STATE OF MICHIGAN
STATE BAR OF MICHIGAN

MEETING of the REPRESENTATIVE
ASSEMBLY of the STATE BAR OF
MICHIGAN

Proceedings had by the Representative Assembly of
the State Bar of Michigan at Hyatt Regency Deaborn,
Marquis Ballroom – Second Floor, 600 Town Center Drive,
Dearborn, Michigan, on Thursday, September 17, 2009, at the
hour of 9:00 a.m.

AT HEADTABLE:

KATHERINE KAKISH, Chairperson
ELIZABETH M. JOHNSON, Vice-Chairperson
VICTORIA A. RADKE, Clerk
JANET WELCH, Executive Director
HON. JOHN M. CHMURA, Parliamentarian
ANNE SMITH, Staff Member
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Dearborn, Michigan
Thursday, September 17, 2009
9:08 a.m.

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

I would like to now recognize Clerk Radke.

CLERK RADKE: Good morning, Madam Chairman.

I would like to certify that we do have a quorum present.

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

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

CHAIRPERSON HAROUTUNIAN: I will entertain a second.

VOICE: Support.

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

Those opposed say no.

Any abstentions say yes.
Okay, the ayes have it. It's been unanimously approved that the motion carries and the calendar is approved.

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

VOICE: So moved.

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

VOICE: Support.

CHAIRPERSON KAKISH: Any discussion?

Hearing none, all those in favor say aye.

All those opposed say no.

Any abstentions say yes.

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

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

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

He began his career serving his nation as a
corporal with the United States Marines. After that, he obtained his law degree from the University of Michigan, and he then continued his career in public service, this time serving the people of the state of Michigan. He joined the Oakland County Prosecutor's Office and then moved on to the Wayne County Prosecutor's Office.

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

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

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

A prescription drug website called
MichiganDrugPrices.com helping consumers and seniors save money by comparing prices on medications.

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

Five, fighting utility rate increases.

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

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

Eight, the first online account of State Government spending where taxpayers can look at the financial information about the AG's office, including
spending on salaries and wages, information technology, rent, and travel costs.

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

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

Now, what I listed were among the many accomplishments that Attorney General Cox is locally known for and is locally known for having achieved as the top law enforcement official in Michigan, but within the Department of Attorney General itself Mike Cox is known for the tremendous courtesy and respect he extends to all employees. He is known for the dedication, his strong dedication to the legal profession. He is known for his commitment to ensure that all assistants attorney general become outstanding leaders in their fields of expertise, and he is known for his mission to ensure that the State of Michigan receives the highest quality of legal representation.
Personally he is the father of four, and he is a little league coach and is married to Laura Cox. I now ask that members of the Assembly join me in welcoming Michigan Attorney General Michael A. Cox, who I am very, very proud to call my boss. (Applause.)

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

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

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

Someone told me, Kathy told me a little earlier, maybe it was Liz told me a little bit earlier
that about 46 of the Assembly members didn't have any
opponents at all. So I have a little thing I am doing
next year, so maybe I should talk to you afterwards in
the lobby about how you figured that out.

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

You know, and I say that simply because I,
like you, enjoy a good joke, and I enjoy jokes that
are self-deprecating, and I enjoy jokes that sometimes
poke fun at our profession. But there is a piece of
me that always cringes a little bit, because it kind
of plays into the stereotype that too many people have
out in greater society about us, and those are those jokes that portray lawyers, attorneys as uncaring rapacious, callous, money grubbing, and the reason it bugs me, it's so counter to my experience of the past 20 years as a lawyer.

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

We are going to honor, you are going to honor some of the heros whose praises ought to be sung and are being sung publicly, but as I look around and see a number of people I know either personally or by reputation, I know just in this room alone there is a number of unsung heros, people who do so much, answer the call to service, are selfless with their private time to use their professional skills to help out their communities, help out their local city, to help
out their local county and to make their communities
better, one case at a time, one person at a time.
And, you know, for hundreds of years since our
profession really started to become a profession in
England under the common law in the middle ages, that
has been one of our hallmarks. Maybe it's the 24/7
nature of cable news or whatever it is or now with the
internet that sometimes we get pillory probably more
than we deserve to.

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

Because I love the law and running an office
that large, oftentimes I don't get the opportunity, I
expect like you, I don't get the opportunity to read
as much as I would like, and when I do read, I like to
read biographies and history. And so I was thinking
of that today because, not just today but yesterday
and the day before when I was preparing for the
speech, one of the lessons of history, and I don't
care whether you read European history, Latin American
history, the history of East Africa or the history of
the United States, one of the lessons that we see any
time we read anything about history is that a society,
any society that wants to be called civilized or
aspires to be called civilized by definition has to
have a system of laws to guide itself, its governance,
and its people.

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

I think that has been my experience as a
lawyer. I am sure that's been your experience as a
lawyer as well. And, you know, and I take heart from
the fact that if you pick up the Bible, if you pick up
the Bible, I think in the very beginning, the first book is Genesis, in Chapter 2 God lays down, for anyone who follows the Bible, God lays down the system of laws, and in Chapter 3, the next chapter, they are broken. You know, it's just part of the human condition. It's part of who we are as beings. Adam and Eve ate the apple, next chapter Cain killed Abel. And so while we aspire to the rule of law, and we ought to aspire to the rule of law, because law is, if you boil it down, any law is an aspiration. It's what we seek to do at our best. And we have to recognize, you know, it's important to have aspirations and goals to guide our behavior, but as human beings we also have to recognize that sometimes ourselves, but certainly the human condition dictates that oftentimes we are going to fall short of that aspiration. And part of what we do is that we try to find and define justice when human beings fall short of that aspiration, fall short of what the law requires.

And no society can function without the rule of law, but equally as important, or more importantly, no society can function without the ministers of law, and that's what we are, we are the ministers of law. We give the law spirit, and we give the law emotion,
and we give the law vitality and life. I don't want to get into any fight about the constitution, whether it's a living constitution or not, but we breathe the human experience into the rule of law. And so it's so important for any society that people not only have faith in the rule of law, what's written in their constitutions, whether it's a state constitution, whether it's a U.S. constitution, but also have faith in the ministers of justice, that they have faith in us.

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

Like I said, any constitutional republic, no matter how well designed, needs more than the actual parchment that the constitution was written on. It needs people who believe in it, who practice it, who live it, and that's what we do. That's what we do as
lawyers. That's what we do as members of the Michigan State Bar.

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

And we ought to take pride in that, and I hope you take pride in that, and I certainly hope that you as Assembly members, representatives of your local legal community, remind the folks that elected you about that. And while you are figuring out what rules ought to be put in the model rules of professional behavior or what you want to petition the Supreme Court about what particular court rule there ought to be, step back occasionally and remind yourself that we are the ministers of the law and
without us it doesn't work.

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

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

And his rabbi says to him in a slow sort of
voice, he says, You know, I heard you the first time. I asked you again because you did not answer my question. You told me what God had done with your life. Now tell me what you have done with your life. Because the man, and I will say the person like me, had listed off the things that he had been given but not what he had done with those things or what he had done with his life.

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

Myzell was about 84 years old. He died maybe about a month ago, and if you drive around town, you are not going to see a statute to Myzell Sowell downtown. There is no building that bears his name. There is no award that honors his memory that I am aware of. He wasn't particularly famous. He wasn't notorious. He made a good living, but he wasn't especially wealthy. But he proved this point, that as a lawyer you can have a huge impact, a great impact, and that you can be a great lawyer even if you are not notorious or wealthy.
I knew Myzell fairly well. Myzell had practiced for 50-plus years. He was one of the early architects of the Legal Aid and Defender Society here in Detroit, which became a model for a lot of indigent public defense around the state and really across the country, and the Legal Aid and Defenders Association was created shortly after 1967 after the riots here in Detroit. And Myzell was one of the very early architects and leaders of the legal aid and the defenders office.

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

But Myzell really did much more than that. He was a mentor to so many lawyers, so many young defense lawyers he showed the ropes to. He showed them how to be great advocates on behalf of their client, and so many of the folks he trained are now judges in Wayne County, Oakland County, Macomb County and on the federal bench, and for me personally, when
I met him, Myzell was probably 65, his professional career had slowed down, but he still worked it very hard. I met him as a young prosecutor, and he was on the other side of the courtroom, on the other side the table, and he taught me so many things about the practice of law and how to be a good lawyer, how to be a professional, and even though we went head to head, he was a teacher and a mentor to me, and he was a great influence on me, even though we had different clients.

And I mentioned earlier that I like to read history. I read a history recently, and it was an obituary that stood in great contrast of Myzell's, and this is an obituary of a very famous man who was born about 200 years ago in Sweden. He came to the United States -- his family was wealthy -- he came to United States to be educated in American schools, and he studied chemistry, and his family business went bankrupt while he was over here studying chemistry, so he went home, and his father died, and he had to rebuild the family wealth. So he applied his chemistry training to manufacture explosives, and eventually he created some of the best explosives in Europe in the 1800s, and he became very, very wealthy and became very, very powerful.
But one day his brother died, and he picked up the obituary about his brother in the paper to read the obituary, but they didn't write about his brother, they made a mistake, they wrote an obituary about him, and so you can imagine the shock. You know, he is reading this. His brother died. He wanted to pick up the paper to see if they said good things about him, but they wrote the obituary about him, and they titled it The Merchant of Death is Dead. True story. The Merchant of Death is Dead. And he read it, and he read some of the things, quote, he was a man who became rich by finding ways to kill more people faster than ever before died yesterday.

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

Now, some of you may have already guessed who this is. His name was Alfred Nobel, and he created
the Nobel Peace Prize, Nobel Prize for Literature and
Medicine, to create a different legacy to use the
wealth he obtained through explosives to create a
different sort of legacy, and he certainly did. And I
didn't mean to be Paul Harvey on you, but that was the
rest of the story.

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

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

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

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

Now, I am honored to be part of this great profession, and I am humbled that you brought me here on a day when you are honoring some great heros of our profession who have done great things. And I want to say congratulations to them, but as we honor the heros of our profession, as you honor them with the awards today and as you perhaps maybe think about your heros or your mentors, like my Myzell Sowell, and hopefully you are reflecting on them a little bit or you will reflect on them a little bit later today, I hope that you also remind yourself that we all have it within us, like Myzell Sowell and Alfred Nobel, to make the
world a better place and we have the ability every
time we go to work. We have the ability to make the
world a better place one client at a time, one case at
a time, one mentee at a time, one life at a time.

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

(Applause.)

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

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

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

MR. NELLIS: Good morning, everyone. Before
I get started, I just want to thank our Attorney
General for his comments. I think you are going to
see as we go through the program this morning, he kind
of hit on a theme, and I think it's going to be really enjoyable for all of us to get the opportunity to recognize some folks who maybe during the courses of your practice are names that you might not be necessarily familiar with, but as we on the Nominating and Awards Committee went through this process it was just a real joy to have the opportunity to recognize some people who do, quite frankly, some very monumental things that others of us don't always hear about, so I want you to really enjoy what we are doing this morning and just really take it all in.

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

VOICE: Support.

CHAIRPERSON KAKISH: Is Tracie Dinehart here? If she is, can you please stand. She isn't here today. Well, it's my understanding she is not here
today. However, the motion is to fill the vacancy at
the 56th circuit in Eaton County, and we did hear a
support for that. Is there any discussion?

Hearing none, all those in favor say aye.

All those opposed say no.

Those abstaining say yes.

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

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

This year's recipient is Daniel F. Bonner
from the Legal Aid of Western Michigan in Muskegon.
To present the award on behalf of the Assembly is
David Kortering from the 14th circuit, Muskegon.
MR. KORTERING: Thank you, Kathy. Good morning. Your 2009 Michael Franck Award winner has
dedicated his 26-year career to providing high quality
legal service to the needy and indigent in west
Michigan. He is currently the managing attorney for
Legal Aid of Western Michigan, which services
Muskegon, Oceana, and Mason County out of 17 counties
they handle entirely.

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

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

Judge Lambrix in Oceana County noted that his
dedication, commitment, and passion for his work are
matched only by his unique gift and ability to resolve conflicts in a civil, dignified, and professional manner.

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

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

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

I agree with Judge Maria Ladas Hoopes who wrote in your materials that when best describing him, whether you just have met him or known him for 20 years, you are proud to call him a friend, a
colleague, and a fellow member of the Bar association.

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

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

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

(Applause.)

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

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

I thought I could get through this without being either nervous or touched, but I can't. I have been deeply touched since May 1st that you would select me, not only because of me but because I am a legal aid lawyer. It's a tribute, I think, to legal
aid lawyers throughout our state that this wonderful
Assembly has chosen a legal aid lawyer for this year's
Michael Franck Award, and I would like to recognize
some other legal aid lawyers who are in the room, all
of whom are from Legal Aid of Western Michigan, some
of whom are members of your body.

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

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

And my other supervisor is my wife,
Dolores Trese. Dolores is the managing attorney of
the Holland office of legal aid, and, in fact, I mentioned to Mike years ago that the reason that Dolores and I got married was, it was a fiscal move on our part to save our program room fees because now the program doesn't have to buy two hotel rooms for us, so we can save our program money by getting married, and that fiscal decision turned out to be just a wonderful, romantic decision as well over the years.

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

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

Other story is I met an attorney in legal aid, a director of program from the Four Corners area
of the United States, and the legal aid program down
there is called, first by three letters, DNA -- not
for deoxyribonucleic acid -- but DNA-People's Legal
Aid Society, and I asked this gentleman who was a
Navajo, I said, What's the DNA stand for at the
beginning of the name of your program? I had seen
that often in our national catalogs and directories.
And he said, Dan, it stands for the first three
letters of a Navajo phrase, and he pronounced it, and
it was poetic, and it was musical, the Navajo phrase.

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

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

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

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

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

Brian participates in many events, and here are some highlights. Brian is on the executive board of our local chapter of the Inns of Court. He, along with Linda Pohly, Don Rockwell, Dick Barron, and several others are the glue that helps keep our inn
thriving. Brian is active in our local Bar
association, participating in many local events and
having served on our executive board and eventually as
our president.

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

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

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

But when I say that Brian is active, I really
mean that Brian is active in our community. Brian and
his wife, Dorie, have helped create and grow the Crim Training Program, and for those of you who don't know, the Crim is a 10-mile road race in our area. The program that they helped create and help flourish is one that has folks with varying levels of training and athletic background prepare for and complete the 10-mile road race.

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

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

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

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

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

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

Brian Barkey is absolutely that kind of unsung hero. A man of outstanding kindness and generosity who is oftentimes referred to an the saint of our Bar. To be honest, Brian really is the saint of our Bar. His sister, Judge Jennie Barkey, is in the back of the courtroom, and just on Tuesday she referred to him as a saint of the Bar from the bench.
So thank you, Brian, for being a mentor and a role model to me, but not just inspiring to me or a handful of other people. We are not alone in thinking that Brian is special. Shayla Blankenship, who is a lawyer from Flint and also a Representative Assembly member, first suggested that Brian would be a great recipient of this award. She was absolutely correct. In fact over 112 local lawyers signed the petition that was attached to Brian's application that was submitted on his behalf.

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

(Applause.)

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

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

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

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

There are unsung heros also to me among the Genesee County Bar Association, and if I could give anything to you today that you can take back to your
circuits, it's something a little bit about this
dinner. Pardon the advertisement here. Seventeen
years ago a family court judge who sees plenty of
hardships said, We ought to do something for families
over Christmas. He saw lots of disrupted families,
and he was absolutely right, the best idea guy in our
Bar association is Duncan Beagle.

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

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

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

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

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

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

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

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

(Applause.).

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

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

She is a partner at Brinks, Hofer, Gilson & Lione in Ann Arbor. She is an aeronautical engineer by training. She worked at McDonnell Douglas, now Boeing in St. Louis. She has taken a passion for
flying and used it to serve other people. She has
taken a passion for flying, turned it into a degree,
and uses it now in her service for her clients. She
is the kind of person that you meet and you realize I
want to be like her. I want everyone I know to be
like her. I want every lawyer that I know to be like
her. She has so much energy and passion and
competence. She is the kind of person who just exudes
competence. You meet her and you think, boy, if I was
on a plane, I would want her to be my pilot. If I was
in a crisis, I would want her to be the one that's in
charge.

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

Kelly said that by training as an engineer
and then working at McDonnell Douglas she had to make
sure that those jets were maintainable, that they were operational, that they were reliable. You can't make a mistake, and Kelly has taken that training as an engineer in her work experience for something like 11 years as an engineer and taken it into the legal profession, and she uses it in service of her clients.

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

She has to be ready and on call. She doesn't know when she might get the call to make a flight like that. What does she do? She donates her time. She might leave the office, drive back to Detroit airport, fly to pick up these people, take them where they need to go, and then come back. She donates her time, her
plane, and her fuel. This is no cheap donation.

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

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

Kelly is just, she is truly amazing. We
talked about her client service, the way she believes in her clients. She flies around the country, sometimes she flies herself and sometimes she flies commercially to see her clients as part of their team. Being an engineer, she can roll up her sleeves and work with them.

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

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

(Applause.)

MS. BURRIS: You like me. Seriously, all kidding aside, I would like to first of all congratulate Daniel and Brian and all the great work that you have done and that you are doing and for the
Representative Assembly for considering me for this award.

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

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

And I have been fortunate enough to match up something I am passionate about with this charity Angel Flight that has this need to get people and supplies -- as a matter of fact I am transporting baby
milk next month, to provide that need for those
people, and then as I thought about it a little more,
I thought he is right. There really is, there is a
charity out there for everybody. No matter what it is
that you are passionate about. If you are a gourmet
chef, I am sure Brian could use some of your services.
If you love animals, there is the local shelter that
could use your help. If you like to work on cars,
local charities that fix up cars and donate them to
individuals and organizations.

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

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

(Applause.)

CHAIRPERSON KAKISH: Well, I do believe that
we are doing very well on the calendar time. At this point I would like to inform you that our three award recipients will attend today's inaugural luncheon, and their names will be mentioned during the program, and we are very much proud to have their names known. It is very clear that the Assembly's Awards and Nominating Committee did a great job this year in selecting the award recipients. I would like us to extend a round of applause for our three recipients and for you for selecting these three wonderful people.

(Applause.)

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

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

CHAIRPERSON KAKISH: If you will take your seats. After these great presentations by the Attorney General and then the award recipients, it's kind of hard to take the microphone and address you now and be compared to all of them, but my job is just to be professional, and that's what I will try to do.
Next on the agenda is item number 9, which is remarks from the Chair. I have 50 things to report to you, but I decided that I will only cover five. So the five matters that I will report to you today, the first one relates to the policy actions adopted by the Board of Commissioners since our last meeting in April.

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

The proposed amendments were issued with three different options, with a comment period expiring on August 1st. The hearing itself took place the first week of this month, September, and State Bar was present at the hearing through its staff. But
once the proposed amendments were actually released for public comment, this is what the State Bar did. The State Bar circulated it to all Bar sections and committees for their own input, and several of these committees and sections responded, and the input, for those of you who read the proposal for judicial recusal, it was very complex, very intense, and so the input that the State Bar received from these sections and committees varied and actually conflicted on certain points.

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

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

Now, at your tables you will find a copy of the August 26 letter, and that's in the attachments that are cream colored, I believe, and so this is the August 26 letter that was addressed to the
Supreme Court reflecting the views taken at this special meeting that the commissioners held on August the 21st. And, of course, that document should be marked as tab 1(D) Exhibit C.

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

Now, also included in the Assembly booklet under tab 1(D) is a copy of the minutes from the Board of Commissioners meeting on June 12th, and then as Exhibit C would be the cream colored attachment that you found on your tables this morning, those are copies of two more meeting minutes by the Board of Commissioners. The minutes from the July 24th meeting and the minutes from the special meeting on August 21st, and of course they give more detail about the proposed judicial recusal amendments.
Now, these three sets of Board of Commissioner meeting minutes reflect, and I am not going to list them all, I am not even going to list them, but they do reflect an additional six or so other actions that the commissioners took on behalf of the State Bar, and this leads me to the second point that I would like to address. We are seeing more and more shorter comment periods from the Supreme Court for proposed amendments, and of course we know that the Assembly meets only twice a year, and with these short comment periods, it's becoming more and more difficult to bring them before the Assembly.

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

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

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

In its 37-year history, 35 hard working,
dedicated attorneys served the Assembly as chairs, and
it was indeed a great honor to meet many of these
giants in the legal profession who attended the
reception.
The history of the Assembly's service of the legal profession was given prominence at this reception. A Power Point presentation was given with a recital of the major action that each Assembly chair took while that person led the Assembly. And a review of the Assembly's work since it was established actually brought home the point that we today stand on the shoulders of past Assembly members and now take for granted many of the policies that the Assembly adopted.

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

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

My fourth point, I would like to extend a heartfelt thank you to the staff of the State Bar. They have shown over and over again their commitment in helping the Assembly in its mission. I remember
many, many years ago when I was sitting among my colleagues on the third circuit how every year the staff would be thanked, and to be quite honest I never really understood the implications of that until I became an officer and realized all the hard work that the staff does in helping the Assembly, in helping the State Bar. It really is remarkable. It's tremendous.

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

I would like to take a moment here to read out the names of some, and only some, of those who have been extremely helpful, not only to the Assembly, but each and every Assembly member. And if they are here in the room, I really would appreciate them standing.
Candace Crowley, external development director. Is Candace here? No. She was earlier.

Margaret Bossenbery, she is actually the executive coordinator.

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

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

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

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

Member services and communications division, we have Nancy Brown, and Nancy is with us at every single meeting making sure that all the equipment is running properly and making us look very good with the Power Point presentations.
Also Michael Eidel— I rehearsed his name, trust me -- Eidelbes. My apologies.

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

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

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

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

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

But I would like to turn to one particular staff member, and I have mentioned her name earlier this morning, and that's Anne Smith. She is the Assembly's administrative assistant. I am sure many
of you have spoken with her over the phone. We
wouldn't be able to operate day to day the functions
of the Assembly or even put together the Assembly
meetings without Anne, and the Assembly is indebted to
you for everything that you do. Thank you.

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

The commissioners, the Board of Commissioner
members who sit on the Assembly, you have done a very
good job for the State Bar this year, and you do
deserve to be well recognized. I please ask you to
stand up so other members will know who you are.

Don't be shy.

(Applause.)

CHAIRPERSON KAKISH: There are more than
that. We have more members, I know, who are sitting
here being a little bit shy.
Now, also President Ed Pappas and Executive Director Janet Welch. Ed and Janet, there is a lot of great things to say about you, and, with all due respect, I am saving those remarks for my introductions just before you come up to speak.

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

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

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

Now, a lot goes on in terms of running the Assembly between the meetings. The three officers --
Liz, Victoria and I -- attend the monthly meetings of the Board of Commissioners, and Liz and I, as vice chair and chair respectively, serve on the Executive Committee. That teleconferences every two weeks. Of course both of the Board of Commissioners and the Executive Committee are chaired and led by Ed Pappas, which means that Liz, Victoria and I have had a great opportunity to work closely with Ed. Ed has, indeed, led the State Bar with commendable leadership skill, treating everyone he meets with great courtesy and respect. He is quick to identify and assess issues, quick to provide sound decisions and suggestions. He is an excellent communicator. It has been a pleasure working with him, because you can always trust that he will always take the exceptional path of excellence, and his great sense of humor is always a great added bonus.

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

(Appause.)

PRESIDENT PAPPAS: Thank you, Kathy. Those
were wonderful words you said about me, and they all
sounded really true.

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

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

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

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

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

So we refocused our attention and decided to
fight against the decrease in judicial compensation
based on constitutional issues, and we asked Barry
Howard to represent the lawyers and judges in front of
the SOC Commission. The SOC Commission agreed that
judges' compensation should not be decreased because of constitutional issues. The governor herself agreed. The recommendation to the legislature was to cut the compensation of all elected officials except judges, and the legislature adopted that position.

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

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

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

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

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

And I thank all of you and all the lawyers in the state of Michigan and the judges in the state of Michigan for giving me the privilege to serve as
President of the State Bar of Michigan. Thank you very much.

(Applause.)

CHAIRPERSON KAKISH: Thank you, Ed. Any questions?

All right. Next is calendar item number 11, remarks from the Executive Director, Janet Welch. Janet, as you know, oversees the day-to-day operations of the State Bar. She implements the State Bar policies and directs the staff. This past year the Assembly officers have also worked very closely with Janet. She has been quite accessible to the needs and concerns of the Assembly. She was immediately available when needed, especially for a couple of last minute emergencies that erupted this year, and she was very quick to provide solutions and the necessary staff to help us get through.

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

Janet's background in state government, particularly with the Supreme Court, has proven time and again how extremely valuable she is to both the Assembly and to the State Bar, and I am sure one of
the most difficult tasks she recently had to do was to assist the Board of Commissioners through the complex Supreme Court judicial recusal amendments. Janet.

(Applause.)

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

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

(Applause.)

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

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

The work of the Representative Assembly, of course, is a key component and the value that we provide to our members and to the public, and although it is very tempting to ask in relation to public policy initiatives of the State Bar, what the heck is taking so long, the R.A.'s proposals do make a real
difference, and, as Kathy has said, she has asked me
to speak in detail about two proposals. The old
initiative from 2006 that she has asked me to speak in
detail about is the R.A.'s endorsement of a trust
account overdraft notification program in Michigan.
Because I only had ten minutes, I am going to refer to
that as TAON instead of talking about trust account
overdraft notification.

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

You were persuaded, you, the institution of
the Representative Assembly, not necessarily each of
you, since some of you are new, but you were
persuaded, as was the Client Protection Fund
Committee, that the vast majority of lawyers get into
trouble not because they intend to steel client monies
but because they go down a path that starts with
inappropriately using a trust account to cover
operating expenses and then failing to replenish those
funds, resulting in a bounced trust account check.

Michigan's experience, in fact, validates this view.
Many of the largest aggregate client protection fund
claims we have found start with a single lawyer having
overdrafts over a period of time.

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

In the light of this evidence, you adopted
the TAON resolution in 2006, and you authorized staff
to develop any appropriate modifications to the ABA
Model Rule that would be appropriate for Michigan,
which we did. We met over a period of several months
with representatives of the banking industry and the regulatory community, and we submitted a draft rule to the court for its consideration.

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

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

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

Now to the second issue that is developing as an area that will almost certainly call for R.A. attention in the coming year or years, and that is, as Kathy has said, the question of under what conditions
and using what procedures judges should recuse themselves from hearing a case. The issue is referred to interchangeably as judicial disqualification and recusal.

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

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

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

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

    Two, disqualification decisions should be in
writing.

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

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

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

    Six, the standard for bias should be actual.

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

    Eight, the rule should clearly state the
disqualification is required if the judge or justice
cannot impartially decide a case.
Nine, the disqualification rule should encompass the appearance of bias based on an objective standard. That, by the way, turns out to be consistent with the Caperton majority.

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

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

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

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

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

At that meeting the board adopted five additional positions which were immediately
communicated to the court, and they are the grounds
for disqualification of justices and judges should be
the same. That doesn't address the question of
whether the procedure should be the same. It
addresses the question of what the grounds for
disqualification should be.

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

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

Number four, that the grounds for
disqualification should include when a judge, while a
judge or judicial candidate, has made a public
statement other than in a court proceeding, judicial
decision, or opinion that commits the judge to reach a
particular result or rule in a particular way in a
proceeding or controversy.

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

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

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

So here is the important point for you, the
Representative Assembly. What's left on the table,
really the most difficult questions. The most
consequential question still unaddressed by the
State Bar on recusal is the Caperton issue, under what
circumstances do campaign contributions trigger a
recusal requirement. I cannot overstate how big and
complicated and consequential a question that is, and
I urge each of you who have not already done so to read the Caperton decision carefully to appreciate the complexities involved. The Caperton decision was a five/four decision, and the lines of disagreement on that court look similar to the lines of disagreement on our court.

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

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

(Applause.)

CHAIRPERSON KAKISH: Any questions? Okay.

MR. LARKY: I have a question.

CHAIRPERSON KAKISH: Yes.

MR. LARKY: Sheldon Larky, 6th circuit.

Mrs. Welsh, I notice that ICLE has put on its website
that it no longer is going to be working on cases with
the State Bar. Can you describe Casemaker for us,
please.

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

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

So I hope that's sufficient. If you want
more detail and you want to hear from Casemaker
itself, they do have a booth in the exhibitors hall.

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

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

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

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

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

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

First I want to start with a quick update on the national level. I also reported to you in March that we were starting to see a greater level of interest from the federal government in providing assistance to states and how they need this very important constitutional need. We let you know that
Michigan was the subject of a congressional hearing back in March. There has now been a second congressional hearing that was held in June. The title of that hearing was Indigent Representation, A Glowing National Crisis. The members of that panel spoke a little bit outside of the scope of Michigan. They had representatives from Minnesota, Florida, Virginia, North Carolina, and Arkansas.

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

In April we also talked about an announcement that was made from our House Judiciary Chair in the state. Representative Mark Meadows had appointed two of his judiciary committee members to spearhead an effort of a subcommittee on indigent defense. So Representative Bob Constan and Representative Justin Amash. They had their first hearing in June, in the middle of June, and that hearing focused on two draft bills. One bill was to provide for a statewide reform
effort of a public defense system. The second bill was to provide funding through an indigent defense fund that would be created.

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

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

Kathy and I have already talked about it, to make sure you guys all have that in your hands. You should know that as the State Bar looks at the bill and looks at amendments, we are looking at it from the
perspective of how do we provide a model to the
legislature that incorporates the 11 principles that
this Representative Assembly adopted back in 2002.

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

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

I want to spend a few moments talking about
what's in the bills, because, as you know, we all
agree on those 11 principles, but, as they say, the
devil is in the details. And I think that with the
change comes some feelings of uncertainty. We know
that we are united in wanting to do this well in
Michigan, but certainly it is a moment of change, and
with change comes some uncertainty, so folks want to
know how are we going to make it better and how are we
going to fund it.
I want to go through a few of the things, since it's just in draft form, to let you know what's being discussed. Certainly it's a system, it's a model that reflects and meets minimum national standards, so to this end we have looked to other state systems that are working effectively. We have worked with national consultants. I hope you will all remember David Carroll who was before you all a year ago. He has been intimately involved still. We also have other folks working with us and also a system that has adequate state funding.

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

It is envisioned that there would be an office of public defense staffed by trained professionals and headed by a chief public defender. There will also be an appellate bureau headed by a
chief appellate defender to oversee appellate defense
functions. It's also being suggested and discussed
that there will be regional offices to oversee the
local delivery of public defense services.

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

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

So we will be making sure that there is
compliance to the 11 principles that will be required
by statute. This office of public defense would
establish procedures to implement the commission plan
and policies, including oversight mechanisms, provision of training and resources to attorneys providing public defense services, collecting data other than reporting the commission and the legislature. The office of public defense and its appellate bureau would appoint the counsel based on the plan established by the commission.

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

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

You know, I want to say that I think we are in a place where the details are starting to emerge, and this is where a lot of the debate is going to start happening, but it's just the beginning of this process. You still have a long opportunity to provide comment and feedback on what it is that this looks like. Obviously we don't even have bills introduced yet, but we will soon, so we have a long time to go, I
think, before we actually are asking the governor to
sign the bills into law, but certainly I look forward
to your feedback and answering your questions and to
regularly speak with you about how this reform is
moving forward.

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

CHAIRPERSON KAKISH: Any questions? Okay.

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

MS. WILLIAMS: Good morning, just to provide
a brief report of actions that were taken at the
August annual meeting of the ABA, there were a number
of different proposals that were up and a number that
were passed, so I tried to look to see what would be
most important to us. And I know in April we had quite a lengthy debate about public defense, and so I will address one proposal regarding public defense, and then there were two others that I thought were related but on the civil side, and one was 102(A), and that was a proposal that was adopted, and what it does is to urge the private sector to waive positional conflicts, especially in the cases of bankruptcy, and it would allow more persons in large law firms or corporate attorneys to take pro bono work, especially in the current economic environment where there is just a positional conflict and not a true ethical conflict where there could be some pro bono services provided.

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

The larger one was 119, and that's related to public defense. The concern with that bill was that there was an excessive workload of public defenders that was interfering with ethical responsibilities to provide quality services, and so there were eight guidelines that were passed that would be urged to
different public defenders offices in states to govern excessive work loads.

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

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

Number three was to provide training within
public defense offices to teach attorneys that ethical responsibilities go beyond what we traditionally think of conflicts of interest, but ethical responsibility also means zealously representing your client and being able to recognize when your work loads are excessive and going to your supervisor and saying I have an excessive workload, I need to get rid of some of my cases.

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

And then also one that I thought was important was to in cases where the civil, the civil remedies would be adequate, working with the prosecutor to, encouraging that the prosecutor not seek criminal charges in those cases, because that
would also reduce excessive work loads.

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

And number eight, the final guideline, was
just to require offices to appeal those decisions
where courts decide we are not going to reassign
cases, we are not going to allow you to withdraw, but
you understand that your office has an excessive
workload, your attorneys are overworked and unable to
provide sufficient representation, that you will
appeal those cases and let the court system know as
well as the public that we have to make sure that the
public defense offices are able to provide adequate
representation and that it's important to the clients they serve and also to our profession.

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

(Applause.)

CHAIRPERSON KAKISH: Next is calendar item number 14, consideration of Canon 2, the hiring of court employees. As you may see from the material attached in the agenda under, the agenda booklet under tab number 14, this is an issue or a proposal that was
considered by the Assembly last year at the last
September meeting. Now, what happened was that it was
moved, seconded, and it was under discussion, and then
the Assembly voted to refer it back to the Special
Issues Committee to seek input from the State Bar
sections and committees, and the Special Issues
Committee has actually done that, and under tab 14 are
the written responses from a dozen or so committees
and sections in response to this proposed court rule.

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

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

As Kathy had outlined already, this matter
was referred to the Special Issues Committee, which
had taken up the matter at two meetings. During the
first meeting it was coordinating the referral of the
matter out to the various committees and sections of
the Bar. We then received the comments, and the
committee met again to decide what the committee's
position would be on a recommendation to this body.
The recommendation was not to move forward with the proposal as written. As you can see from some of the comments, the proposal amends the judicial cannon, and it was felt that this was not an appropriate thing to do. Though the committee wanted to make note that it recognizes, along with some of the other areas that had commented, that it doesn't mean that there aren't issues.

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

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

CHAIRPERSON KAKISH: Thanks, Steve. The initial motion now is the one that is on the screen and the one printed on your booklets, and that's the motion that was before you back in September, and, as Steve indicated, the overwhelming responses from the
various committees did not like this proposal. And that's what we will open the floor up for discussion at this point.

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

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

JUDGE KENT: Wally Kent, 54th judicial circuit. I have got about four pages of handwritten notes of what I want to say. I will not say it all. I am as hungry as the rest of you. I suggest, as drafted, that we should vote in opposition to this
To some degree it may be a solution without a problem. With due respect to Matt, and I have a lot of respect for Matt, I think that this is the wrong way to approach the situation. There is now a new committee of the State Bar entitled the Judicial Ethics Committee. This is not a substitute motion, but I suggest to you that perhaps it would be best if this were to be referred to that committee for consideration and investigation. What I have a sense is that this is going to turn out to be a little like Potter Stewart's definition of -- I can't define it, but I know it when I see it.

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

CHAIRPERSON KAKISH: Any further discussion?

Hearing none, we will now vote on the motion, and the motion is as listed, should the Representative
Assembly support and endorse a resolution to amend the Michigan Code of Judicial Conduct to add Section F to Canon 2 as proposed.

        All those in favor of this motion say aye.
        All those opposed say no.
        Those abstaining say yes.
        All righty, this is an unanimous vote that opposes -- this is an unanimous vote that actually opposes the rule.

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

MR. GOBBO: I again stand before you as the block to lunch. This matter, as Kathy pointed out, was referred to the Special Issues Committee, and the Special Issues Committee voted to recommend deferral of the proposal until the spring meeting, and the reason for that is that this proposal had been put forth by the Alternative Dispute Resolution Section in response to the work of NCCUSL to come up with
standard model language regarding the arbitration provisions that many see, many don't like, depending on what side of the fence you are on, and many like, because it's part of the business of practicing law in terms of trying to keep things out of the court system.

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

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

They chose not to do that. They chose to work with the Assembly in terms of providing more information and then to have informed debate on this
matter at the next Assembly meeting.

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

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

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

CHAIRPERSON KAKISH: The Assembly is now back into session. Next is calendar item number 17, consideration of proposed amendment to MCR 6.302, pleas of guilty and nolo contendere. This is a proposed Court Rule change that the Supreme Court has
published for comment. A copy of this proposal has been printed in the agenda booklet as Exhibit Number 1. That's the copy of the proposal as submitted by the Supreme Court.

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

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

The proponent who is bringing this before the Assembly for the Assembly's consideration is Richard Cunningham. He had served as an Assembly member for many, many years, and he is currently serving on the
State Bar as a commissioner, so I recognize Richard Cunningham, if you can come to the podium, please.

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

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

The Court Rules now deal with that, deal with the ways to determine, for the courts to determine, for the courts to show that that plea is truly freely, knowingly, and voluntarily made. And one of the current rules says that in order to ensure that its freely, knowingly, and voluntarily made we are going to make the prosecutor and the defendant tell us what agreements were made. The defense attorney and the prosecutor will tell the court at the time of the plea do you have any agreements, what are they, let's put them out there. What this language adds is that any
discussions regarding that plea have to be done on the
record in open court.

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

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

But even looking at the rule very narrow, all
discussion regarding a defendant's plea must take
place in open court on placed on the record. Can you
imagine the outcry if that was required in a civil
case. You are going to negotiate on behalf of your
client. You are going to negotiate out in the open.
Certainly we can all appreciate the need to be open, but we also have to recognize how the world really works, how we reach agreements between prosecutors and defense attorneys and say things we wouldn't want said in open court and deal with things when we know that that's the nature of the negotiation process.

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

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

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

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

CHAIRPERSON KAKISH: You are opposing this language, very clearly.
MR. CUNNINGHAM:  I am sorry, I was a little subtle on it.  I think this is probably the worst Court Rule that I have seen in years.

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

VOICE: Support.

CHAIRPERSON KAKISH: Any discussion?

Hearing none, all those in favor --

VOICE: Stop.

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

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

If we were to force these things to be on the record, that could inadvertently cause all sorts of
problems for noncitizens who might be subject to removal. I am thinking typically low level domestic violence situations, which are particularly dangerous for noncitizens to plead out to, but there are other ones as well, and that would turn it into a trap for the unwary.

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

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

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

All those in favor to oppose say aye.

All those opposed say no.

Any abstention say yes.

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

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

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

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

Now, meanwhile, over the course of the summer
the Family Law Council took into consideration all
that was discussed here at the April meeting, and they
went to the drawing board. They now submit to you
their proposal.

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

Elizabeth, if you can come to the podium.

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

We are also very aware of the First Amendment
implications that have been raised in this matter. We
respectfully would like to proceed with this matter at
a later date, and, if it is appropriate, to be able to
bring this to the attention of this Representative
Assembly with further detail at the April meeting.
However, we do wish to thank you for your concern. We
1 do wish you to be sure to keep this in your attention,
2 because it is too important to simply forget about.
3 We would like to be back to you and speak with you at
4 a later time. Thank you.
5
6 CHAIRPERSON KAKISH: If I may add, when the
7 Drafting Committee reviewed the proposal, the Drafting
8 Committee had recommended to the Family Law Council
9 and the Family Law Section that samples of the type of
10 problems that are arising in this issue would be very
11 helpful for the Assembly to review.
12
13 You do have one sample attached to that tab.
14 That is just one sample, but the recommendation was
15 for more attorneys perhaps to submit their statements
16 to this Assembly as to what type of problems they are
17 encountering because of attorney solicitation, and
18 it's my understanding that the proponents of the
19 proposal want to have a little bit more time in which
20 to do that.
21
22 Next is calendar item number 18 -- actually
23 we just did that.
24
25 Now we are in order, it's 19, and that's the
26 nomination and election of clerk. We have a contested
27 election this year, and the Permanent Rules of
28 Procedure of the Representative Assembly provide how
29 it will be handled.
Before we begin opening the floor for nominations, an overall view of what we are going to do today is worth going over. The rules allow each candidate to have two minutes to address the Assembly. Both candidates, and I name them in alphabetical order, Stephen Gobbo and Krista Haroutunian, it's my understanding, and please correct me if I am wrong, but it's my understanding that both candidates have decided to forego speeches, and they are relying on the biographical information that they have submitted for your review and which are found in your booklets.

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

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

So the tellers will distribute the ballots. Each ballot is in an envelope with your name on it. After you cast your vote, please fold the ballot and
raise your hand so that the teller assigned to your aisle can come and pick it up. Please do not, do not return the envelope with your name on it. These votes are anonymous.

Now, after the tellers collect the votes, they will leave the room and start counting, and so at this moment we will start by opening the nominations. Are we a little bit early on the program?

Alphabetically, Stephen Gobbo.

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

Mr. Gobbo has been active in policy-making decisions with organizations right from law school. While he was in law school he was a member of the ABLSD policy-making body. And he joined the Representative Assembly. When he joined in 2004, he was actually appointed, he became chair of the Special Issues Committee. He was also involved in several other committees in the Representative Assembly, and has been very active with the State Bar. He used to be chair of the Prisons and Corrections Section, and there is nobody else that I can see as a perfect candidate for the position of clerk for the
Representative Assembly, so I hereby move his nomination to be elected as clerk of this Assembly.

Thank you.

VOICE: Second.

CHAIRPERSON KAKISH: Now Krista Haroutunian.

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

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

MS. VANHOUTEN: Margaret VanHouten from the 3rd circuit. I am pleased to second the nomination of
Krista Licata Haroutunian. I have known Krista
Haroutunian for at least 15 years. I have known her
as a legal professional. I have often bounced cases
and legal ideas from her and value her keen legal
mind. She has been active in the State Bar
Representative Assembly and has chaired the Hearings
Committee. I have known her in several leadership
roles, have served on many committees in which she has
served as chair, and I can attest to her ability to
run a meeting and, as she works her way through the
leadership roles, would one day make a fine chair of
this Assembly as well, and I have also known her as a
good friend for many years, and I would like to second
her nomination.

CHAIRPERSON KAKISH: Thank you.
Seconding for Steve Gobbo.

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

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

    CHAIRPERSON KAKISH: Are there any other
nominations?

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

    VOICE: So moved.

    CHAIRPERSON KAKISH: Any second?

    VOICE: Second.

    CHAIRPERSON KAKISH: Support. Any
discussion?

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

    All those opposed say no.

    Those abstaining say yes.

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

    Now, if the tellers would please start
distributing the ballots. Remember the ballots will
have an envelope and your name. After you vote,
please do not return the envelope.
(Ballots handed out and then collected.)

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

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

VOICE: So moved.

CHAIRPERSON KAKISH: Seconded?

VOICE: Support.

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

VOICE: Can Bob just get up and do jokes for 25 minutes?
CHAIRPERSON KAKISH: I don't know if that was a friendly amendment, but for those who did not hear, the recommendation was for Bob Buchanan to come up and say jokes in the interim.

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

Hearing none, all those in favor say aye.

Any opposed say no.

Any abstentions say yes.

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

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

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

CHAIRPERSON KAKISH: Can you please announce your name.

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

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

MR. EVANS: Against.

CHAIRPERSON KAKISH: Okay. Is there a second
for the motion to reconsider?

VOICE: Second.

CHAIRPERSON KAKISH: Any discussion?

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

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

CHAIRPERSON KAKISH: So that's the motion.

All those in favor say aye.

All those opposed say no.

Any abstentions.

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

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

(Applause.)

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

VOICE: 20.

CHAIRPERSON KAKISH: Let me backtrack a little bit. The tellers are outside counting the
votes. What will happen is once they finish counting the votes, at some point after Liz Johnson is sworn in as chair, she will announce the winner with respect to the clerk's nominations.

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

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

(Applause.)

CHIEF JUSTICE KELLY: Now, I have no allusions about why you are clapping, because it means
you get out a little quicker.

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

I Elizabeth Johnson --

VICE CHAIR JOHNSON: I Elizabeth Johnson --

CHIEF JUSTICE KELLY: -- do solemnly swear --

VICE CHAIR JOHNSON: -- do solemnly swear --

CHIEF JUSTICE KELLY: -- to uphold the

Constitution of the United States --

VICE CHAIR JOHNSON: -- to uphold the

Constitution of the United States --

CHIEF JUSTICE KELLY: -- and the Constitution

of the State of Michigan --

VICE CHAIR JOHNSON: -- and the Constitution

of the State of Michigan --

CHIEF JUSTICE KELLY: -- and the Rules of the

Michigan Supreme Court --

VICE CHAIR JOHNSON: -- and the Rules of the

Michigan Supreme Court --

CHIEF JUSTICE KELLY: -- regarding the

Representative Assembly --

VICE CHAIR JOHNSON: -- regarding the

Representative Assembly --
CHIEF JUSTICE KELLY: -- and to faithfully
discharge the duties --

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

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

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

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

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

CHIEF JUSTICE KELLY: Congratulations,
Elizabeth.

(Applause.)

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

(Applause.)

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

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

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

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

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

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

To Kari Thrush, who is a godsend in
organizing meetings like this and has done a great job
on our annual meeting.

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

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

(Applause.)

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

(Applause.)

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

(Applause.)

CHAIRPERSON JOHNSON: Thanks now to
Connie Coon, who is our wonderful court reporter. She
has served our Representative Assembly for many years,
and I am grateful for her dependable, consistent work
in recording and transcribing our meetings to perfection. Thank you very much, Connie.

   (Applause.)

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

   (Applause.)

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

Thank you, Charles.

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

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

(Applause.)

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

Very special thanks to our clerk,
Victoria Radke, who is now the Assembly chairperson. Congratulations, Victoria.

CLERK RADKE: Vice chair.

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

CLERK RADKE: You're welcome. Thank you.

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

While Kathy served as chairperson, the Assembly discussed and acted upon many important policy matters. Her efforts have helped to foster a continuing dialogue between the Assembly and the Supreme Court, which continues today. Her caring and
compassionate manner have made our legal profession
and the Representative Assembly a much better place.
Thank you, Kathy, your knowledge, generosity of spirit
and service will be greatly missed by me and those who
have worked with you on the Representative Assembly.

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

(Appause.)

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

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

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

(Applause.)

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

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

(Applause.)

CHAIRPERSON JOHNSON: Thank you very much,
Victoria, and to your tellers, and congratulations to
Steve Gobbo. Our thanks also to Krista Haroutunian,
who has served very well with this Assembly, and we
thank you very much for your interest and
participation.

(Applause.)

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

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

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

(Applause.)

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

(Applause.)

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

(Applause.)

The next is Linda L. Widener.

(Applause.)

CLERK GOBBO: Linda wasn't here.

CHAIRPERSON JOHNSON: James Paterson.

(Applause.)

Julia Perkins.

(Applause.)

Linda A. Pohly.

(Applause.)

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

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

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

(Applause.)

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

(Applause.)

Colleen M. Culitan.

(Applause.)

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

(Applause.)

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

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

(Applause.)

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

(Applause.)

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

(Applause.)

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

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

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

(Applause.)

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

Next I would like to have Kathy Kakish come forward. Kathy has served this Bar with great distinction. She has served on the Board of
Commissioners, she has served on the Executive Committee of the State Bar, she has served on the Representative Assembly for years. She has been the clerk, the vice chairperson, and this year the chairperson.

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


(Appause.)

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

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

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

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

(Applause.)

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

Before we end, I have a few announcements.

First of all I would like to remind all of you of the session that's going on that Elizabeth Lyon discussed
earlier this morning concerning legal defense. It will be held in the Grand Ballroom, which is downstairs, and all of you are certainly welcome to attend. If you have any questions about where it is or issues concerning that, please see me or Elizabeth Lyon.

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

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

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

Please remember to turn in your signed attendance sheets to Anne Smith or one of the other staff members at the end of the meeting, and there
will be people at the rear of the room.

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

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

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

VOICE: So moved.

CHAIRPERSON JOHNSON: Is there support?

VOICE: Support.

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

Opposed.

Abstentions.

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

(Proceedings concluded at 3:00 p.m.)
STATE OF MICHIGAN  
COUNTY OF CLINTON  

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

October 7, 2009

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