis who work so hard to put this meeting together and bring it to you. Please take an opportunity to thank them personally. I would like us all to thank them today for all their hard work.

(Applause.)

CHAIRPERSON RADKE: I think that is all of my remarks. I am going to now turn this over to the next person on the agenda, and that will be our Bar president, Anthony Jenkins. Tony, you are up.

(Applause.)

PRESIDENT JENKINS: Thank you, Victoria. If any of you are not able to hear me, just raise your hand a little bit and I will try to project. I have got a little frog in my throat this morning for some
Well, thank you all for that warm reception, and thank you also for allowing me a few minutes on your busy agenda to greet you and to make a few remarks.

To Victoria Radke, the Chair of the Assembly, and to the other officers, to other dignitaries who might be here and to my fellow Bar leaders, I bring you greetings on behalf of the Board of Commissioners and the officers of the State Bar. I would like to just leave a couple thoughts with you this morning.

As many of you know, this Assembly was created in 1972 in recognition of the fact that the membership of the State Bar of Michigan increased significantly between 1935 when it was formed and 1972 when this Assembly was founded.

In 1935 the State Bar had a membership of just over 4,200 members. It was represented by a Board of Commissioners of 21 individuals. By 1972 the membership of the State Bar stood at nearly 12,000 with a Board of Commissioners of only 23 people.

To improve the proportion of members who may actively participate in policy-making decisions, the Board of Commissioners requested and the Supreme Court created this body to ensure that a reasonable
representative body was maintained as membership of the State Bar grew. Since 1972 the Assembly has grown from 127 members to 150.

Perhaps more important than the sheer increase in size of the Assembly over the years has been the diversity in its composition and the diversity of opinions, viewpoints, experiences and talents and, of course, geographic representation. This is the type of diversity that makes the Assembly a strong policy-making body. It is one that makes our Bar association stronger.

The membership of this body has included young lawyers who bring fresh ideas and energy so vital to the long-term viability of this Assembly, as well as our Bar association. It has included seasoned lawyers who have experience, talent, and know-how to provide sage guidance in the formulation of policy and more recently whose talent we have been able to tap in mentoring our younger lawyers for important community service projects, such as mentor/mentee match programs paired or partnered with legal aid programs.

There has been ethnic and gender diversity, and I see a lot more of that here today than of course was the case when this Assembly was founded. And there has been participation by persons with
disabilities and I presume by individuals who are members of the LGBT community.

Just as the Board of Commissioners sought to create a truly Representative Assembly in 1972, it certainly has become that in the broadest sense of diversity. It is important that we as leaders of the Bar continue to work towards a more diverse and inclusive profession, one that is open rather than closed or reserved for a few or the privileged, one that allows access, opportunity for development and success without regard to color, gender, disability, nationality, sexual preference or any other factor, frankly, that has nothing to do with talent, industry, and character.

While we made great strides towards being a more diversely inclusive profession, the latest studies show that we have more work to do. Attorneys of color are underrepresented in our profession. And our profession lags far behind other professions, such as medical doctors, accountants, college professors and the like, in terms of the percentage of members who are racially diverse.

Women continue to be underrepresented in leadership positions in large law firms, corporate law departments, judiciary and the like, and in too many
work places women continue to face glass ceilings in terms of advancement or compensation.

Too many work places still lack culture that are not supportive of individuals with nontraditional sexual or gender preferences or where persons with disabilities are not generally afforded equal opportunities or, in fact, where women are penalized because they elect to raise families during the course of their professional career.

As we continue to confront these and similar challenges on the diversity and inclusion front, I want to thank and salute our members across the state who have over the years elected the persons who sit in this Assembly and have done so not only with the view of making sure that the most qualified, deserving persons are here as policy makers, but who have done so in a manner that has yielded the diversity that I have just talked about.

If we demand that other professions and sectors of our society be diverse and inclusive in the true tradition of equal justice and equal opportunity, then it is imperative that we demand the same of ourselves. We must walk the walk and not really talk the talk.

You can help in that regard. On the State
Bar website you will find a pledge in support of 
diversity and inclusion as adopted by the Board of 
Commissioners, and you will find commentary that 
explains the development of this initiative based on 
work done by the Bar association in the past, 
particularly in terms of fighting against bias, racial 
bias and gender bias in our court system.

We are asking you to consider becoming a 
signatory to that pledge, and in doing so not only 
express your commitment for equal opportunity, equal 
access and the like, but to become one of the persons 
who will help us develop assessment tools and in doing 
so try to position the Bar association to really be a 
clearinghouse for best practices in diversity and 
 inclusion in our profession. If you are successful in 
this effort, it will be the first time that we have 
been able to create that type of facility for the 
legal profession in Michigan, so I urge your help and 
support.

Finally, I would be remiss if I didn't take a 
moment to thank you all for the great work that you 
are doing here in this Assembly. Some of that you, of 
course, will undertake today and for the rest of the 
Bar year. I would especially like to express my 
thanks for your leadership on the attorney
solicitation proposal, amending our Court Rules to
prohibit attorneys from soliciting clients any sooner
than 14 days after the filing of an action to protect
the person filing, particularly in cases of domestic
violence, and thank you also for your leadership and
your fine work on the voluntary pro bono standards,
which of course our Supreme Court recently adopted.
In my judgment this was monumental, particularly in
today's devastating economic environment which has
really catapulted the legal needs for low income and
poor families and individuals far beyond the resources
that are available to them.

Nearly 50 percent of Michigan's population
that qualify for legal aid assistance are simply not
going it. They are being turned away because there
is not the resources to meet their needs, so adopting
these new voluntary pro bono standards I think will
help address the gap in justice, including handling
basic problems, such as people being able to stay in
their homes, keep their families intact, and for
veterans who might otherwise be denied benefits.

Finally, thank you for your leadership work
on the equal access to state-issued identification,
which is a proposal to support legislation to
facilitate access to vital documents and public
service for all Michigan residents who are legally present in the United States. Doing so will assist those who need access to our court systems, notary services, and other public services where proof of identity is required.

I could go on talking about the remarkable work that you do here in this Assembly, but I respect your schedule. I will simply conclude by saying that our Bar association and our profession owes you a great debt of gratitude and thanks for all that you do and the manner in which you do it. So thank you once again for all of that, and thank you so much for allowing me a few minutes on your agenda.

(Applause.)

CHAIRPERSON RADKE: It's been my great pleasure to be chair during the year when Tony Jenkins is president of the State Bar because I have the opportunity to tell everyone that our Bar president, both metaphorically and actually, is head and shoulders above every other Bar president.

Next we are going to hear from our executive director, Janet Welch. She is going to bring us up to date on what's happening in the State Bar.

EXECUTIVE DIRECTOR WELCH: Suddenly I am very self conscious about only being five-six.
Good morning. I want to thank you all for the gift of your presence this morning. I know it's not sunny out there yet, but it is April, and it is a Saturday morning, and as our president has just told you, the work that you do is of such great benefit to your fellow lawyers, they owe you a huge debt of gratitude. As a lawyer, I want to extend my thanks to you personally.

I did take a look at the survey about your preferences in terms of the agenda, and I am cognizant of the fact that a majority of you want to preserve this segment of the agenda where the executive director speaks to you. Written communication is my favorite form of communication, not just because I can do it in blue jeans and my bare feet, but I feel more capable to perform that than public speaking, but I am happy to do what your capable leadership asks me to do, and I am pleased to be here this morning.

But I want to say a few words to the significant minority of you who thinks that this shouldn't be part of the program. I am a member of the House of Delegates of the ABA, and when the executive director of the ABA speaks to the delegates, typically late in the afternoon, that's the point at which I usually check my Blackberry and go get a cup
of coffee. So if any of you want to do that, I have no right.

I want to talk to you this morning about one very important public policy issue that is going to be coming into prominence between now and the next time that I speak to you in September, and that is the issue of judgeships and the number of judgeships that are appropriate in the state.

I think for the first time in the history of Michigan we are facing a net reduction in the number of judgeships in the state, which is obviously a very momentous occasion and a very -- it's going to be a somewhat anguished process, but it's very important that we do it right, and I think that from the work of the State Bar and the work of the judges association that the foundation has been set for that to happen and for it to happen in the right way, and as that happens we all need to be advocating that the savings that comes from right-sizing the judiciary, having right resources in the right place given where the caseload is in the state, that those savings be applied to help make the justice system better and the court system run more efficiently and more effectively for the public that we all serve.

So here is what I would like to do. I would
like to give you the basics of the arguments that we have been making about how to downsize or right-size the judiciary, because they are not obvious arguments, and, while we are prevailing at the highest policy levels, the chief justice has expressed his strong advocacy for resizing the judiciary by the principle of attrition. The governor is on board for doing it in the fashion that we are advocating and the judges association are advocating.

It's not an obvious argument, and I think you will find yourselves in conversation with members of the public who say, if the statistics show that we don't need as many judges as we have in a particular court, we ought to just eliminate those judgeships at the first moment that we are able to do so under the constitution. I want to arm you with the arguments why we need to do it in an orderly fashion by attrition, and by attrition I mean that when the statistics show that the number of judges in a particular jurisdiction is greater than the number that is needed to handle the caseload in that jurisdiction that a judgeship in that jurisdiction will be reduced at the point at which there is a vacancy, not at the end of the first term that arises in the election process.
So that the agreement is and the principle of attrition is that you don't eliminate a judgeship in mid career or prematurely for a judge. But you also say that among the judges who are on the bench right now, if a judge, when that judge cannot run again because of age limits, that's the longest that judgeship is going to go.

Now, instinctively you think that means that we have to maintain judgeships longer than they are needed and perhaps for years longer than they are needed. So here are the five arguments I want to give you to say.

First of all, as is the case with this body, we are all getting older and we are all approaching retirement, and it's particularly true on the bench that we have a graying of the bench, and we are going to have way more retirements happening in the next decade than the number of judgeships that we need to be downsizing, so we don't need to force the -- we do not need to artificially cut off a judicial career because we have so many retirements that are just going to happen, and those vacancies are going to occur naturally in that way.

Also, the judges are united on the subject, and they will be supportive of broader changes that
will be important to making the court system more efficient and effective if they can be assured of the reductions by attrition and not by fiat at the end of an election cycle.

Finally, and this is one of the arguments that is also not obvious but is part of civic education about the judicial branch of government. Judges are State officers. They are not local politicians. They have a characteristic of local politicians, but they are not local politicians. They are State officers. So that if the amount of work that needs to be done in a particular jurisdiction is not enough for all of the judges in that jurisdiction, the constitution allows the excess capacity in that jurisdiction to be used to help the entire court system.

That means that we have judges, for example, if we have a judge who is an outstanding leader in terms of drug courts and can help fellow judges, train fellow judges and help disseminate best practices in terms of that, that judge can be assigned anywhere in the state, and we can, therefore, use that excess capacity that happens to be in that particular place more effectively for the whole system.

So when you get into a discussion with a
member of the public or a relative who says, you know, why are we paying for this unneeded capacity, it isn't unneeded at this moment. We need to be remaking the court system more effectively, and we will use all of those resources.

The fourth argument really is an elaboration on the point that judges are State officers, they are not local officials. Judgeships are not political offices. They are a different path than are taken by other public officials. If you take a judgeship, you have to give up a legal career, you have to cut off your clients, you have to cut off the path of your business career in a way that no other elected official has to do. So it is -- so it's not inappropriate to say that we are going to respect the career path that judges are on and let them finish out their careers and not cut them off arbitrarily at the end of a judicial term.

And, finally, and I think perhaps this is the most important argument and it's one that lawyers understand and the public doesn't, and I want to encourage you to use this argument as a way to educate the public. And that is that if we did not have the attrition principle at work in how we go about right-sizing the judiciary, there is going to be in
the legislature hand-to-hand combat over each judgeship, and it will not be based on principle, it will be based on politics, and that will for the first time politicize the judiciary in a way, and the public perception of the judiciary, in a way that has never existed in Michigan before.

I think all those arguments together have been why at a high level the leadership has said this is the way to go about the change that we are about to undergo, and I wanted you to be armed with those thoughts going into the next six months because there is going to be, I think, a really active public conversation about that change.

And that is really all I wanted to leave you with this morning. Again, I want to thank you for allowing me to speak to you and I give you my best wishes for a successful morning.

(Applause.)

CHAIRPERSON RADKE: Thank you, Janet, and for those of you news junkies out there, Janet's remarks are even more pertinent in light of the fact that two Court of Appeals seats are going to remain empty, and you can see where and how that's trending.

Now, I would like to introduce Anne Vrooman. Anne is going to talk to you about the Demographics
and Economics of Law Practice Survey results, as well as a few other things, and I am happy to turn this over to Anne. She has got some very valuable information for you.

MS. VROOMAN: Thank you, Victoria. Good morning, and thank you for letting me be part of the agenda today.

The topic says that we are going to talk about Demographics and Economics of Law Practice Survey. In the interest of time, what I would like to do is just give you a couple of real basic top line things about the demographics, but then move to the economics of the law practice survey results.

You might recall for those of you that were here last year, we were planning the survey at that time, and we got a little bit deeper into what the demographics are of the Bar overall, and now I am happy to be able to come back with that survey completed and share with you what the results have been that we are continuing to work on.

Overall the demographics of the Bar, as you have heard Tony say, we have more than 41,000 members total, and that includes a pie that sort of keeps growing. The way that our membership really is tracked, and you stay in the membership track forever
and sort of move into different segments.

In terms of active Michigan residents, we have about 36,000 plus of that number, and of that number about 50 percent are in private practice and the remaining 50 percent are something else. That really helped us when we thought about how to design the survey. And backing up, let me just give you a little bit of background about the Economics of Law Practice Survey itself.

The Economics of Law Practice Survey has been conducted by the State Bar for more than 30 years every three years. The time before this time we actually tried a different format, which was using an online sort of always moving, result-oriented, interactive format. It was somewhat successful, but because of the challenges that we found with lawyers wanting information and not being able to get what they were looking for, it turned out to be somewhat of a frustrating experiencing.

We started gathering practitioners and people throughout the profession to tell us how that information is used and so that we could design a survey and an information gathering and result process that was most helpful.

Also during that time the Michigan
Supreme Court in their Smith V. Khouri decision referenced the Economics of Law Practice Survey as a key resource that's used by courts, attorneys and then considered by courts and attorneys asking for attorney fees. We then created a special, really to help us think through what is it the court says and how we could get closer to serving the needs of both the courts and the attorneys. So with all of that information we totally revamped the survey for 2010.

A couple major things, what we decided to do was split the survey and actually conduct two separate surveys, so one survey was conducted for private practitioners and another separate survey for nonprivate practitioners. That gave us the opportunity really to dig in and dig deeper into the field of practice area that Smith V. Khouri talked about.

Another real key change that we heard, we know that a lot of attorneys practice in several circuits. In previous surveys the way that the information was analyzed was really by office location. We collected information about office location and lined people with what they reported that way.

What we did this time was say, you know,
asked on the survey which circuits that attorneys do at least 30 percent of their work in. So, for example, if someone has cases in both Wayne and Macomb County, the information that we gathered from that attorney would fill both of those buckets, and that gives us a lot more detailed information and sorted that information so that you have available for all of those circuits.

The other thing that was a real difficult piece of that, we know that in order to get the depth of information it really requires a lot of participation, so we really used all of our communication vehicles to try to encourage people to take the Economics of Law Practice Survey.

I recall last time speaking to this body and encouraging you all to do your part as a leader in the Bar communities where you are to encourage people to take the survey knowing the importance. We were much more successful than we have ever been in the past and, in fact, about three times the number of participants participated in the 2010 Economics of Law Practice Survey than in the previous survey, so that's really a success.

With all of that, then let's take a look at what some of the results are. You have the handout
that accompanies this, and we will breeze through a lot of this, but what I would urge you to do is to spend some time looking at both the live presentation here. We also have available outside some copies of what the preliminary report or the first report was from the survey outside this room. If they are not there, it is also available online on the Bar's website, so feel free to do that. And if you are attending something and you want actual printed copies, feel free to contact me, and I will make sure that you get them.

So, again, to that sort of demographic piece, what you are looking at on the first slide there is the fact that you can see that the Bar overall has that sort of 50/50 split or nearly 50/50 split of private versus nonprivate. When you look at the survey responses, what this shows is in terms of overall taking the two surveys, a significant number of private practitioners took it. When we lay that against what people report, the actual participation rate then by private sector was up 15.3 percent, which is really a great response. We are pleased about that.

Next slide is a comparison just overall of income for private and nonprivate practitioners. And
what that slide really sort of points out is for nonprivate practitioners income is higher sort of going through really to about the 75th percentile, so you can see that the median income is actually a little bit higher for nonprivate practitioners than for private practitioners, but then it slips at about the 75th percentile where you have private practitioners with greater income.

Some of that, you know, I think if you stop and think about it, just makes sense in that in the nonprivate you have stable income or salaried type positions that occur sort of all the way through, so you have got a lot of the government jobs, including government judges, federal judgeships, state judgeships that are there all the way through, and that's part of what it is, so the range is narrower than for nonprivate as to private.

In the next slide it shows the distribution according to the type of practitioner. As you can see, there are very wide ranges in that, and then the next one shows the median income for private practitioners by the type, so it's just sort of stacking.

The next slide is the distribution of nonprivate practitioners with the percentiles showing
the ranges, and, again, you can see the impact of
fixed salary positions and how that affects the
percentiles there. And then this is the median income
for various categories of nonprivate practitioner.
Again, you see sort of the distribution in that.

The next is about billing rates, and this
tracks the billing rate for private practitioners,
again by the type of practitioner that they are, and
then the next slide is the hourly billing rates for
private practitioners, again by the type of
practitioner that they are.

In terms of just, again, back to the
demographics, as I am sure many of you know, solo and
small firm are the largest categories of practitioners
that we have in terms of type. When you take, again,
that 50 percent being in private practice, of that 50
percent about 38 percent are in private practice, so
that's a pretty significant number. And we use that
information really in thinking about the Bar services,
who are the members, what are their access points to
resources that they have to manage their practices,
and all of that helps us align those numbers with the
services that we try to develop.

The next slide, this is the hourly billing
rate and income for private practitioners by years in
practice, and as I am sure it's not surprising, there is a correlation between years in practice and the income and billing rates. You will see that both of those track in an upward motion, and billing rates really stay the same throughout. At about 30 years in the income level you see that start to decline, and probably what that means is someone is starting to take less work and wind down their practices a bit.

This is median hourly billing rates for private practitioners, again, by years in practice, and then correlation by firm size. Another correlation is that it appears that there are higher billing rates the larger the firm size.

This is median hourly billing rates for private practitioners by firm size where we just again charted out so that you can see the visual picture of that.

And then this is median hourly billing rates and income for private practitioners. You can see that this was the trend, the difference between the last survey and this survey, and what's interesting and probably not surprising given the economic situation is that billing rates have continued to increase from the last survey to this survey but actual income has declined, and, you know, that could
be because there is less work, so attorneys are
getting paid for less work perhaps, less work
available, but that's a trend certainly that we are
paying close attention to.

There are other things that we asked in the
survey, and we are still compiling results, and I
wanted to give you some of those results. The first
thing is the median number of hours in an average work
week, and again this is by nonprivate practitioner and
private practitioner. Pretty close, but you can see
that there is a little bit of a difference there in
those numbers. Forty-five for nonprivate and 49 for
private practitioners.

Next is private practitioners and their
satisfaction with practicing law, and, as you can see,
74 percent said that they either get a great deal of
satisfaction or enough satisfaction from practicing.

In terms of private practitioners and their
view of the current economic conditions, I am sure
that it's no surprise that 53 percent reported that
economic conditions are worse than compared to prior
years. Some of the comments that we picked up in the
survey, just open ended comment, lots of them about
people really struggling and that, you know, that this
period is the worst that they have seen it for many in
their career.

Perception of current workload, comparing perceptions of private and nonprivate practitioners, 39 percent of practitioners feel that their workload is insufficient compared to eight percent of the nonprivate practitioners.

And, finally, law school debt continues to be of great concern and expressed both in this survey and what we learned in the member survey. The median law school debt is $75,000 for private practitioners and $80,000 for nonprivate practitioners with monthly debt payment in the 400 and $465 a month range.

So that's a look at some of the things that we are learning. The full report that would include all of this information, as well as the information that we gathered about the law practice or law office management pieces, we are completing now. I expect that it will be complete within the next couple weeks. We will announce when it is finished, and it will be available on our website, so I would urge you to pay attention and go there.

We are using this information already. Like I talked about in terms of, you know, recognizing sort of where the challenges are. We are also conducting right now the member survey, and you should have all
gotten an email a little more than a week ago asking for your participation in that survey. If you have not completed it, I would urge you to please complete it. It takes about 15 to 20 minutes, but we have not done one in about ten years, so if you could help us with that, and for all of the places that you connect in your communities, if you could encourage participation in that, that really helps us with all of this information get a better picture of sort of what's going on on the ground and how the Bar can build services to help.

Like I said, we are already using this information. Coming Monday is the Justice Initiatives Summit. The focus of that summit will be attracting the next generation of leaders. So, you know, the challenges that we recognize that people are feeling in the financial pressures, the time pressures, those things are all things that the Bar really needs to think about being really a very -- relying on a very heavy volunteer load in terms of working like many of you are in terms of giving up Saturdays but understanding what the challenges are to that.

I am happy to take questions, but I am also sensitive here to the time. Are there any questions?

MR. ULRICH: Anne, is there anything else
that's a component of the higher billing rate but the reduced income? Technology, size of firm, number of offices, that sort of thing? Overhead, in other words.

MS. VROOMAN: The overhead in term of -- you are talking about just the income that was reported?

MR. ULRICH: The one that shows the billing rate is up but the income is down.

MS. VROOMAN: And that's from the last survey to this survey. Most of the information that we got in terms of firms, I mean, there has been sort of a regular increase just in billing rate, and then sort of typically what happens is there is a response, sort of solo practitioners like to keep pace somewhat with that, but in terms then of this economy, when you look at in Michigan that we know that there were probably 350,000 jobs lost, population decreased, so our population is older, poorer, and fewer. Those pressures really have also compressed the availability of legal work.

Looking nationally, Michigan probably has been in as challenging a situation as anybody has, but globalization, I mean, certainly absence of some of that work and some of the efforts when we look at what the number of self-represented litigants are in cases,
I mean, we know that more and more people are trying
to go it alone, perhaps in part because of cost
pressures and not being able to afford it, and, as
Tony mentioned in his remarks, that now, just in terms
of people who qualify for legal services, that number
is increasing.

So all of that, to say all of those
pressures, and at the same time firms that, the larger
firms that are able to have a more stable base of
clients for regular work, increasing their billing
rates is probably part of what you are seeing there.

Thank you for letting me spend time with you
this morning. I am always available for questions.
You have my phone number and email address. I look
forward to sharing the next news, and, again, if you
haven't taken a member survey, we would really
appreciate that. Thanks very much.

(Applause.)

CHAIRPERSON RADKE: Thank you, Anne. I just
want to reiterate something that Anne said, and that
was that her work really helps the State Bar to
determine how best to assist you at your job, so it's
very important to get feedback from you.

Now we are going to hear from Elizabeth Lyon,
the director of governmental relations, giving us a
public policy update.

MS. LYON: Good morning. All staff is responding to the input you provided on the member survey, so I look forward to perhaps providing these reports to you in the future in a written format, but certainly also want to hear from you as I prepare those comments about what would be helpful to you in your deliberations. We also saw very clearly that you would like input and report on circumstances or environment in which you are making these public policy decisions on action items. So if there are questions that occur to you during your consideration of those items where I might be helpful, I encourage you to contact me ahead of time.

And sort of also in the vein of being responsive to your surveyed responses, I am going to limit my comments this morning to public policy actions that we are working on as a result of Representative Assembly positions, but I do want to let you know that we have a really pretty vast public policy program. There is a number of issues that we are working on through all three branches of government that are both proactive and reactive. We have a lot of online resources and an online newsletter that's published every week, so if you want
to hear more about all of the really great thing that
I feel we are doing, please use those online resources
or just ask me about them.

I feel that we always talk about public
defense reform during the public policy reports
because this body adopted the principles of an
effective public defense system really months after
the American Bar Association did that and was the
first state bar to do so. When we last spoke in
September, we considered an incremental approach to
implementation, and we are continuing on that path
still.

We had what I considered to be very positive
developments in the fall that saw the District Judges
Association, the Circuit Judges Association, the
Probate and the State Bar coming to a consensus
agreement about how to move reform forward and really
put the support of all those associations behind it.
That staff would be a time-limited commission that
would have appointments from various stakeholders that
would be tasked with coming up with recommendations
and doing data collection for the legislature to make
ultimately their recommendations for wholesale
systemic reform which we as a state bar firmly believe
is needed in this state.
We pursued that effort in lame duck. We got something through the Senate that looked different from what the agreement had been between the judges and the State Bar. The State Bar ultimately opposed its own action in the senate because the commission, as it was recommended in bill form, would have had more prosecutors seated on a defense commission than defense attorneys, and we felt that it needed to be better balanced.

So we are looking at, again, pursuing that, again, time-limited commission approach this session. We are very pleased to have vocal support and leadership in both caucuses in the legislature for this effort. We expect a bill to be introduced in the House to accomplish this by Representative Tom McMillin, who is a republican from Oakland County. We had heard from the chairs of both Senate judiciary, Senator Rick Jones, and House judiciary, Representative John Walsh that as soon as the bill is prepared, they will quickly address it and move it through the committee. So that's very positive news. We are sort of ahead of the Legislature Service Bureau in terms of drafting and getting this done.

We are also looking to pursue, because we want to make sure that this is happening as quickly as
possible, because we know reform is needed now, and through the leadership of Representative Tom McMillin to accomplish that will be pursuing a bipartisan, bicameral committee that will be appointed by the Speaker of the House and the Senate Majority Leader that will be tasked with doing public defense reform review.

This committee is seen to work sort of in partnership with the commission that will be appointed so that the commission can in a sense be reporting to the committee making sure the data collection efforts and the deliberations taking place at that level is something that the legislature is engaged with and reacting to positively so that when the commission completes its work, the legislature will be able to quickly enact those recommendations and perhaps even get something rolling still in this two-year legislative session. So that's, in my opinion, very positive news on that front for something that will be a very large reform effort.

The other bill I want to talk quickly about has to do with custodial interrogation recording, the audiovisual recording. This body adopted a resolution several years ago that called for the creation of a task force to review procedures and policies and then
to implement either legislation or court rules to enact those policy recommendations.

We again tried to accomplish this in lame duck session, so back in late November/early December of last year, were not able to get it out of the Senate, but I am very pleased to say that this session it has been taken up by Senator Tonya Schuitmaker, who is a republican from the Lawton/PawPaw area, is in leadership in the Senate, sits on the Senate Judiciary Committee. She has introduced a bill this session. It's been successfully passed out of the Senate Judiciary Committee, it's on third reading on the Senate floor. We anticipate when the legislature reconvenes it will be quickly taken up and then considered by the House shortly thereafter. We have support for that in the House as well.

So that will be a great victory that several years later after a lot of long processes of review we believe that we will have that legislation on the books, and I have to say to great credit to both Nancy Diehl and Valerie Newman who were appointed to co-chair the effort. It has support from the chief of police, the prosecutors, defense attorneys, the State Police is neutral, and really to have all of that support garnered on an issue is really a tribute to
their very hard work.

With that, I think we have perhaps a few minutes for a few questions. Otherwise, I will be available throughout the day.

CHAIRPERSON RADKE: I would like you to comment on tax on legal services, just bring them up to date on that.

MS. LYON: Oh, sure. I had that on my list, but I am happy to do that.

We have also previously talked about the potential for a sales tax on service plan that would include legal services. The legislation to propose that has been introduced again this session by Representative Mark Meadows, who had the bill last session as well.

It is our understanding that while the governor has not ruled out a service tax plan, it is not something that we anticipate seeing in this two-year legislative session. The governor has been pretty vocal on pursuing first his business tax reforms, the pension reforms and those efforts first and then perhaps once that’s accomplished they will go back and look at a service tax plan.

In all of the meetings that the State Bar has had on this issue, and we have been talking with a lot
of elected members, there really just is no interest in pursuing this at this time. So I don't expect it to come up in the short-term but will continue to monitor for any long-term.

(Applause.)

CHAIRPERSON RADKE: Thank you, Elizabeth. We appreciate knowing what's happening with all of our hard work.

We are now going to heard from Vanessa Williams, our American Bar Association House of Delegates member, and she is going to give us a report on what's happening in the ABA.

MS. PETERSON: Good morning. I will keep it short. I want to highlight, although we talked about a number of different reports at the February 14th meeting, there are four that I will bring to your attention, in addition to the Model Rule that was adopted.

The first one was report 10B, which would just urge the congress to enact legislation to amend the Tax Code so that states could retrieve from recipients any type of money that's due, so if you owe some type of restitution or some type of fee to the State that the State would be able to intercept your federal tax refund to cover that amount.
Report 10C was to urge the United States House of Representatives to restore the rights of DC citizens to have Eleanor Norton Holmes to have a vote within the legislature.

10E, which was one that got a lot of attention in the House, and that was to oppose any types of cuts to funding for legal aid and legal services. That was being proposed, and the cuts were very severe, and so the house did adopt a resolution to go and lobby against any types of cuts to legal aid and legal services.

The last one I will bring to your attention is report 100C regarding the requirement to have practice restrictions on inhouse counsel or judicial law clerks when they apply for admission to a state for temporary rights to practice law. So if you go and make a motion, generally they look at what jurisdictions you practice in, and that would be waived in those situations.

The model Transaction Tax Overpayment Act was the model hold type provision that was adopted, and that is just to allow, if you are a purchaser and you pay some type of tax, that if there is an overpayment, this gives you some type of opportunity to go in and seek a refund from either the seller or from the
taxing entity.

And so that's just a highlight of the different reports that were addressed and the model code that was adopted. From now on the report will be worked out as an electronic report to you, but you can always reach out for additional information to any of the State Bar members to the House of Delegates.

Are there any questions? Thank you.

(Applause.)

CHAIRPERSON RADKE: Moving along, trying to keep this on track. We will now hear from Jeff Nellis, the chair of the Assembly Nominating and Awards Committee regarding the 2011 award recipients. Jeff.

MR. NELLIS: Thank you, Victoria. I said this in the past, this is the part of the committee work I really like, which is getting involved in selecting our nominees. It really gives those of us on the committee an opportunity to see what folks are doing all around the state, things that we don't normally hear about, and it never ceases to amaze me some of the incredible things that attorneys in the state of Michigan are doing that we are not even, a lot of us are not even aware of.

So by having these awards, it gives us the
opportunity to kind of spread the word about these folks throughout the state of Michigan, because I think it's important for us as attorneys to know the outstanding work that people are doing. It's also important for us as a profession to put out the word for those nonlawyers, and we don't always have the best reputation as attorneys, you know, lawyer jokes and that type of thing, and it's really great to be able to showcase these folks to the rest of the world as really great examples of people in our profession.

So first off, the Michael Franck Award, the person that we came up with in our committee was Dr. Clark Johnson. He was -- you probably noticed in the materials he was actually nominated as an Unsung Hero, but we felt that he actually was better suited to the Michael Franck Award. Of course the criteria for that is a lawyer who has made an outstanding contribution to the improvement of the profession.

Dr. Johnson is an educator, and he has actually taught, it sounds like, for about 37 years, both at DCL and then when it turned into MSU College of Law. But he has literally, you know, impacted the lives of hundreds, if not thousands, of law students, and those of you who went to that institution know what I am talking about.
And so we felt that in a way this is almost like a lifetime achievement award for this individual, and he has impacted so many people and has had such profound impact on really improving our profession through his teaching efforts that we felt he was the perfect person to receive this award.

Now, moving to the Unsung Hero Award, and the criteria for that is a lawyer who has exhibited the highest standards of the practice and commitment for the benefit of others. Whether it be in this meeting today or the news, obviously all we hear about budget cuts. We don't have the money to fund everything from education to whatever, but the two people that we selected this year are the type of people who, quite frankly, we are going to really have to rely on and are going to be so important to the way our profession works, and that is folks who deal with the underprivileged, folks who need additional protection, attorneys who necessarily aren't in it for the money but regardless of that situation are incredible at what they do in protecting their clientele.

The first one is Karen Gullberg Cook of Beverly Hills, Michigan. She was nominated by Bob Gardella, who of course is a former chair of this body. As I understand it, she literally is considered
a statewide leader in the area of child protective law as an attorney. In Oakland County, where I believe she primarily practices, she is kind of considered the expert amongst attorneys. I know a lot of people go to her for advise and expertise, and I think even judges from time to time consult with her. She has devoted her career toward protecting children, toward preserving families, and, again, any of you who do this type of work know that it's not a particularly lucrative area of the law, but it's incredibly important, and so she was our first pick.

Or second pick was Mayra Lorenzana-Miles. She is an attorney who practices in southeast Michigan. She has put in literally countless hours of pro bono legal work and volunteer work working particularly with the Hispanic community in southeastern Michigan, but both in her career and outside of her business endeavors she has literally devoted her life toward helping those who are less fortunate and, again, in that region of the state where she practices she again is widely known, widely respected, and, again, she also perfectly fits our criteria for this Unsung Hero Award.

So those are our three nominees. At this time I would like to entertain a motion that we first
appoint Dr. Clark C. Johnson for the Michael Franck Award, and then for the Unsung Hero Award to Karen Gullberg Cook and Mayra Lorenzana-Miles.

VOICE: So moved.

VOICE: Support.

CHAIRPERSON RADKE: We will vote on these one at a time. All in favor of Dr. Clark Johnson for the Michael Franck Award, please say aye.

Any opposed.

Thank you. That one passes.

For the Unsung Hero Award, Karen Cook and Mayra Lorenzana-Miles. All in favor say aye.

Opposed.

Thank you. That passes as well.

Jeff, thank you very much, and thanks again to your committee for their hard work.

Just a little side note. Clark Johnson was one of my professors at DCL, now Michigan State University College of Law, and everything they said about him in the book is true.

Let's move this forward. Actually right now we are supposed to take a break. If there is no opposition to that I will give everybody a break.

Please be back here at precisely 11:00 so we can get on to substantive matters and some voting. Thank you.
(Break was taken at 10:47 a.m.)

CHAIRPERSON RADKE: Thank you. We will now hear from Michael Blau, the chair of the Rules and Calendar Committee, regarding the Past Chairperson Committee.

MR. BLAU: In our last Representative Assembly meeting in September of 2010 we authorized the concept of creating a past chairperson's committee. We thought it was a very good way of accessing the experience, the institutional knowledge and memory and intelligence of past chairpersons of this body.

The matter was referred back to Rules and Calendar for recommendation on the duties of the committee. When we met as a committee, we agreed this was a good idea, came up with the proposed Rule 7.8 that you have in your material, and the creation of a Past Chairpersons Committee, and that would consist of all the past chairs of the Representative Assembly, and they would have the duty of providing counsel and recommendation on all matters concerning the State Bar at the request of the Representative Assembly.

So we are back before you this morning basically seeking approval for this proposed Rule 7.8 and also a technical matter changing the current Rule
7.8, which is other committees, to 7.9. And that is it. We will be looking for your support.

CHAIRPERSON RADKE: Because a motion was made and seconded at the September meeting and is still on the floor, we will now open this up for debate.

MR. COURTADE: Madam Chair, Bruce Courtade from the 17th circuit. I rise to speak in opposition to this motion for several reasons. I will start out with the fact there is no need.

When you look at the current composition of the State Bar Board of Commissioners, on that commission are officers -- Bruce Courtade, Julie Fershtman, and Tom Rombach -- all of whom are ex-chairs of this body. Also on the Board, Ed Haroutunian, a former chair of this body; Lori Buitewig, a former chair of this body. That's not an anomaly. As long as I have been involved in the State Bar, there have always been representatives, ex-officers of this body on the Board of Commissioners. Kim Cahill, Kurt Schnelz, Scott Brinkmeyer, Greg Ulrich, to name a few.

Second reason, there is no need. The Representative Assembly membership, right here in this room we have past chairs of this body. Anybody who is a past chair of this body, please raise your hand. So
we have got a ton of past institutional memory right here.

The third reason, there is no need. The chair of the Assembly can always appoint an ad hoc committee if the need arises to address any issue that they want to bring to the attention of the State Bar.

The fourth reason is there is no need. If you want to talk to past chairs of the Assembly, we have this thing called a telephone. You can call them up and ask. I have never had a past chair of the Assembly turn me down when I have wanted some information.

The fifth reason -- well, I won't say there is no need. I would say there is no legitimate compelling need. There is a Past Presidents Committee of the State Bar. They say it is the most useless committee they have ever been on. They convene once a year. Staff has to scramble to come up with meaningful agenda items for them. They don't do anything. And they say they feel obligated to show up because they are a member of the committee, but they don't do anything.

The sixth, there is a cost to this. First off, any time you have a State Bar meeting, they are providing coffee, pop, water, cookies, whatever. They
are reimbursing mileage in some instances. I don't
know that would apply here, but the other cost is the
woman who is sitting right up at the table right
there. When you appoint a committee, the State Bar
has to staff the committee. That means somebody,
Anne Smith in this case, is going to have to
coordinate that meeting. She is going to have to be
spending time contacting all of these past chairs,
getting them into the room, coming up with something
for them to do, preparing reports and sending them off
to somebody who may or may not consider them.

For all these reasons, as past chair of the
Assembly, as a current officer of the State Bar, I
encourage you, let's not make things that we don't
have to make. Thank you.

CHAIRPERSON RADKE: Thank you, Bruce. Are
there other comments? Hearing none, we will take this
to vote, unless Mr. Blau would like to address
Bruce Courtade's comments.

MR. BLAU: The only thing I can say in
response, Bruce, I think it's not that this is going
to be an ongoing or regular meeting. It would be
called upon, very limited circumstances, and it's an
opportunity basically to have the individuals who have
experience with the Assembly, particularly
congregating in one place at one time to deal with issues as opposed to it being in forums where we see there are a lot of people before the commissioners meeting or some other type of forum. Focus on very defined issues that would be referred to the past chairs and be able to utilize that great experience.

CHAIRPERSON RADKE: Thank you, Mike, and I don't know if this was anticipated to be an in-person or a telephone conference call, so that would address some of your concerns, so we will go to a vote.

All in favor of the establishment of the Past Chairpersons Committee, please signify by saying aye.

All opposed.

I think they did too. Do we want to do a count? It sounded to me as if there is a majority of no votes, and so this petition or this motion will go down as defeated this morning unless somebody wants to ask for a vote, but it sounded significant to me that the noes have it. Thank you.

MR. BLAU: Thank you.

CHAIRPERSON RADKE: I have privilege of the chair here. As I understand, that our presenter on the jury reform project is not here yet. I would like permission to move item 14 up ahead, because Ms. Aukerman is also going to be addressing the
Uniform Collateral Consequences of Conviction Act, and so I would like to move item 14 up if there is no objection.

MS. AUERMAN: I am here.

CHAIRPERSON RADKE: Oh, you are here. They told me you weren't here, so we are then ready to go. We are going to go to item 13, consideration of legislation for the Uniform Collateral Consequences of Conviction Act. The Presenter is Krista Licata Haroutunian, the chair of the Special Issues Committee; Martin Krohner, Committee on Justice Initiatives; and Miriam Jane Aukerman, also on the Committee on Justice Initiatives, Criminal Issues Initiatives. So those parties will approach the podium, please.

MS. HAROUTUNIAN: Hi, I am Krista Licata Haroutunian, chair of the Special Issues Committee, 6th circuit. At the last meeting this was brought before us for further review, and we met. My committee did meet. Most of the members are here today, and the officers were also on the phone calls, as well as Anne Smith, so that went very well. And I just wanted to briefly -- you have materials in front of you. There was also a handout, I believe, in support.
The Special Issues Committee's position is
found on the prior action by the R.A. paragraph, and
we as a committee unanimously support the concept of a
collateral consequences compilation for defendants.
We, however, did not necessarily support the uniform
act. We did not want to say we support that in total.
We just wanted to say that we do support the concept
and that we would use the sample language in the
uniform act as a kind of a jumping off point, you
know, a beginning point, and so the question is should
we support and advocate for state legislation that
implements a collateral consequences of conviction
act.

So that is the report of the Special Issues
Committee, and I thank my committee members for all
their help in this process.

MR. KROHNER: Good morning. I am
Martin Krohner, 6th circuit. I think when we met last
in September in Grand Rapids there was some confusion
about the fact that this Uniform Collateral
Consequences of Conviction Act was part of the
materials that was presented to you and it was kind of
a feeling I got that people thought that this was the
definitive proposal and that you needed to vote on
what was contained in that particular document that
was in the materials. What we are looking for really through the initiative is, A, getting the concept for a uniform collateral consequences of convictions act, which mostly is going to be defined by the criminal side. It's an opportunity now based on the recent Padilla decision by the U.S. Supreme Court so that people within the state who are representing criminal defendants will at least have an opportunity to be aware of all the entirety of the collateral consequences. I don't believe everybody in this room could name more than three or four.

We have been working on this a number of years, passing out materials initially at the State Bar annual meeting in Grand Rapids six years ago, defined what collateral consequences are and provided the wiki website that Miriam had, and that's still up.

We believe the opportunity, the time is here. The U.S. Supreme Court has stated it. I believe what Krista has said, it's a jumping off point, it's a place to start the discussion. We don't have to necessarily have everything that's in that document. You may want some, you may want none. We need to have something as a uniform collateral consequences of conviction act to get the legislature moving, and at
this point we would ask from the Criminal Issues Initiative, and Miriam will also talk, but we would prefer and ask that you support this concept so that we can get the ball rolling, because it's become a matter of urgency, especially in light of the economic situation that we have today and the number of people that are on the lower end of the socioeconomic scale who end up in the criminal justice system don't have a clue about some of the collateral consequences they will be facing if they come in and plead guilty or are found guilty and don't have the opportunity to have their records cleared or expunged or take the opportunity to avail themselves of the Holmes Youthful Trainee Act or some of the other deferments that are currently contained within your criminal statutes.

At this time I am turning it over to Miriam for her few words.

MS. AUKERMAN: Thank you very much for having me. I have spent much of the last decade working on collateral consequences in Michigan. I want to talk about why this is so important. The estimate is one in three adults has some kind of criminal history on file, that would include arrests. There are about one in four adults have a criminal record of some sort. Twenty-nine percent of the adult population has a
felony record. That's about 19.8 million people in the United States, and people of color are particularly affected. By some estimates, one in three African American men has a criminal record.

At the same time you have this huge number of people with records you have an increasing number in severity of civil consequences to criminal convictions. Those include things like legal barriers to housing, to employment, to education, to public benefits, immigration consequences, licensing consequences. So there are consequences all over the criminal code.

Part of the reason that there has been this explosion in civil consequences to criminal convictions is that criminal record information is much easier to obtain now than it used to be as a result of the internet and the easy availability of criminal record checks.

For lower level offenders in particular the collateral consequences are often much more significant than the actual criminal consequence. If you are facing deportation, the loss of your housing, loss of employment, the ability to work in your profession, that can be a much more significant consequence to you than the actual criminal penalty,
which might be probation or a short jail sentence or something like that.

There is also, I think, a real concern about fairness. Criminal sentences are tailored to the individual. They are based on sentencing guidelines, based on the person's prior conduct, the severity of the crime they committed. Collateral sanctions are not like that. They are generally imposed across the board without any individualized assessment about whether they are appropriate for the particular individual. That raises real questions about how appropriate they are in many cases. I think most of us would agree it's unfair for people to make important decisions in the context of the criminal case without knowing what some of the most severe consequences are that they face.

Finally, the reason that this is becoming increasingly important is that we are facing a changing legal framework. In 2010 the U.S. Supreme Court decided a very important case called Padilla V Kentucky in which it held ineffective assistance of counsel if that person would be deported as a result of their conviction.

And I think that decision recognized that defendants deserved to know the collateral
consequences that can be very, very significant, like deportation, because that fundamentally affects their decision, their decision making. And across the country courts have now been applying the Padilla decision to other types of collateral consequences.

The Michigan Court of Appeals recently on a case called Fonville invalidated a plea because the defendant had not been advised that it would result in sex offender registration. Other courts are looking at collateral consequences on pensions and things like that saying defendants need to be informed of that and are invalidating pleas on that basis.

I think that recognizes the importance of fairness and notice. I think the criminal Bar is concerned about this from the prosecutorial perspective. It raises concerns about finality of pleas. Concerns from the prosecutorial side, from the defense side. There are a lot of consequences out there. How do you actually inform your clients about all of these consequences given how many there are and the fact that they are all over federal and state law and they are not compiled in one place.

So the national response to this issue of the increase of collateral consequences and the importance of notice has been to develop the uniform -- well, the
Uniform Law Commission has developed a model law, the Uniform Collateral Consequences of Conviction Act. The Drafting Committee, representing a wide variety of views, brought that together. It's largely a procedural document. It creates a mechanism to have compilation of collateral consequences so they are all available in one place and easy to find, and it creates mechanisms for notice, which these are things that I think are going to be a great relief to defense attorneys, because they will -- we are running out of time?

CHAIRPERSON RADKE: You are fine.

MS. AUKERMAN: Defense attorneys will be able to have this information in one place to find and to know notice is provided. I think it's fair to defendants to know what they are getting themselves into when they are making decisions in criminal cases.

The UCCCA also creates procedural mechanisms for relief of collateral consequences which are severe or inappropriate. Someone may well deserve a criminal consequence in a particular case, but it may not necessarily mean that it's appropriate for them to automatically lose their license, and it's going to give judges discretion among issues like that.

There are six states that have seen bills
introduced -- Colorado, Minnesota, Nevada, New Mexico
Vermont, West Virginia, North Carolina, and -- I am
sorry, North Carolina has issued recommendations and
the other states have introduced bills.

The question today is whether the
Representative Assembly should support or advocate for
comprehensive state legislation on collateral
consequences, and I want to echo what the two prior
speakers said in that I want to be clear we are not
asking the Representative Assembly to endorse the
UCCCA, per se, as that particular document. What the
creation by the Uniform Law Commission of the UCCCA
does is it highlights the need for states to develop
comprehensive legislation to address collateral
consequences.

Today Michigan's law doesn't address this
issue. It's all over the criminal code with scattered
provisions, many of which are conflicting. We need
legislation that looks systematically at the following
collateral consequences and addresses it in a
comprehensive fashion.

The UCCCA is complex legislation developed
during an extensive drafting process. Undoubtedly if
Michigan develops its own version of collateral
consequences legislation it is going to be critical
for stakeholders from the legal community to be present and part of that drafting process and involved in working out the details, which do obviously matter. But what we are asking today from the larger legal community as represented by all of you here today is a recognition that collateral consequences are important, that Michigan needs comprehensive legislation on that issue.

As you can see, this is comparable to saying the electronic revolution has changed financial transactions, so we need to rework our financial transactions law. That doesn't necessarily mean everyone is going to agree on the exact details, but what we are deciding on is you need to comprehensively address this very critical issue through comprehensive legislation.

The question is should defendants be notified about collateral consequences, should the information be collected so it's easily available, should there be mechanisms for relief of collateral consequences when they are inappropriate? My position, I guess, is that this position from Criminal Issues Initiative is that such comprehensive collateral consequences legislation is very important. It's important for ensuring that defendants are informed about collateral consequences,
important for ensuring that the defense bar has the tools it needs to provide the required information to defendants, it's important for ensuring the finality of pleas, and it's, you know, particularly important for reducing the unnecessary barriers to employment, to housing, to education, to lots of areas that are faced by a large number of people with records.

I am hoping that today the Representative Assembly will recognize the importance of this issue and will allow the State Bar staff, in consultation with stakeholders, to move, which is all of you in the various agencies of the Bar that want to weigh in on this, but allow the State Bar to move forward and try to introduce collateral consequences legislation that is tailored to the specific needs here in Michigan.

CHAIRPERSON RADKE: Thank you. Krista, for clarification, would you restate the motion, please.

MS. HAROUTUNIAN: The question before the Representative Assembly is should the State Bar of Michigan support and advocate for state legislation that would implement a collateral consequences of conviction act? And I make that motion.

CHAIRPERSON RADKE: Is there support?

VOICE: Support.

CHAIRPERSON RADKE: Thank you. Discussion,
please.

MR. POULSON: Barry Poulson, 1st circuit. I am a public defender. I rise in support of this motion and would note that my impression is that the collateral consequences have now grown in the sum of their complexity to exceed the complexity of the criminal law itself. I find it puzzling. I will note just an anecdote, that my client's arrest was announced on the 8:00 news and between then and her 1:00 arraignment she was notified by public housing she needed to find a new place because she was going to be evicted based on the radio. It is a pervasive, devastating, and major issue.

Some of these I grind out and understand as best I can, SORA, things like that, well within my purview. As to Padilla, Supreme Court says a simple reading of the Immigration Code would tell everybody what it means. I read it. I didn't understand it. It doesn't come up a lot. I think that we have to do something on this.

Now, the question does come, and this is, Whose responsibility is it? As a defense attorney I have no way to determine, for example Padilla, if somebody is a U.S. resident or not. I have no way. They don't have a national card. Judges can make that
finding, so I think that's a factor.

And is it the judge's responsibility to put on the record or us collectively on the record that the notification has occurred? Comprehension has to be part of that notification, and so the defense attorney certainly has had a role explaining that, but I think the judges have a role too.

I am very much in favor of it. At the very beginning just having the documentation is going to be hell, but having the support of the whole community on these consequences, I very much favor this. Thank you.

CHAIRPERSON RADKE: Thank you, Mr. Poulson. Other comments?

MR. REISER: John Reiser, 22nd circuit. I have some concerns about this. I am glad to see that it's not the UCCCA necessarily, but something akin to that, but the devil is in the details.

I am all in favor of compiling a list. Whether it should be the function of government to do that or whether that's something the State Bar should do or the defense bar or those practitioners in that field, I just don't know who would have to do this, and there is also something there about, I think it said current federally-financed funds or something
like that. Will that continue, and if that doesn't continue, what happens to the list? Does it dwindle? Will it be maintained? So I think a list is a really good idea. So that's one of my concerns.

The notification, we are notifying defendants at every important procedure. There is an arraignment, there is presumably a pre-trial or a plea takes place. If set for a jury, then you have to give it to him again, or her again, at a plea or where a trial is set, then it is sentencing and then every time someone gets out of incarceration.

I am telling you a lot of, I can't say chicken, the other word, but a lot of petty misdemeanors via burlesque result in guys getting arrested a bunch of times, and there are significant administrative sanctions. Collateral consequences of driving while license suspended. We know there are points, driver responsibility fees. There are additional things like suspension, so there is a lot of stuff.

What happens if that person doesn't know English? So do we have to give it to them in Spanish, or, you know, I come from Ann Arbor where there is multiple cultures there. And one of the concerns that I have is does it give, a cause of action isn't the
right word, but a basis for relief?

Sometimes plea agreements are taken knowing that there is going to be I don't want this guy teaching again based on what he did to that little girl. I don't want this guy driving again based on its his fourth drunk driving but for some reason we had to plead it down to a second or something like that.

So prosecution and defense attorneys often know them, good ones do, and we take that into account when we resolve a plea agreement. Do I now need to say you can plead guilty to added counts two and three upon dismissal of one provided you not seek any relief under the Collateral Consequences Act?

And I guess one of my concerns is that we are trying to do through the judiciary what might better be done through the legislature. If there is a sanction that's imposed, an administrative sanction that the legislature has passed a law on, then we are allowing a judge to say, notwithstanding what the legislature has passed, I hereby declare that you can do this.

You know, a repeat drunk driver has some significant administrative sanction with respect to the ability to drive, so can a judge undue that? And
I know the reason is that minorities really get hit by this, but I fear with respect to drunk driving that it's the guy who can afford the fancy lawyer who is going to be filing the petition for relief.

CHAIRPERSON RADKE: Mr. Reiser, I have to interrupt. You are past your time

MR. REISER: Thank you very much.

CHAIRPERSON RADKE: Ms. Aukerman has a question.

MS. AUKERMAN: I wanted to answer the question regarding funding on this. The initial compilation under the Federal Court Security Improvement Act, the federal government has contracted out to compiling collateral consequences for every state in the country as a basis for this. There is a question of keeping that current. That's something that could go to SCAO, Legislative Services Bureau. There are a couple options for that, but that original compilation that would form the basis then would be updated, that basis would be there.

CHAIRPERSON RADKE: Mr. Mills, my back was to you. Are you the next speaker?

MR. MILLS: I think I am, yes.

CHAIRPERSON RADKE: The chair will recognize John Mills.
MR. MILLS:  John Mills from 6th circuit.  I remember this coming up in Grand Rapids, and the problem I had with it then really is the same problem I have with it now.  I think the proponents are putting a lot of faith in the legislature that I just don't have, and the way I read the proposal here that you are starting with the Uniform Act, but you don't advocate all of the provisions of the Uniform Act, so you are going to leave it to the legislature to pick and choose among the various provisions and figure out what they think is the best for the particular need.

I agree the need is there.  I would feel more comfortable voting for this if, in fact, we had something we could look at.  I am reminded of Speaker Pelosi's comment about passing the health care legislation, let's pass it and then read it, and I don't want to do that.

CHAIRPERSON RADKE: I am just going to comment about that, if I may.  John, this is just to authorize Elizabeth Lyon and her staff to start work on a collateral consequences act.  If we are going to talk about language and effect policy from the start, I think we are going to see that back again.

MR. COLBECK: J.R. Colbeck of the 15th circuit.  I have been a member of this board for quite
a while. I have never spoken publicly before. I have been an attorney for 43 years on both sides of the bench, both prosecutor and defense.

There are a lot of collateral consequences. They probably should be listed, but that isn't what this proposal does. You are asking us here to advocate, not to support but to advocate, something that we know nothing of. If it was only to suggest that these be compiled and be presented, wonderful, but it goes well beyond that. It creates certain requirements that are nonsense. It sets provisions, but then it says it's clear that they don't have any effect. It makes clear that neither the provisions of the Act, nor noncompliance with them, is a basis for invalidating a plea or conviction. So what's the sense of having them with no consequences.

If the true issue here is not in compiling these but in the consequences themselves or how they affect, why don't we more seriously then address our expungement statutes or make them more available. Why don't we then address removal of those consequences. This ticket to ride that says if you are a good guy after so many years, a certificate of restoration is nothing because it has no effect. Why don't we get serious and get meaningful and address the true
issues. If expungement is appropriate, a court should be able to determine and we should have a statute that allows for it.

Perhaps we should list all these consequences, but if we list them and give them to somebody, all we are going to do is steer people from taking pleas. They are going to say they will go to trial and they still have the same consequences imposed. It doesn't do anybody any good. We need some meaningful consequences. We don't need to advocate something we know nothing of.

MR. KROHNER: On the expungement issue, when I was appointed to the deputy directorship of the Wayne County Department of Community Justice, I was approached by him and his staff to work with Representative Waters in changing the expungement law here in Michigan. That was back in '03. As we used to say back in the last century, ought three. The situation was bills were present in the legislature a number of times. In fact, there is a current new bill up there now, but it doesn't address collateral consequences. Only addresses your convictions and what and how many you can have and what you can eliminate and what you can't eliminate. This is, again, the UCCCA that was provided in the materials is
an opportunity for a pointed discussion.

You are talking about specific language, and that language, we are not looking at that language. We are looking at it as the starting point as for discussion. Whatever language comes, as the chair has indicated, would have to come back. So what we need to start talking about, if we are going to do something, if you don't tell your client what the consequences are and then they come back to you and start filing grievances with the Bar, that's not going to help us either. How is that going to deal with our malpractice insurance rates. We are supposed to know all this stuff, and that's what the client expects from us, to tell them all the effects of their pleas.

MR. SMITH: Joshua Smith, 30th circuit. I want to speak very briefly strongly in support of this proposal. I think it's vital to get the ball rolling on this. I want to give you a few examples.

One of the things I do is I prosecute professional licenses, and time after time what will happen is people have a case where a person says while they were young they committed some crime. Years after the fact they get their life in order, they go to college, they apply to become a teacher only to find after doing all of that work, rehabilitating
themselves, lo and behold, they can't become a teacher. Why can't they become a teacher? Because they had this conviction from when they were 15, 16, maybe 18 or 19 years after the fact.

We also have the situation just as commonly where the person, for whatever reason, slipped through the cracks. They commit a crime, they become a professional of some type, the state is doing a search, it comes up on a database, boom, this person has been a licensed professional for maybe a decade, they have got a family, all the sudden the state is now saying you can't practice your profession anymore. You can't be a teacher because you did this X number of years ago. We are sorry we missed it the first time, but you are sort of out of luck now.

I think it's vital that we get the process rolling so that we inform people of these collateral consequences. As the speaker said, they are very real. They are increasing, and without people knowing them, they cannot make, I don't see how they can make a knowing, intelligent, and voluntary plea without knowing all the consequences of it. Thank you.

MS. STANGL: Terri Stangl from the 10th circuit. I have been working with these collateral consequences issues for about ten years with nonprofit
organizations and low income clients, and, as you heard today, we have a problem. We have had it for thousands and thousands of people. We have had it for defense attorneys who are potentially committing malpractice and for prosecutors. The problem is real.

What we are actually proposing today is to take the unique expertise of people like all of us in the room and people who do this work and the convening role of the Bar to sit down and figure out how can we solve the problem. This is what this motion does. It actually brings together people with different ideas and experiences to get real about what is a problem and how can it be solved. It may not all be solved in the legislature, it may not all be solved in the courts, but you have to start the discussion, and this motion would authorize the State Bar staff to use its resources to convene that discussion.

This issue plays into two really critical principles that the Bar has had for many years. One is educating the public and its members about the law. That idea of compilation and education is really critical to our role. The other piece that's a part of it is that balance between judicial discretion and the legislature. That's a recurring issue. We come at it every time, and who better than the Bar to be
sitting down and sorting that out.

So I would strongly urge all of us to say it is a problem. We are the ones who need to be moving on this. Let's authorize our staff and our volunteer leadership and those with expertise to address it.

MS. WASHINGTON: Erane Washington, 21st circuit, and I stand to support this. I happen to be one of the firms in Washtenaw County that got what's called the second public defender's contract, and what that means is that we deal with any conflicted out case that comes through Washtenaw County Public Defender's Office. We get a lot of cases, obviously.

During that process it is for me very, very painful to watch people come through the process who committed crimes because they can't survive. They can't support themselves because of these collateral consequences. It is to me one of the most important things we can do as a body is to actually start taking a look at this issue and figuring out a way, like people have said before me, to figure out how to give people an opportunity for a second chance so that they can survive, because if you don't give them the chance, you are going to keep getting what we get, which is repeat offenders.

Now, you are not going to cut down on
everybody, because everybody is not in that particular
position, but there are a number of people that we can
help by coming up with a means to give them that
second opportunity, and I don't think what we're
saying here is this is the document we are going to
use. It gives us the opportunity to say let's look at
it, let's figure out what we can do to at least begin
to give these people a second chance, and I strongly
support this and I would urge you to as well. Thank
you.

MR. HAUGABOOK: Terrence Haugabook, 3rd
circuit. Some of the questions and concerns that I
have is how this might eventually conflict with the
whole expungement procedure, because let's say you are
convicted of a felony for which you can't get an
expungement, does that mean you can go and get this
certificate? I think certain convictions are barred
from the expungement provisions for a particular
reason.

The next thing is, one of the things that you
might look at is, you know, you compile the list and
you give it to somebody and then they think that, wow,
I got all this, so, therefore, I go to trial, and we
are already talking about downsizing the judiciary.
So if you are going to have the downsizing the
judiciary, then you are going to run into the problem, you know, more trials with limited resources.

Then how does this affect the repeat offender. Somebody who is in Jackson, they are in Jackson now with two or three convictions and they get out a year from now. How does that affect that person with regard to now they start -- let's say this act is active within a year at the time they get out. How does it impact them? Will it have any meaning for that person in those situations.

CHAIRPERSON RADKE: Excuse me. I am going to call a privilege of the chair here. I think that your comments are beyond the scope of this motion, and those are things that I think that need to be addressed once we start the process of getting into a collateral consequences act and those should be considered, but I don't believe they directly address the question that's before the Assembly.

MR. HAUGABOOK: I was going to sum it up. Maybe if I sum it up that would explain it better. If we are talking about using this UCCCA, you take say this off and stay with this document here, take this document and carve it up, legislature, and start trying to address certain problems, these are the things that I am saying. Thank you.
CHAIRPERSON RADKE: Thank you.

MS. VANHOUTEN: Margaret VanHouten, 3rd circuit. Couple of points. I don't believe any of us in this room object to the first part of the act about compiling the collection, authorization, making sure that defendants know what the consequences are. I think where a lot of questions arise are in the second part of the act or the Uniform Act where it talks about the relief from these collateral consequences. I believe that all of us would probably support an act that just calls for the collection of that list and making sure they are informed.

The other question I have is as matter of procedure. There is discussion of it going right to the legislature and have the legislature carve it out, or is there a committee of this committee that is going to look at this, draft some sort of proposed legislation and bring it back to us to then address, carve up, and do whatever it is we are going to do?

CHAIRPERSON RADKE: I am going to answer that question. The question and the motion on the floor is should the State Bar of Michigan support and advocate for state legislation that would implement a collateral consequences of conviction act? We are not voting on any specific language right now. What we
are asking this body to do is to put its support, the
support of the State Bar, behind advocating for
legislation to implement a collateral consequences of
conviction act. And a lot of you have addressed
ramifications and things like that, but that's not
before this body today. Do you want the
Representative Assembly to support and ask the
State Bar to advocate for legislation that would
develop a collateral consequences of conviction act.
That's what we are talking about today.

MS. VANHOUTEN: We are talking about
referring to the legislature then, not to a committee
here to come up with proposed legislation?

CHAIRPERSON RADKE: If we authorize the
State Bar of Michigan to support and advocate for this
legislation, then our governmental unit with
Elizabeth Lyon is going to go to work on that, okay,
and develop something, and if the language is
something that would violate a policy that we have
already adopted, it's going to have to come back here.
We are going to have an opportunity to look at it,
okay. All we want to know today from this body is
should we advocate and support legislation for a
collateral consequences act in Michigan.

MS. VANHOUTEN: So that proposed legislation
would come back at some point?

CHAIRPERSON RADKE: It might. I can't promise it will. It depends on how it develops. What we want to do, as Ms. Stangl said, is start the process.

MR. KRIEGER: Nick Krieger, 3rd circuit. I wanted to note that constitutionally a lot of this stuff will have to be done through the court rules rather than in the legislature, and I don't think anyone has considered that. That's all I want to say.

MR. BARTON: Bruce Barton, 4th circuit. I have been a prosecutor for 16 years and a defense attorney for 34. And I don't know all of the consequences of a criminal conviction. Further, is there anybody here who knows the consequences of a felony conviction in Michigan if the client moves to Indiana? I doubt it.

In a way you could call this the self-defense for defense lawyers act, but given all of that, I think there have been a lot of considerations here that probably were not considered by the committee, and beyond that I agree with the previous speaker. Maybe this is a court rule matter as opposed to legislation. The matter as presented here talks about legislation. There may be other ways to go about it.
For those reasons, I move to recommit this matter to the committee for a more comprehensive review of the problems involved.

VOICE: Support.

CHAIRPERSON RADKE: We are going to discuss the motion that's been brought before the committee. Is there discussion on Mr. Barton's motion? Mr. Abel.

MR. ABEL: Matthew Abel, 3rd circuit. I believe that this is overdue and that we should not send this to committee. Ten years ago I served as an expert witness in a case where a defense lawyer was being sued by a man who was incarcerated in Texas after a plea in a felony case in Detroit. And the question was whether this defense lawyer should have understood the standard at that time. And they brought me in, of course, to say nobody understood the standard, at least back then there really wasn't a standard, but there is no reason not to inform a defendant.

We should go ahead and encourage the legislature to pass this legislation, and then typically what happens is a court rule gets adopted and the court rule supersedes the legislation, but without the legislature doing this, the court is unlikely to move. We should pass this now. Thank
you.

CHAIRPERSON RADKE: Is there any other discussion on Mr. Barton's motion to send this back to committee? Seeing none, I will accept a vote.

All in favor of sending this back to committee say aye.

All opposed.

MR. COLBECK: Division of the house.

CHAIRPERSON RADKE: I think we are going to have to take a standing vote. All in favor of sending this back to committee please rise, and will those appointed counters please come up and count for us.

Thank you. All opposed to sending this back to committee, please rise.

Mr. Barton, your motion is defeated. We will go back to the main discussion on the motion regarding whether or not this body should authorize the State Bar of Michigan to support a collateral consequences of convictions act. We are over here.

MR. BOONSTRA: Mark Boonstra from the 22nd circuit. I share the concern that was expressed that what we are being asked to do is to support and to advocate for legislation that would implement an act that we know nothing about. It may be something that I could support. It may turn out to be something that
I wouldn't support, but I think it's premature to ask this body or ask the State Bar to support and advocate for legislation that will implement something when we don't know what's in it.

So I would suggest that if what we want to do is to authorize the State Bar to study the issue and perhaps to assess the merits of the issue and to come forth with draft language for us to consider that that's what we should ask them to do rather than asking us to authorize the State Bar to support and advocate for legislation that would implement something.

MS. HAROUTUNIAN: I just want to quickly address that point. I want to make sure it's clear, the Special Issues Committee unanimously voted to support the compilation of civil collateral consequences to criminal convictions in Michigan but does not support all of the proposed draft language of the Uniform Act as proposed by the National Commission on Uniform State Law.

This is not a vote on legislation. We would be here for a year and a half arguing about each individual word of the act. This is not about supporting an act. This is about should the State Bar support and advocate for state legislation that would
implement a collateral consequences of conviction act?
It is not defined as to what that means. Michigan
would define it, the legislature would define it,
stakesholders would define it. Not what this body is.
This body is merely going to vote up or down on an
issue as to do we support the concept of a collateral
consequences of conviction act.

MR. CHADWICK: Tom Chadwick from the 8th
circuit. I move the previous question. I believe
this requires a two-thirds vote and is not debatable

VOICE: Second.

CHAIRPERSON RADKE: Then we will call the
question. All in favor of the motion.

VOICE: You have to vote on calling the
question.

CHAIRPERSON RADKE: To end debate. Thank
you, John.

All in favor of ending debate at this time,
say aye.

All opposed.

Well, the ayes have it, and the question has
been called. We will now take a vote on whether the
State Bar of Michigan should support and advocate for
legislation that would implement a collateral
consequences of conviction act.
All in favor of the motion on the floor, please say aye.

All opposed no.

The ayes have it. It passes. Thank you very much.

We are now going to move on to consideration of ensuring equal access to court and administrative proceedings. I will ask William Ard and Michael Blau and Thomas Thornburg to approach the podium, please. Josh Ard will address first. Josh, go ahead.

MR. ARD: Hi. We know we are the last thing between you and lunch.

VOICE: A boxed lunch.

MR. ARD: So we will try to be brief.

My name is Josh Ard. I am from the 30th circuit, and you may wonder, well, why is a drafting committee up here for a proposal. We are not. We are not proposing anything. We are presenting something. It's our job to take issues that are very complicated and try to whip them into shape so that you can know exactly what it is that you are being called upon to vote on, and this is a complicated one.

I would like to thank the members of my committee who investigated this, tried to figure it out, offered suggestions, and I would like to thank
the proponents who worked with us and maybe agreed
with us on some things, made some changes on others,
and also the leaders of the Assembly, where we think
we have got something that now you can understand, and
our job, as I said, is to clarify the language on
difficult issues so that you can spend your time
considering the merits of the proposal and not spend
your time worrying about the way that they were
written. And I guess we will find out in a few
minutes whether we succeeded or not.

So the proposal is up here before you, and
here is what it says. Should the State Bar of
Michigan adopt a position in favor of the
implementation of procedures or administrative rules
designed to ensure that, upon application and payment
or waiver of any applicable fee, an official state
personal identification card is issued to any Michigan
resident who is legally present in the United States,
as that term is defined in MCL 28.291, and who
otherwise qualifies for the card. And I will now
leave it to the proponents for them to explain why
they want you to adopt that proposal.

MR. BLAU: I am going to call up
Tom Thornburg to basically explain the position and
basically maybe add some insight and give him the
podium at this time.

MR. THORNBURG: Thanks. Yes, I am Tom Thornburg, and I represent two nonprofit organizations today, as well as -- those are the Farmworker Legal Services and Michigan Human Rights Center, which are two statewide legal service programs with ten attorneys operating out of Kalamazoo, Michigan. I also represent the Justice Policy Initiative, which had a subcommittee, the I.D. Subcommittee, that started in 2008 studying this need for photo identification to access justice in Michigan.

This all began following a 2006 report by the Brennan Center at NYU finding that millions of Americans do not have government-issued photo identification, especially the poor, elderly, and minorities.

So the J.P.I. subcommittee reviewed the effect in Michigan on immigrant litigants not being able to obtain a Michigan state I.D. card. For example, we queried the Administrative Law Section of the State Bar that confirmed it is state policy to require that persons entering state office buildings produce photo I.D., including facilities in which administrative hearings are held.
So the J.P.I. adopted the position and proposed it to this Assembly last September calling specifically at that time for the Secretary of State to promulgate an administrative rule reflecting the legislature's 2008 amendment to the Motor Vehicle Code and the state I.D. Card Act to accommodate the definition of, quote, legal presence, so that all eligible Michigan residents could obtain a state-issued photo I.D.

At that point, as Mr. Ard explained, it was referred to the Drafting Committee, and following several very, very valuable suggestions by members of that committee and this body, this proposal came out today that essentially reframes that question as endorsing the principle of ensuring equal access to state I.D.'s, including all legal proceedings and processes, while allowing some flexibility in the manner, the mechanism in which that principle is accomplished.

Of note, that the Bar has previously taken a position of enabling paroled prisoners to obtain drivers license and official state I.D. through legislation that this body and the State Bar endorsed back in 2009. This proposal then is within the purview of this body, if you wish to endorse this
principle, because it improves both the functioning of
the courts and increases the availability of the legal
services. I suspect there will be some questions. I
will take a breath and let there be questions.

MR. BLAU: The motion, Resolved, that the
State Bar of Michigan shall adopt a position in favor
of the implementation of procedures or administrative
rules designed to ensure that, upon the application
and payment or waiver of any applicable fee, an
official state personal identification card is issued
to any Michigan resident who is legally present in the
United States, as that term is defined in MCR 28.291,
and who otherwise qualifies for the card.

VOICE: Support

CHAIRPERSON RADKE: Did I hear support?
Thank you. Is there any discussion? Mr. Krieger.

MR. KRIEGER: I just have a question.
Nick Krieger, 3rd circuit. I think I am missing
something. So there is already a statute, and the
issue is that the Secretary of State's office is
saying that documents that these immigrants are
providing are not sufficiently reliable documents, and
if that's the case, all it seems to say on the statute
is documents. It doesn't really say like official
documents or certified documents or anything, so, I
mean, I totally support this, but I don't really understand the problem. I thought maybe you could just -- maybe I missed something.

MR. THORNBURG: Good question. I think the gentleman states part of the problem, but actually this is a problem of federal and state laws not always meshing, and what we are looking for is the support for a procedure, and that could be an administrative rule, we are very flexible, that would on an ongoing basis make sure that those federal and state laws regarding what is an acceptable document to prove legal presence mesh. That's essentially it. It could be an administrative rule, as we pointed out the previous time we were before you.

At that time we solely considered that it should be an administrative rule, but we are actually looking for support for the principle and are willing to work out the mechanism that would ensure that people who are legally present Michigan residents indeed do get an official personal state I.D.

CHAIRPERSON RADKE: Is there any further discussion, comments, or question? Mr. Courtade.

MR. COURTADE: Point of information. I guess it involves our executive director, or I don't know if our legal counsel is here. What's our ability to be
able to lobby on behalf of this? Is there something we need in order to lobby on this?

CHAIRPERSON RADKE: Elizabeth.

MS. LYON: I think Janet.

CHAIRPERSON RADKE: I will take anybody.

EXECUTIVE DIRECTOR WELCH: I have to change hats a little. I am trying to log what's going on. Now I am part of the story.

I would say one of the things that the Representative Assembly helps us do in adopting positions like this or failing to adopt is to help us deploy our limited resources. It gives us direction as to where we should put our efforts, and resolutions like this clarify how we might do that.

MR. COURTADE: Thank you. And then I have a friendly amendment. There is no question mark at the end of the resolution. It should be a period.

CHAIRPERSON RADKE: Well, since it's a resolution. You are saying there is a question mark and we don't need it?

MR. COURTADE: Right.

CHAIRPERSON RADKE: Mr. Blau, will the committee accept that as a friendly amendment?

MR. BLAU: Yes.

CHAIRPERSON RADKE: It's accepted. Thank
you, Mr. Courtade.

If there is no further comment or question --

MR. KROHNER: In the book it's a period.

CHAIRPERSON RADKE: Thank you for pointing
that out.

I am going to call for a vote. All those in
favor of the resolution please signify by saying aye.

All opposed.

I believe that the ayes have it and the
matter is passed.

Don't everybody jump up and run out the door,
except for Ms. Smith, who I believe is going to get
your attendance sheets that have to be filled out. It
is important for you so that we know, A, you were here
and, B, if you want your mileage, you have to have one
filled out.

I have been reminded to remind you again,
please get in your nominating petitions and, as well,
please fill out the assignment request for both the
R.A. and for Ms. Fershtman and for your State Bar
committees. Thank you all for attending. Thank you
for your attention.

Our clerk, Dana Warnez, reminds me that you
can donate your mileage to Access to Justice by
putting that on your form, on your mileage form, that
you are going to donate that to Access to Justice, and the State Bar, instead of sending you a check for your mileage, we will send it to Access to Justice.

With that, I ask that you please drive safely going home, and I am looking for a motion to adjourn.

VOICE: So moved

VOICE: Support.

CHAIRPERSON RADKE: Thank you. Not debatable. We are adjourned. Thank you.

(Proceedings concluded at 12:08 p.m.)
STATE OF MICHIGAN 
COUNTY OF CLINTON 

I certify that this transcript, consisting of 99 pages, is a complete, true, and correct transcript of the proceedings had by the Representative Assembly on Saturday, April 9, 2011.

April 29, 2011

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

METROPOLITAN REPORTING, INC.
(517) 886-4068