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

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

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REPRESENTATIVE ASSEMBLY 9-18-08

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

RECORD

CHAIRPERSON GARDELLA: If everyone could be seated.

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

Filling of vacancies
Remarks by Chairperson Robert C. Gardella
Remarks by President Ronald D. Keefe
Remarks by Executive Director Janet Welch

Consideration of MCR 6.201 (B) Preservation of Electronic Recordings

Consideration of Political and Judicial Endorsements by Assembly Officers

A Race to the Bottom - Speed & Savings Over Due Process: A Constitutional Crisis by David Carroll, Director of Research for the National Legal Aid and Defender Association

Consideration of Canon 2(F) of the Michigan Code of Judicial Conduct

Consideration of MCR 6.425 (B) & (C) Providing Copies of Presentence Reports to Defendant and Defense Counsel

Consideration of MCR 6.425 (B) Presentence Report: Adding Information to; Adjournment Allowed When Not Timely Submitted Before Sentencing

Consideration of MCR 6.610 (F) Presentence Report District Court: Adding Information to; Adjournment Allowed When Not Timely Submitted Before Sentencing

Nomination and Election of Assembly Clerk

Swearing in of Kathy Kakish as 2008-2009 Chairperson of the Representative Assembly

Presentation of Recognition to Assembly Chair, Committee Chairs and Assembly members

Adjournment

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

CLERK JOHNSON: Thank you, Mr. Chairperson.

Mr. Chairperson and members of the Assembly, I am pleased to announce that we have a quorum with over 50 members present.

CHAIRPERSON GARDELLA: Thank you, Clerk Johnson.

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

MR. WOLFSON: Yes, Mr. Chairman, Scott Wolfson from the 3rd circuit. I move that we adopt the proposed calendar that's been circulated this morning by the Rules and Calendar Committee.

CHAIRPERSON GARDELLA: Thank you. Is there support?

VOICE: Support.

CHAIRPERSON GARDELLA: Any discussion?

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

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

CHAIRPERSON GARDELLA: You are asking that
the agenda be amended to accomplish that?

MR. ABEL: Correct.

CHAIRPERSON GARDELLA: Is there support?

VOICE: Support.

CHAIRPERSON GARDELLA: Any discussion?

Hearing no discussion, those in favor of the amendment, which is to move item 15 up in front of item 11, that that be approved, and those in favor please say aye.

Those opposed nay.

Any abstentions say yes.

Hearing none, the motion carries.

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

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

CHAIRPERSON GARDELLA: The agenda as amended, yes.

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

CHAIRPERSON GARDELLA: Support?

VOICE: Support.

CHAIRPERSON GARDELLA: Any discussion? Those in favor say aye.

Those opposed nay.

Any abstentions yes.

Hearing none, the motion passes.

Next is, I understand that there is a motion from the 2nd circuit.
Ms. Cullitan: Colleen Cullitan, 2nd circuit.

Mr. Chairman, I move that the Assembly adopt and

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

Chairperson Gardeilla: Thank you. Is there support?

Voice: Support.

Chairperson Gardeilla: Is there any discussion?

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

Those opposed nay.

Any abstentions yes.

The ayes have it, and the motion is approved.

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

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

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

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

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

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

In terms of Congressman Conyers' background, after graduating from Northwestern High School in Detroit, he served in the Michigan National Guard from 1948 to 1950. He also served in the U.S. Army from 1950 to '54 and the U.S. Army Reserves from 1954 to '57. He also served for a year in Korea and as an officer in the U.S. Army Corps of Engineers and was awarded the Combat and Merit Citations.

Congressman Conyers grew up in Detroit and
received both his B.A. and J.D. degrees from Wayne
State University, and he also is a former assistant to
Representative John Dingell prior to his election to
Congress.

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

(Applause.)

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

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

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

I frequently argue that the committees in the
Congress are very important, but I have always took
the position that the House Judiciary Committee is the
most important one of all, not because I am the chair
of it, but because it is the guardian of the
Constitution and the 27 amendments, because it has
jurisdiction over the Department of Justice, because
it promulgates the Federal Criminal Code, the
immigration law, the International Treaties,
intellectual property laws. And so I have approached
this position which I began my career on, and I have
now become its chairman. And what an awesome
position, what an exciting position.

What I wanted to do for just a few minutes
today is share with you some views and invite you to
share with me some afterward. I am one of those that
still like to talk with and back to the people that
talk to me. I get frequent advice on the importance
of impeachment from some of my best friends
incidentally, and so I love to pick up the phone in my
own office and they are giving the person that
answered the phone what it is they are supposed to
tell this chairman when they see him, and I say, This
is John Conyers. I love to do that, so please, any of
you that want to try me out, if I am in the office, I
will do that. It’s a way of keeping in touch.

And so we are confronted with so many
incredible challenges. We are at a crossroads, not
just in American history, but in world history as
well, and it’s my position that members of the Bar,
lawyers, those who look to help make this planet of
6.6 billion people, 232 nations, how are we going to
make this a better place, what is it we can do while
we are here for this brief moment on earth, how can we
make it better? What can we do?

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

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

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

And so we are in a unique place and time and
profession in which we can make things happen. I
happen to subscribe to the belief that everything that
you do and say, every act that you do or don't do has
an effect, everything. As a matter of fact, what was
that song, Everything is Everything. I thought that
was, at one time I thought it was silly, then another
time I thought it profound, then another time I have
realized I didn't know what it really meant, but whatever interpretation you may choose to put on it, I believe that just coming here this morning for ten minutes -- is my time up? No, you don't ever say that to a congressman. As long as you want?

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

I remember Professor Schuman (sp) in Conflicts as a senior in Wayne State University Law School, and the study of conflicts of laws at that time was an examination of why nothing in international law worked. There was no successes, nothing worked. And we went through a few cases. But it was the billions of Franklin Roosevelt and Winston Churchill to begin to conceive the idea of a united nations and of all nations coming together and that there be under it certain rules of conduct and certain acts that were outside these rules of conduct and that by that we could get a harness on the historic
inclination toward might making right, which even
today is controlling. Martin Luther King, oh,
 analogous. Yes, John, jobs, justice and peace, a
brotherhood, but, look, Mr. Chairman, when you get
down to it you either got the power or you haven't.
We still believe that, even though it may
crowd up against the notions that there is some
imperative among many of us, probably most of us, to
create a more peaceful world, a world that,
notwithstanding the incredible technology we have to
destroy each other and the planet, and this is the
tension that arises and must be resolved by people who
study and practice the law, and so it's in that sense
that I am so honored to join you today.
I know how much time Bar activities can take
up and other professional duties that go outside the
scope of your practice or your profession, and so I am
honored to bring these greetings to you, and I am
hoping that we can devise more ways in which not just
the House Judiciary Committee but the Senate Judiciary
Committee, the Energy and Commerce Committee, the
Finance Committees, the Banking Committees, because
this nation is in a financial crisis now that there is
no comparison for, and for all of those with whom I
have debated in the Congress about whether we should
deregulate, whether we should privatize, we now are
reexamining the notion of American capitalism in a
completely new way, a completely new way, because
there is evidence coming out even before the hearing
that we are holding next Friday about bankruptcy and
mergers, which is a part of our jurisdiction.

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

(Applause.)

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

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CONGRESSMAN CONYERS: Pick up the phone and call me.

CHAIRPERSON GARDELLA: We will.

Moving on in the agenda, the next part of the agenda has to do with the awards, and this is the happy time of the meeting here where we look back on the year and the people that have made substantial contributions to the Bar and the legal profession over their lifetimes, and our recognition of the great service that they have had to our profession and to their respective communities in the state of Michigan.
The first award that we will present is the Michael Franck Award, and many of you know Michael Franck was the former long-time executive director of the State Bar of Michigan, and our Bar building in Lansing is named after Michael Franck. In fact, years ago when I worked in the State Legislature Michael Franck was a regular over at the Capitol carrying the mission of the Bar to the state legislators, and he has had a lasting effect in Lansing.

The criteria for the Michael Franck Award is the award is presented to a lawyer who has made an outstanding contribution to the improvement of the profession. And to present that award and make the introduction to our recipient is Larry Nolan, who is one of our Assembly members, and he is from the 56th circuit. So, Larry, if you could approach.

Mr. Nolan: Good morning. Thank you, Mr. Chairperson, and good morning fellow colleagues of the Representative Assembly.

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

In the late summer of 1971 and 1972 Tom formulated an idea and a concept that a law school would give more people a legal education or the ability to obtain a legal education and that it was
needed. Probably would be worse off as a society with a better educated society with more people with law degrees.

I was a direct recipient of that. I had applied to Michigan, I had applied to North Carolina, was rejected, had been wait listed at Notre Dame, and I read that there was a law school forming in Lansing, Michigan, to which I applied. This was my life's dream, not unlike what Martin Luther King told us to dream about, was to go to law school.

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

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

I went to the Supreme Court after I was admitted in December of 1972, introduced myself. I remember sitting out -- never been in a courtroom, never been in the Supreme Court. Sat outside next to his secretary, Marianne Farhat. If any of you knew Marianne Farhat, she said nothing, she had a glaze that went through you, and you didn't do anything.
without asking her permission.

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

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

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

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

So he quickly got Mike involved, and Mike was
on the Board. Tom was on the Board, and they decided, I don't know if I missed a meeting, but I was elected president.

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

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

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

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

Tom, I cannot think of anyone that made a more lifetime achievement contribution to my life and my family's life and where I am at and what I have been able to achieve through the legal education I
obtained, and he has done it for thousands of individuals, many of which are sitting in this courtroom have been direct beneficiaries.

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

One of the greatest things before my dad passed away, my dad always fancied himself as being able to go golfing. Tom invited my dad when he found out that he was in town to go golfing with him and Jim Ryan. So you can imagine my dad in a foursome with his son and two Supreme Court justices, never imagining that he would ever have that opportunity. Little did he know that Tom in his discussions with Jim said, Tom, or Jim said to Tom, did you know Knob Nose Nolan was Larry's uncle?

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

Tom told me another story about my uncle that he was talking to someone. When he turned around my uncle hit him across the nose with a ruler bloodying
his nose. I said, What did you do at that point, Tom?
He said, I just let it drip all over my chemistry book
just to spite him. In those days you didn't go back
and tell your parents that you had been disciplined by
a priest or a nun, and Tom certainly didn't tell his
parents.

In 1972 he incorporated the Thomas M. Cooley
Law School. The individuals who have signed my
nomination were Wallace Riley, Jim Ryan, Joe Reid,
Michael Cavanaugh, Chief Justice Clifford Taylor, and
Louis A. Smith. That's the company that Tom has
associated himself.

No one stands taller in my eyes for having
been solely responsible for thousands of people like

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myself getting a legal education than Tom Brennan.
I would like to say at this time that in the
Ingham County Legal News of September 21st, 2006,
going back to show I did a little bit of research,
there was an article that Tom wrote called The Wind
Beneath My Wings, and that individual, who has been
his steadfast partner for 57 years of, well, maybe
marital bliss, producing six children, is Pauline Mary
Wienberger Brennan, who happens to be with us today.
Pauline, would you stand, please, and be recognized.
(Appause.)

MR. NOLAN: She was the one filling out the
applications, doing the secretarial work, getting the
school fiscally responsible back then, to which Tom
gives her full credit. They had six children along
the way. Bill, Mary Beth, Peggy, and Ellen are not
able to be here today, but they send their best wishes
and congratulations to their father. Judge Thomas E. Brennan, Jr., is here, Thomas, with his mother and father and Professor John Brennan.

     (Applause.)

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

     (Applause.)

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and congratulations on this award.

     (Applause.)

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

     Second, because this award was named for and commemorates the work and the accomplishments of a man with whom I worked both as a justice of the Supreme Court and as a member of the Board of Commissioners of the State Bar. The legendary champion of lawyer ethics and professional responsibility, Mike Franck. Mike was a good friend. Polly and I cherish the many delightful times we spent with Mike and Carol over the years.
And third, because I was introduced this morning by Lawrence Patrick Nolan, another graduate of the Thomas M. Cooley Law School, a graduate as a matter of fact of the very first class, as he told you, who has been like a son to me for more than 30 years and whose loquacious Irish charm never fails to light up a room whenever he shows up.

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

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

The words that are spoken at funerals, says Jackie in his galic lilt, are spoken too late for the man who is dead. What a wonderful thing it would be to sit at your own funeral and sit in the front and
hear what's said, maybe say a few words yourself.

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

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

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

I was trying at that time to support a growing family, and looking back, it seems that I was either running for public office or Polly was pregnant. I may be the only man in America who was told to get out of politics by his wife's gynecologist.
It has been my experience that nothing I ever accomplished came easy or got done without help from other people. My instinct has always been to blunder forward ready or not. I am the poster boy for rushing in where angels and sensible people fear to tread. I confess to you this morning in all candor that the secret to my success has been to undertake great enterprises with vigor, passion, unjustified optimism, and such obvious ineptitude as to invoke the sympathy and invite the assistance of competent colleagues.

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

They have all combined to push me along the road of life. Sometimes that road has been a six lane interstate, and sometimes it has been just two tire tracks meandering through the forest. But I have been blessed to make this journey in the company of an exceptional human being who long ago consented to be my wife and soul mate, and so with the faith we have shared we have never really been lost along the way.

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

(Applause.)
CHAIRPERSON GARDELLA: Thank you, Justice Brennan. Those were beautiful remarks, very inspirational for us to look back on your career, and hopefully that will motivate us to follow in your footsteps, and some of those tire tracks and six lane highways that you had.

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

MS. OEMKE: Thank you, Bob. I first heard of Sue Spagnuolo when I was being sworn in to the Bar some 28 years ago. At the swearing in it was announced that Ms. Spagnuolo had her tenth baby. She was a graduate of U of D Law School. She was a former teacher, and she had begun her practice in Howell.

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

She also had a home in Fowlerville, which is a quaint country atmosphere at that time, some 30 years ago, and not known for its affluence, but she gained her clientele from the countryside of
Sue was well versed in legal aid type of law. She was trying to make a practice, but with the heart that she had she was not making a lot of money. There became an opening in the legal aid office, and Sue got the job. Sue had continued to represent indigent people. Her hallmark is to call it like she sees it. She is very honest with her clients, very honest with opponents, and she looks out for children.

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

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

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

She knows people, she understands what they need to have, and tries to deliver that from the legal
perspective. She is a true example of lady justice. She is blind to whether they have means or not and she delivers that justice. And I am very proud to have nominated her for the Unsung Hero Award.

(Appause.)

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

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

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

I have been most fortunate, as Kathy
mentioned, to go to work for legal services. I was first employed in 1987, hired by Dorothy Catrell at Oakland/Livingston Legal Aid. Unfortunately before I slid into the chair Dorothy became ill and left. Sheri Stevens, who I am tickled pink is present today, and Jim DiMeglio acted as directors until Paula Zimmer was hired, and that was the most delightful experience to work with Paula, and when the redistricting happened in 2002 we were all without jobs. Ann Routt and Bob Gillett of Legal Services of South Central Michigan were kind enough to meet with me, and we worked out an agreement wherein I would go to work for them and still cover Livingston.

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

And, outside of saying thank you very much to everybody involved, I know who some of them are, and I haven't quite ferreted out yet who all wrote letters of support for me, but thank you, thank you, thank you, and to be up with such distinguished people is
just something that I never dreamt of. Thank you very, very much.

(Applause.)

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

The Unsung Hero Award is a more recent award that the Assembly has started to award to our Bar members. It was started during Tom Rombach's tenure as our chairperson of the Assembly, and it's a highlighted award. There are so many people throughout our state who are deserving of this award, people who have not served in various elected positions or Bar leadership positions but who have helped their communities, and the criteria for this award that Sue Spagnuolo Dal has received, our criteria, presented to a lawyer who has exhibited the highest standards of practice and commitment for the benefit of others, and Sue Spagnuolo Dal definitely deserves this award, and we hope she will keep her efforts up for many more years to come, and we thank her for all of her great work over the years.

(Applause.)

CHAIRPERSON GARDELLA: One note we will be recognizing Sue Spagnuolo Dal and Justice Brennan at
our luncheon today. They will be there with their various friends and family members at the luncheon that runs from 12 noon to 2:00. So you will get a chance to say hello to Sue and their respective family and friends who have joined them. So please remember that and so you get a chance to shake hands and say hello to them.

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

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

CHAIRPERSON GARDELLA: I would like to call the meeting back into session here if everyone can come back into the room and be seated.

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

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

CHAIRPERSON GARDELLA: State your name and circuit.

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

The first item of business from my committee is to present this body with nominees to fill the
vacancies of membership pursuant to Rule 6, Section 6
of the Supreme Court rules. The list of nominees is
included in today's materials, and I would ask, as I
read each name, I would like the individuals named to
please stand and be recognized by this body.

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

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

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

CHAIRPERSON GARDELLA: Thank you. Is there
support?

VOICE: Support.

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

Those opposed nay.

Any abstentions yes.

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

I would also like to thank our Nominating and
Awards Committee chair, Victoria Radke. She has
worked diligently this year to fill vacancies as they
Sometimes people will move their office very abruptly, and we have endeavored over the last five, six years to make sure that we are at a hundred percent participation, and I think at this time we are very close, if not at, the hundred percent and at most we have one vacancy that just popped up because I think somebody moved out of their circuit.

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

And you have more?

MS. RADKE: I do. Mr. Chair, with your permission I would like to offer my thanks to the other members of my committee and ask the Assembly to recognize their hard work in filling these vacancies. Tom Evans from the 5th circuit, Suzanne Larsen from 25th circuit, Mike Olson from the 44th circuit, Jeff Nellis from the 51st circuit, Richard Paul from the 6th circuit, and Jeff Crampton from the 17th
circuit. I want to thank each of these individuals for their hard work in putting bodies into these seats so that we can do the business of the Representative Assembly, but I would like to make a special recognition and special thanks to you, Bob, for your assistance to my committee and as well as to Anne Smith who worked so diligently with me these last couple months to help me get these seats filled.

CHAIRPERSON GARDELLA: Thank you, Victoria.

(Applause.)

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

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

The first item is more of, I guess, an encouragement to all of you who are long-time serving Assembly members and some of our new members.

The new people, by the way, if you have been selected to fill a vacancy, you can be seated in your circuit right now. So, if you haven't done that
already, please find your way to whatever circuit you
have been selected to fill the vacancy for.

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

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

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

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

One suggestion that I have is at your monthly
meetings make an effort to get on the agenda. When
you would show up at the beginning of the meeting, 
remind the chair that you would like to make a quick 
presentation regarding what the Assembly has focused 
on previously in the year and what you anticipate they 
might be addressing later on in the year or address 
some of the programs that the Bar is involved in. 

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

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

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

The other thing that I would suggest is doing 
a newsletter article in your Bar association, regular
monthly newsletter that comes out or quarterly newsletter. That's important, summarizing these things, because many people don't show up at the local Bar association meetings, but they will read the newsletter. Or ask your local Bar association if you can be put on their e-mail blast list or if you write a short article will they send it out for you and basically do all the work. With all the high tech things that are out there now, it's easier to send your column out than waiting for the local print version of the newsletter to be distributed. So I would encourage you to do that.

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

The other thing that I would like to do is to thank our Representative Assembly committee chairs. All of the committee chairs have done a great job this year. I think we may have a couple of them not here today, but we have Victoria Radke. I acknowledged her before. She is our Nominating and Awards Committee.
Let's see, we have Rob Buchanan. I am not sure where all the circuits are today. He is our Drafting Committee chair. Right there, right in front. He has done a great job. Again, he and his committee have done excellent work under a tight time deadline. When those proposals come in, within a week, they have to get the drafting done in a hurry. They have gone above and beyond what they were expected to do this year and did more work and gave us more suggestions as to how to make these proposals the best that they can be and the easiest to read and understand.

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

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

The other person who really went into action early on, one of the first things I did as our chair when I took over the reins from Ed. John Riser, our Assembly Review chair, had to do what hasn't been done in many, many, many years is do a bylaw change to the
Assembly, and John as our Assembly Review Committee chair went into action right away. We had numerous hearings, and also we approved that bylaw change, and then the Board of Commissioners, they took over and they went into action and approved it right away without any debate. So that has to do with contested elections, so thank you, John, for getting things in action so quickly.

And last, but not least, Scott Wolfson from the 3rd circuit. I know he is up front here. Scott has been our Rules and Calendar Committee chair, and he has kept our agenda working as well as it can, and with the various issues that we have that come in, trying to place those issues in the right order, depending on the time that's anticipated, and sometimes that's difficult. And so I not only thank the chair of each committee, but I thank the members.

Thank you for all of you who have served on these committees. You have done a wonderful job. You have taken time out of your schedule for sometimes very lengthy conference calls, and I ask that you continue to serve. You can serve on a number of different committees, but you have done a wonderful job, and we appreciate your time commitment. It is very much appreciated. All of the officers are very happy with the great work that's been done this year.

The other item that I wanted to address -- (Applause.)

CHAIRPERSON GARDELLA: The other point I wanted to make, switching subjects here, is the fact
that we have members who can change their offices here and there periodically. Offices move or you may leave a firm and go to another firm or change your office location. We had that come up a few times this year, and one thing that the Bar staff would like me to reiterate to you is if you are in a particular circuit and you are moving out of that circuit to another circuit, you automatically will lose your position on the Assembly, and I want to reiterate that to you. So if you do move, please let Anne Smith at the State Bar office know that you have moved so that we can fill the vacancy immediately for that seat.

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

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

Also, a follow-up from our 35th anniversary of the Assembly. Ed Haroutunian had sort of
spearheaded something to memorialize the contributions of the Assembly, and he came up with the idea of a permanent photo display of the past Assembly chairs, and that is almost completed. It will be on the first floor of the State Bar building. As you go down the hallway to some of the hearing rooms, or the meeting rooms I should say, it will be on the wall. We finally received the last one, I think it was our second chairperson, it was a challenge to try to get a photograph from one of our past chairs, but we did it, and it took a lot of effort to do that with a lot of people searching and trying to find family members to get the photographs for people who have moved or that are deceased. So it's finally done, so hopefully by mid or late October you will be able to see that permanent display in the State Bar building.

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

(Applause.)

CHAIRPERSON GARDELLA: The other recognition I would like to give is to the State Bar staff. They do so much work behind the scenes that makes this Assembly run so smoothly. The officers here are very fortunate to have a great staff they can rely on that will remind us when we overlook something to keep things going well.
Most of you know the people at the table here. Anne Smith, she is the administrative or executive administrator for the State Bar staff that handles the Assembly activities.

(Applause.)

CHAIRPERSON GARDELLA: All of you know Janet Welch, and I am going to make comments introducing Janet in just a little while.

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(Applause.)

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

(Applause.)

CHAIRPERSON GARDELLA: Greg Conyers is the director of justice initiatives. Greg was here. He has a program. And Greg has worked tirelessly. He deserves a round of applause.

(Applause.)

CHAIRPERSON GARDELLA: Greg has done a great effort in a bad financial market right now to make sure that the justice initiatives efforts are funded the best that they can be and has really helped promote the programs and has done an outstanding job.
Dawn Evans, who is the director of the professional standards office. Dawn was here earlier and she was out in the hallway. I don't know if she is here, but she is always a great reference. If you have any ethics issues, she is a great resource. Her office, if you have issues in your locality in a what if or what should I do or what's the position on an ethical issue, her office is the office to call, and she has two new staff attorneys who are very, very talented. And, in fact, one of her staff members is a former chair of the Representative Assembly, so we are happy to have her new people in her office be a great help.

The next person, Anne Vrooman. I don't know if Anne is here. She is the director of research and development. Is she in the room? Okay. And also Marge Bossenbery. Marge was out in the hallway and she may still be out there, but Marge does a lot of work for the Assembly.

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

(Applause.)

CHAIRPERSON GARDELLA: Cliff went into action to help us with the bylaw change at the beginning of this year. He helped us in a short amount of time to get that done and accomplished, and we thank Cliff for
that, and he helps us on various other issues that
come before the Assembly so that we are running
smoothly.

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

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

And Jim Horsch, our financial director. Jim,
I don't know if he is in the room. I don't know if I
have seen him here. He was here yesterday. Jim has,
I think, the challenge of the century right now with
the bad financial condition that we have. Jim has
done an outstanding job keeping the Bar on solid
financial ground with conservative investments that we
have had to redirect our focus to to make sure that we
are on solid ground, and he has accomplished that. We
have an excellent person as our financial director,
and I can tell you, because I serve on the Finance
Committee for the Board of Commissioners, that we are
on solid financial ground, and much of that is thanks
to Jim's direction in leadership as the financial director.

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

(Applause.)

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

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

(Applause.)

CHAIRPERSON GARDELLA: A couple of other items. There is also, I guess important, we were talking about pocket book issues before. For those of you who have to submit mileage reimbursements, the State Bar staff has asked that you submit your mileage reimbursement sheets for participation at this meeting on or before September 30th, because our fiscal year is going to be ending. We have to get those in before
the end of September, so do your best. When you leave here today, make a mental note to sign the sheet and pop it in the mail to Anne Smith so she can get her accounting work done so that she meets with the various financial deadlines we have.

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

The last item that I wanted to address is the Access to Justice effort. It's been something that most of you are probably familiar with, but it's essential that we keep funding this program.

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

I encourage you to remember that the Access to Justice, the legal aid offices, if the rest of the economy is getting hit hard and the government is having budget deficits, you know that the legal aid offices are going to be suffering budget-wise too, and so I encourage all of you to make an effort this year before the end of the year or even before the end of this month if you can to make a contribution to Access.
You can even designate which organization will receive the money that you wish your funds to be focused on. There is a large variety, or you can just say, well, I am giving it, they will do the right thing in terms of disbursing it to a lot of good, worthy organizations.

So we have a promotion today. In fact, our

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

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

So that's all I have. I wanted to end on that note for my remarks. That is very important, and it's a priority for us this year.
Next, I would like to have our esteemed president, unfortunately our outgoing president, Ron Keefe. He has had a wonderful year this year. I would like him to approach the podium here.

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

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

But he got it over the plate and did a wonderful job on that, and so we wanted to give him, I guess, some Tigers gear to remember the first pitch,
and also with all that time that he is going to have
not doing all the State Bar activities, and believe me
he has been speaking everywhere in the state, I have
seen him a lot of different places, he is going to
have all this time now to just lay on the beach, think
of that great pitching experience he has had at
Comerica Park in Detroit, so we got him a Detroit
Tigers beach towel so he can lay on the shores of
Lake Superior during the two weeks in the summer that
you can actually go swimming there.

(Appause.)

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

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

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

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of our Bar association.

Let me ask you at this time to join with me
in thanking several people whose work has been
essential to the accomplishments of our association
this year.
Chairman Bob Gardella, of course, has been a full partner with me as an officer of this Assembly and as a member of the Board of Commissioners and its Executive Committee. At all times Bob has been a strong and vocal advocate of the Assembly and has served you well. Please give Bob the recognition he deserves.

(Applause.)

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

(Applause.)

PRESIDENT KEEFE: In addition to her service as clerk of the Assembly, Elizabeth Moehle Johnson also serves on the Board of Commissioners. In May I had the opportunity to participate with Liz in her hometown of Plymouth in the rededication of a legal milestone known as the Rose of Aberlone, which recognizes an important principle of contract law, and I might add it's a fascinating story in its own right, and it has been brought to life by Professor Otto Stockmeyer in a recent, I am not sure how recent, but Law Review article from the Thomas M. Cooley Law Review, and I would highly recommend this entertaining piece to you.

At that dedication ceremony I had the opportunity to see firsthand Liz's commitment to our
Bar association, and I want to personally thank her for her year of service.

(Applause.)

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

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

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

The first issue was Access to Justice, which is the first issue for us. That Access to Justice
issue, of course, includes civil gideon, increased
funding, and limiting restrictions on funding. As I
said, ATJ is the top priority of the State Bar of
Michigan, and I think I can safely say that we have
one of the best ATJ programs in the country. Still
many legal, civil legal needs are unmet, as you know,
and much more is to be done in that area.

The second issue we agreed on was the

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

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

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

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

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

Now let me touch briefly on a few of the things that our Bar association has been up to this year. An initiative to explore ways to promote and support an active senior Bar in Michigan has begun to take shape. This started in November, and it's just gone from there to an expanded group, and it continues. And I am very excited about the opportunity for senior lawyers to do pro bono and other volunteer work, start mentoring relationships with new lawyers and establish programming related to retirement and cutting back and closing down law practices.

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

On November 14 of last year numerous Michigan lawyers and others across the United States stood in silence near local courthouses to show solidarity and support for our counterparts in Pakistan. But I would remind you that the rule of law is not just an overseas issue. Here at home we face the challenge of how to preserve our liberties while ensuring national security.
On June 17 the State Bar of Michigan released an important study from the National Legal Aid and Defender Association that overwhelmingly concluded the constitutional right to an attorney in criminal proceedings in Michigan is not being met in our trial level courts. Even in tough economic times we cannot deny our citizens their constitutional rights. We must respond to this report in a meaningful way that ensures equal justice for all, not just for some.

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

(Applause.)

CHAIRPERSON GARDELLA: Thank you, Ron, for those nice remarks, and thank you for your year of service. Ron has done an outstanding job this year.

Next on the agenda, our Executive Director, Janet Welch, will give us a presentation and sort of an update as to what's going on at the State Bar and in Lansing and all the great programs. Janet has so many balls in the air, she is like the ultimate juggler, a hundred things going at one time with a lot of different projects and activities, and so she is going to give us the update to let you know what the latest and greatest is in Lansing.
EXECUTIVE DIRECTOR WELCH: Thank you, Bob. It's a little intimidating to be standing up here this morning after several giants of the profession have been standing here, two giants that I have been aware of my entire adult professional life, one giant who I just met this morning, an unsung hero, and the extraordinary leaders of the State Bar. It's also a little intimidating to be behind schedule and try to bring you up to date on everything that's happening in the Bar in two minutes. For that, I want to refer you to our website. We have a wealth of information about what's going on at the Bar.

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

(Applause.)

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

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

I want to thank Bob for recognizing the staff of the State Bar of Michigan, because the other thing
that I have learned from my national experience is
that the State Bar of Michigan is second to none. In
fact, we are way ahead of the game in a lot of
respects.

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

(Applause.)

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

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

An example of that is Bob mentioned Dawn Evans, who is the director of professional standards. She was sworn in in August as the president of the National Organization of Bar Counsel. Just an example of the quality that we have in our staff. She was out helping with registration. That's how we are able to make your dollars go far.

Nancy Brown is the dean of Bar journals in the country. She is our longest serving member of the State Bar, and here she is doubling as your reporter/recorder of what's going on. We are committed to delivering value to you. Right now the dues for the State Bar of Michigan, which before the dues increase four years ago we were at about 17th in the country. By our calculation right now we are now in the bottom half, 26th in the country, and we are delivering more and more value, frankly, by working harder and up to this point being very, very careful and lucky with our investments.

I want to make up for time a little bit, and I don't want to leave the podium without saying something about the outgoing chair of the Representative Assembly. This Assembly has developed the habit of choosing as its leaders people who are really extraordinary in their passion for the profession, in their energy, in their enthusiasm, and in their heart, and in that regard Bob Gardella is no exception at
all. I have to say that from the experience of staff, his energy and enthusiasm has been super human. And

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

(Applause.)

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

There is a lot of things that happen behind the scenes that you don't see that are in the management of the Assembly throughout the year, and Janet is always a great source of advice and direction with her knowledge in Lansing over the years working at the state senate, working for the Legislative Service Bureau doing drafting, working at the Supreme Court as counsel, and then as general counsel of the Bar and now, fortunately, as our executive director. She has just a great source of knowledge
and knows Lansing and our government system I think better than probably anybody else in Lansing. So thank you for all of your help, Janet.

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

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

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

So, first of all, let me reintroduce myself. I am Matthew Abel from the 3rd judicial circuit, and just so you know, I am running for Wayne County prosecuting attorney on the Green party ticket, and I am not worthy, I am better, and so I hope you will all support me. Thank you.

That's one of the advantages when you introduce a proposal, they actually put you up here for a couple of seconds, and Judge Stephens hasn't
given me the heave-ho yet.

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

So I subpoenaed the videotape, as any good criminal defense lawyer would do, and took a long time to get it, a lot of kicking and screaming, dealing with the law department, the police, the prosecutor, and eventually we got the videotape. They wouldn't give me a copy. They would just let me know, they came up with it five minutes before the hearing started. And so I said, Judge, I think I have a right to see this tape, and he agreed. And let me go in the jury room with my client, and as we are watching the tape, just at the point where the officer approaches the car and yanks open the door the sound cuts out, and the whole issue was what the officer said to my client.

He ended up taking a first offender 7411 plea on that case. If I had had the videotape, I could have shown that was an illegal search. And for those of you who think that it doesn't happen that tapes are missing or destroyed deliberately -- sometimes it does happen innocently -- either you don't practice criminal law or you are not paying attention or you have never been stopped in a traffic stop where you
were charged with anything other than a civil infraction.

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

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

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

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

However, as this goes on, the Attorney
General indicates that requiring a defendant to show bad faith on the part of the police is appropriate.

Look, if there is bad faith on the part of the police, you can sue them under 42 USC, Section 1983, for violation of civil rights under color of state law. There is already something where you can prove bad faith.

It's so rare to prove bad faith. It's just not going to happen very often. So I don't think requiring the police to show bad faith is appropriate. I think we ought to require them to show good faith.

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

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

Now, if he is the same guy who is out there beating up the client, the defendant, is he going to be putting that tape on evidence? I don't think so. If he is the guy who did the illegal search, is he
going to be putting the tape on evidence? No, not at all. What gives the police officer the right to
declare what evidence is preserved and what isn't?

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

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

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

If and when I am the Wayne County prosecuting attorney, I think that if you destroy a tape you can
be prosecuted for obstruction of justice. But that's not happening. And it won't happen, because the prosecutors cover up for the cops, and the cops cover up for each other, and what happens is justice is not served. This is just a little thing to show that a little more justice gets served. Thank you.

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

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

CHAIRPERSON GARDELLA: It's been moved. Is there support?

VOICE: Support.

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

MR. POULSON: Barry Poulson, 1st circuit. I, by the way, the political aspect, as head of the camouflage party, do support Prosecutor Abel in his campaign. He is not worthy, but he is able. We have had that discussion. He is going to put silly string in place of the tasers.
Police destroy evidence when it serves their interest. They come on the stand, though, and they say accidentally, and I have had this happen, and I am sure you have had if you defend clients, we accidentally destroyed the evidence. Very difficult to prove bad faith when you say we accidentally destroyed the evidence, and that's what they say, and then that's what they will always say.

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

So we very much support that in the 1st circuit. It's the judge's rule in 1st circuit, for example, that confessions be recorded, and it is the assumption that I make as a defense attorney to make the remark that when the videotape is gone, I make the remark, and the prosecutor cringes, if it helped the prosecutor, they'd have shown you the pictures today. It would be much more effective if the judge would say exactly the same thing, because it's actually true.

CHAIRPERSON GARDELLA: Thank you. Ms. Radke.

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

CHAIRPERSON GARDELLA: To answer that,

Mr. Abel, if you could take the microphone and clarify
that.

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

CHAIRPERSON GARDELLA: Are you accepting that
as a friendly amendment?

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

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

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MR. ABEL: Yes.

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

CHAIRPERSON GARDELLA: So that will be added
as a friendly amendment, that portion.

Any other discussion? Mr. Debiasi.

MR. DEBIASI: William Debiasi, 3rd circuit.

I just want to say that I agree with the Attorney
General in terms of the presumption that the proponent
wishes to attach to this particular amendment to the
Court Rule.

If you look at the Court Rule and you look at
Sections 1 through 5, there is no such presumption
that's attached or jury instruction that has to be
given if the judge finds that there is any failure to
comply with discovery under Sections 1 through 5. Why
should there be a similar presumption under Section 6?
It doesn't make any sense, and it is not consistent with the ends of justice.

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

Anyone who has worked in this particular area of the law and has seen thousands and thousands of videotapes can tell you any prosecutor, that 97 percent of the time those videotapes are not exculpatory. They are either inculpatory or they are inconclusive.

To have a presumption without any evidence of bad faith, without any evidence that the prosecutor even knew what was on the videotape -- if you have a situation where an individual skips out on a warrant and isn't picked up for two years later and then there is no videotape because the police right now, according to law, are entitled to reasonable record keeping practices, and they have rules for regular record keeping practices that have been established in the Court of Appeals, if they have destroyed a videotape in the course of reasonable record keeping practices and have no knowledge what's on that tape or if the attorney hasn't requested it, now you have to have a presumption that they can go in front of the jury and say presume that this videotape that nobody has seen is adverse to -- that it provides adverse evidence to what the prosecution is saying. That simply is not consistent with the vast majority of
cases. That particular presumption is completely off the wall and should be stricken.

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

JUDGE KENT: Wally Kent, 54th judicial circuit. Matt and I don't always find ourselves in agreement, but on this issue I do agree with Mr. Abel. There is a presumption of innocence. It's important that the people who must prove guilt preserve the evidence for both sides that they have under their control.

I understand that there may be a storage problem. There may be a speedy trial problem. Perhaps a bright line time test of three years, whatever, would be appropriate to let the prosecution and the police off the hook, but short of that they should not be allowed to pick and choose what evidence they preserve and what evidence they destroy. There is no hardship in keeping these recordings, these electronic recordings for a period of time to be sure that the defendant has an opportunity to examine that evidence and to determine for himself whether or not
it is exculpatory. So I support the proposal offered
by Mr. Abel.

CHAIRPERSON GARDELLA: Thank you, Judge Kent.

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

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

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

If we have brother counsel's situation, then you're automatically presumed to have done something wrong when it was out of your hands, and that is the part that I think -- what if we live somewhere like in Louisiana and a Hurricane Katrina or Galveston or
something like that and they come around and things are destroyed. Now when you get ready to go to trial, they say, oh, you don't have that tape. Ha, here is the coup de grace. I can say, you know, even though it was by hurricane, I can say, hey look, they don't have this tape, therefore, you can presume that what they had is adverse to their case.

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

CHAIRPERSON GARDELLA: Mr. Riser.

MR. REISER: John Riser, 22nd circuit, Ann Arbor -- is this live, the mike?

CHAIRPERSON GARDELLA: I think we can hear.

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

CHAIRPERSON GARDELLA: Mr. Riser, could you put it up a little bit.
This is big stuff. The remedy for not preserving evidence gets litigated, I don't want to say ad nauseum, but significantly in appellate courts of our land, and that's where this should be done, or in the Legislature.

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

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

All the marijuana law that you practice, Matt, unless it's possession with intent to distribute, isn't felony law. I think this is an important concept. The preservation of evidence, the mandating of patrol videos, and I am for that, and I am a prosecuting attorney, but I think it's something that needs to be dealt with, fleshed out by the Legislature.

As a prosecutor attorney, I know that any electronic recording in a case could be -- for instance, if it's a drunk driving with a crash, patrol videos, radio traffic, 911 calls, ambulance calls and
ambulance traffic, the fire departments there, there
could be some interviews on video, there could be some
interviews on tape. There are mug shots. There could
be digital photos. That's what, I don't know, maybe
ten types of electronic evidence that as a prosecuting
attorney I now have to preserve.

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

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

CHAIRPERSON GARDELLA: Thank you.

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

I am sure of all the prosecutors, most
prosecutors would be against this and say no way, no
how for reasons we have already heard. I am sure most
defense attorneys would say absolutely for reasons we
have already heard. But I think changing those two,
making those two friendly amendments would the old fashioned way, talk to the judge before that court

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

MR. ABEL: I accept both of those amendments.

MR. KORTERING: That's all I have.

CHAIRPERSON GARDELLA: Thank you. Next.

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

Although the written document that's before us today on this matter indicates that there was no known prior action by the Representative Assembly, I just want to point out, in fact, we debated this issue six months ago. There was a lively debate about it. And at that point it was referred to the Special Issues Committee, of which I am a member.
That committee, along with -- and this is described, actually, in a subsequent, the pre-sentence report document that's in your binder. The Special Issues Committee, along with members of or delegates from the Criminal Law Section, Criminal Jurisprudence and Prisons and Corrections formed an ad hoc committee that debated this issue ad nauseum on several occasions.

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

VOICE: Support.

CHAIRPERSON GARDELLA: It's not debatable.

We have a motion on the floor to table this proposal, and so at this point we have to take a vote on the matter. So hearing the responses, all those in favor of the motion to table say aye.

All those opposed to the motion say nay.

And any abstentions say yes.

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

If our clerk, Elizabeth Moehle Johnson, if you have people to assist you, if the people who have raised their hand in support of the motion to table,
please raise your hand.

VOICE: Mr. Chairman, can we just stand?

CHAIRPERSON GARDELLA: Just stand, that's fine, yes. That might be easier.

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

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

Those opposed, if you could please stand.

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

At this point you can be seated.

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

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

The motion to table fails.

Mr. Crampton, I think you were in line.

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

CHAIRPERSON GARDELLA: Mr. Crampton, if I could interrupt you for just a minute. We do have the
luncheon that’s going to start at noon, and we have to be in there, so at one point -- I am not just picking on you, but we did debate this at the April meeting, I refresh everybody’s recollection on that. And so if everyone could be very brief in their comments, we are going to try to get of everybody, and then we can take a vote, and then the next item that we have regarding the consideration of political endorsements, we will push that, without objection, to after lunch, and then move along from there. But I would like to get the discussion finished and get a vote on this before lunch, and we will hopefully get it done within the next seven minutes, if we can.

MR. CRAMPTON: I will be brief.

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

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

VOICE: So moved.

VOICE: Second.

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

Hearing none, those in favor say aye.

Those opposed say nay.

Any abstentions say yes.
The ayes have it for the modification of the schedule. The motion is carried.

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

(Applause.)

MS. VESTRAND: Thank you. Hopefully this won't be controversial.

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

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

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

Consequently, the proposed prohibition would serve to protect the integrity of the State Bar and the effectiveness of its public policy program. It would also serve to protect and insulate our officers
from the pressures that befall when approached to
provide such endorsements. In declining the request,

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

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

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

CHAIRPERSON GARDELLA: Do I hear support?
VOICE: Support.
CHAIRPERSON GARDELLA: Discussion?
MR. CHADWICK: Hi, Tom Chadwick from the
8th circuit. I rise to oppose this motion. My law
partner is running for judge this year. I intend to
endorse him. I have endorsed him probably. I would hate for his opponent to dig up this rule of the State Bar Representative Assembly and use it against him or me to disparage my character in saying that I did something that was discouraged by this body.

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

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

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

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

If you come from a community, especially an STP community where the same ten people do everything, to say, you know, if you take this position here, you...
know, as an officer, then you will have to -- no, you
don't have to, but we would really like you to shut
your mouth.

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

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

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

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Matt's efforts.

CHAIRPERSON GARDELLA: Is there any other
discussion?

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

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

CHAIRPERSON GARDELLA: Any other discussion?

VOICE: Call the question.

CHAIRPERSON GARDELLA: Mr. Abel.

MR. ABEL: Thank you, Matthew Abel from the 3rd circuit. I think this rule doesn't have any teeth with the word "discourage." Either we should prohibit it or not. To discourage it means what, you know? You can still do it but we are going through sneer at you? And I think if we are going to pass this that we should add between the words "discourage" and "officers," we should add the words "judges," "magistrates," and "all officers." I mean, how can a judge endorse somebody but the clerk of the Assembly can't. That just is inconsistent.

CHAIRPERSON GARDELLA: Ms. Vestrand, would you, if he is proposing that as a friendly amendment, would you accept that?

MS. VESTRAND: I would not accept that, because I don't think that we can use the bylaws for the Representative Assembly to legislate that.

CHAIRPERSON GARDELLA: Any other discussion at this point? Seeing none and no one at the microphone, I would call for a vote on this matter.

Those in favor of the proposal please say aye.

Those opposed please say no.

Any abstentions say yes.

And in the Chair's opinion the noes have it, and that the motion is defeated.

At this point we are at a stage -- thank you,
Ms. Vestrand for the presentation, and thank you for
the involvement of the Assembly members on the debate.

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

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

(Luncheon break 11:53 a.m. - 2:00 p.m.)
CHAIRPERSON GARDELLA: If everybody could
take their seats, we would like to resume the meeting
and go back into our session here.

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

Mr. Kent, I would recognize you.

JUDGE KENT: Mr. Chairman, I so move.

CHAIRPERSON GARDELLA: Is there support?
VOICE: Support.

CHAIRPERSON GARDELLA: Any discussion? Not

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hearing any discussion, those in favor please say aye.

Those opposed to say no, or nay.

And any abstentions say yes.

The motion carries, and I would now introduce Elizabeth Lyon. No, I am sorry, introduce Janet Welch to make the presentation of Mr. Carroll.

MS. WELCH: Thank you, Bob. The State Bar of Michigan has been on record for decades asserting that indigent criminal defense in Michigan is not meeting the standards that it needs to meet. This body took a substantial step forward when it adopted the 11 principles that should underlie quality public defense. Another giant step forward was taken this spring with the publication of the NLADA report on indigent criminal defense in Michigan.

The author, primary author of that report, was David Carroll. He is the director of research and evaluations for NLADA, and he is the go-to person and national expert on this issue, and it is my privilege and honor to introduce him to you today. David.

(Appause.)

MR. CARROLL: Thank you very much. As you might be able to tell, I am at the tail end of a cold, so please be patient while I keep my throat going here.
As world events unfold daily in far off places like Afghanistan and Iraq, the words on the screen of U.S. Supreme Court Justice Hugo Black speak to the core values that distinguish the United States from those countries under the repression of dictatorships, theocracies, and despots. We are different.

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

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

In the case of Gideon v Wainwright the United States Supreme Court concluded that reason and reflection require us to recognize that in our adversarial system of criminal justice any person hailed into court who is too poor to hire a lawyer cannot be assured a fair trial unless counsel is provided for. Declaring it an obvious truth that lawyers and criminal courts are necessities, not luxuries, the court rule that states, not counties or
local governments, must provide counsel to indigent defendants in felony cases. This mandate has been consistently extended to any case that may result in a potential loss of liberty, including misdemeanors and juvenile delinquency proceedings.

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

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

Now, we didn't pick the counties. We wanted to make sure that we weren't accused of cherry-picking either the very best or the very worst to skew the results, so we asked the sponsor of the concurrent resolution, Senator Alan Cropsey, to put together an advisory group made up of representatives from the State Court Administrators, the Prosecuting Attorneys Association, the State Bar, the State Appellate Defender Office, and the Criminal Defense Attorneys of Michigan, plus trial level judges, and we said, You tell us what counties that people would accept the
results as being a representative sample. The ten counties are listed up on the map.

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

Counties are free to establish any form of right to counsel delivery system they so choose without regard to meeting nationally recognized standards of justice, such as those promulgated by the American Bar Association, related to caseload control, attorney training, accountability or other quality assurance standards. In fact, most counties have a multitude of public defender delivery systems. One for circuit court, one for district court, third for juvenile delinquency representation, and in some cases a different indigent defense delivery model for each district court and/or judge within those courts.

Without uniform oversight, each of these systems has become institutionally balkanized over time and are failing.

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

These include judges hand picking defense
attorneys, lawyers appointed to cases for which they are not qualified, defenders meeting clients on the eve of trial and holding nonconfidential discussions in public courtrooms, attorneys failing to identify obvious conflicts of interest, failure of defenders to properly prepare for trial and sentencings, attorneys violating their ethical canons to zealously advocate for clients, inadequate compensation for those appointed to defend the accused, and a lack of sufficient time, training, and resources to properly prepare for a case in the face of the state court system that values speed over substance.

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

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

Counties in Michigan grappling with budget problems are forced to look for the cheapest possible option for providing indigent defense. With no
statewide oversight or standards to ensure justice is equal across county lines, financially strained

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

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

One of the most glaring results of this failed policy is what passes for justice in Michigan's...
district courts. People of insufficient means in Michigan are routinely processed through the criminal justice system without ever having spoken to an attorney, in direct violation of the U.S. Constitution. The district courts employ a variety of manners to avoid their constitutional duties, including uninformed waivers of counsel and, more importantly, the thread of personal financial strain through the imposition of unfair cost recovery measures. Anything to emphasize speed over substance is the mantra of the district courts.

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

And, as bad as the level of justice people of insufficient means receive in the district courts, juveniles facing delinquency proceedings are even more of an afterthought. At risk juveniles in particular require special attention from public defenders if there is any hope to change behavior and prevent escalating behavioral problems that will increase the risk that they'll eventually be brought back into the adult criminal justice system in later years.
These are common children who have been neglected by parents and the range of other support structures in our society that could channel children in appropriate constructive directions. When they are brought into a court and given a public defender who has no resources and a caseload that dictates that he dispose of the case as quickly as possible, the message of neglect and valuelessness continues and the risk, not only of recidivism but of escalation of misconduct, increases as you do that process.

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

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

These include independence of the defense system from both the judicial and political governmental systems. Early appointment of counsel so that you can get and investigate the crime quickly and figure out what the best resolution is. Confidentiality, that you shouldn’t be discussing everything in a holding pen in front of other people who could then use that information to cut their own deal. Workload control, so that you are not asking people to carry an unlimited number of cases. Attorney qualifications, to make sure that
that attorney that is getting that case can handle that case. If you were being asked to be defended on serious felony cases, I don't think you would want a real estate attorney. I think you would want a criminal defense attorney. Continuous representation, training, and other things that we will talk about slowly.

Now, the very first ABA principle requires independence of the defense function from the judiciary, yet Michigan statutes give the authority for oversight to the judiciary specifically. While the vast majority of judges do strive to do justice in all cases, political pressures, administrative priorities, such as the need to move dockets, or public publicity generated by a particularly notorious crime, can make it difficult for even the most well-meaning judge to maintain their neutrality.

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

When the public fears that the court process is unfair, people are less inclined to show up for
jury duty or to come forward with critical information about crimes.

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

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

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

In Ottawa and Shiawassee Counties public defenders do not conduct independent investigations for their clients. When they think something is wrong, you know what they do? They ask the police to reinvestigate. Even though oftentimes, and, again,
this isn't painting the police function with a broad stroke, but when you have already investigated and come to a conclusion, it's very hard to break out from those bonds and look at things anew.

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

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

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

Now, no one is thinking that there is going to be one-to-one parity in the sense you are going to add up all those resources and give it to the defense.
but what can be done is have similar pay, similar work loads, and other things that can make it a more even fight. Without such resources, the defense is unable to play its appropriate role of testing the accuracy of the prosecution evidence, exposing unreliable evidence, and serving as a check against prosecutorial or police overreaching.

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

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

Now, I am not an expert in the prosecution function, but our court observations around your state make us believe that the presentations made by the prosecuting attorneys are true. The underfunding of the prosecution fund in Michigan, though, only serves to highlight how truly far off the mark the defense function is.
And though prosecution reform may certainly be required for public safety reasons in the coming months and years and though prosecution reform -- we know that there is no constitutional requirement for effective prosecution. Perhaps for victims of crimes there should be some day, but right now there is a long litany of cases requiring states to create adequate defense systems.

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

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

Well, the court has said unequivocally this year that that does not count as justice, and again they quoted this: The right to counsel would be heard in many cases of little avail if it did not comprehend the right to be heard by counsel. Even the intelligent and educated layman has small and sometimes no skill in the science of law. If charged with a crime, he is incapable generally of determining for himself whether the indictment is good or bad. He is unfamiliar with the rules of evidence, left without
the aid of counsel. He may be put on trial without a proper charge and convicted upon incomplete evidence or evidence irrelevant to the issue or otherwise inadmissible. He lacks both the skill and knowledge of adequately to prepare his defense, even though he had a perfect one. He requires the guiding hand of counsel at every step in the proceedings against him. Without it, though he be not guilty, he faces the danger of conviction because he does not know how to establish his innocence.

The time is now. The people of Michigan need to come together and demand that we uphold the constitution. We did not in our report make recommendations on how to fix it. We are happy to aid anyone that is willing to look at it where we can tell you how other states have approached this and fixed it, but the bottom line is there is no cookie cutter answer. You necessarily have to take into account the uniquenesses all across your state. It may be a system that looks quite different in the Upper Peninsula than it does in Wayne County.

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

CHAIRPERSON GARDELLA: It is.

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

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

MS. SADOWSKI: Elizabeth Sadowski from the 6th circuit. My question is whether there is any state or locality that has a model which you might suggest we consider?

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

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

Minnesota has what you would probably recognize as the more typical public defender system in which there is top down governmental employees that
are full time and on staff in each of those.

My sense from walking around your state is

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

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

This past summer there was a conference that
brought people both from the defense and prosecution
system in Wisconsin to come and talk to public
defenders and prosecutors, and I think there is a lot
of good that comes from that. And I think they also
share a lot of the same sort of uniquenesses as far as
how the state looks as regards to urban areas and
rural areas and stuff. So those are the states I
would start looking at to get some ideas on how to do
it.
MR. HOSCHNER: Robert Hoschner from the 35th circuit. My question to you is, and I only ask this because I am from Shiawassee County and I worked in that system for 36, 37 years, and I ask this question because I don’t know where you got your information, and I am wondering how you got that information, since it certainly is not what I experienced in 36 years and the comment you made about Shiawassee County. I also have a cold.

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

So, for instance, we took the ABA ten principles, and we set up a very formal protocol and asked specific questions to find out, you know, the difference between there is quality lawyers in this system but there is nothing that guarantees it. It’s only grown up that way or there is certain things versus having strict rigors to be able to ensure that each attorney is going to be able to handle those case loads. So each of the counties, obviously, have
different variations on a theme. Some are better than others.

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

MR. HOSCHNER: The reason I say that is because in the 36 years I practiced law in Shiawassee County I had many murder cases, rape cases, thousands of cases I defended. I always had the opportunity to go before the judge and get additional help as far as I needed. I never in thousands of cases had to go back and ask the police to do any further investigations unless it was with the prosecutor and the judge because there appeared to be some obvious reason why, obvious reason why we wanted them to reinvestigate.

I always had the opportunity to have investigations. I sometimes had to, I sometimes had to ask the judge, you know, permission at first to make sure that he knew what I was needing and what kind of money it was going to cost, but I would get that information, provide it to him, and he would always give me the right to do that.
I have three people in my office that have been doing criminal defense work for many years. I don't know that any one of them ever talked to anybody from your organization.

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

For example, we had a system wherein the older attorneys, the more experienced attorneys were the ones who got the felony cases, were the ones who got the criminal cases that were the severe cases, and the judges all knew who those attorneys were, and they were the ones that were put on that list, and maybe there is only six attorneys out of 50 in that county that were put on that list, and it was done by a variety of people, prosecutor being part of it, judge would be a part of it, the other defense attorneys would be a part of it.

I think there is more to our system in this state than what it appears from looking at this particular representation. I only say that because, you know, I really loved what I did for 36 years, and I thought I did an excellent job. In fact, I had many murder cases of which I did far better than I thought I should for an indigent defendant, and I always felt that I had the opportunity with my judges to do what I
needed to do for that defendant, and I always had the
opportunity to speak to him alone, I always had an
opportunity to let him tell me what he needed to do
and that I could advise him at any given time, and I
always had the time to do that.

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

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

MR. CARROLL: Thank you for those comments.

(Appause.)

MR. CARROLL: Let me say a couple things
about that. One, first of all, we encourage this type
of discussion and debate. I think it's fair game for
people to look at the principles that we used and say,
you know what, those weren't fair, those weren't the
standards or we didn't get in depth far enough or
anything. There is a problem here. I mean, even you
said it, that we need resources from somewhere, it
needs to improve, but people did a good job within the
confines of what we were given.

I think this type of debate is very healthy.
several things in that that you went to the judges
every time you needed something. Now, in that
instance it may be someone that wasn't feeling
pressures and there weren't budgetary constraints and
they were able to give you experts or not, but that's
not always the case, and that's why the Supreme Court
again has said that the judiciary must be out of it.

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

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

I think I met many, many committed public
defenders and private defense counsel in your state,
and I think they aren't trying to do a bad job. I
think they are doing by their own, what's given to
them, a very good job. The problem is that given the
structure of the system even Superman couldn't be
doing what is expected under the ABA guidelines and
what the U.S. Constitution recommends.
I would say, if people would ask around, how many counties are now respecting the Rothgery decision that was handed down two months ago? I would say very few in your state.

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

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

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

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

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

In any event, the problem is with the Board of Commissioners. They don't want to spend the money,
they don't have the money, I suppose. And that I think should be pinpointed that any system which relies on appropriations from the Board of Commissioners is going to have the same flaws that you have mentioned.

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

Our system works fairly well except to the extent that, one, there is no investigative process available which isn't the police except the problem that attorneys are working on volume. They go in Friday morning with felonies and sit with the prosecutor, and the prosecutor says, well, I will plea bargain down to this, take it or leave it, and generally they take it, because they can't afford to do much else.

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

By the way, I don't agree that the prosecutors are underpaid. I have been there. I started with something like $5,000 a year as an assistant prosecutor. We got finally in our county a
system of a prosecutor's union, so to speak, that bargained with the Board of Commissioners.

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

MR. CARROLL: Think you. I think you said a couple very important things. One, the ABA, first principle on independence, I spent a bit of time talking about independence from the judiciary, but independence from the political process is there as well. Most states that's a broad, bipartisan, statewide commission to oversee indigent defense insulated from some of these very board questions that you talk about.

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

If these battles are going on on 83 different counties instead of once at the state level, you are always going to have issues with a new commissioner.
comes on and reeducation has to start all over again.

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

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

In regards to -- you know, I think, I hear a
lot of people that say things like you did, sir, of I
think we do fairly well, you know, and I would agree
in many instances you are doing okay here or fairly
well, but that's not what the Constitution says. It's
not the right to counsel given whatever the current
economic status is. It's a very definite, this is
what needs to be done, and so I know people are going
to struggle with this. I know I am in for a lot more
people questioning our methodology, questioning how we
did that. I want that. Please, let's engage in debate and get to the bottom of it, because the system

is not working for clients. Thank you, sir.

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

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

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

We are doing what any interest group, and our interest I think is the Constitution, what any interest group does when it wants to make change. We are educating legislators, and we are also having conversations with the Supreme Court, because there is two parts to this. There is the money and there is the standards, and if you don't have standards, it doesn't matter how much money you spend. So we are
engaging in both those areas, and I would say that we would have no chance of success at all if we didn't have a most powerful ally possible on our side, and that is the Constitution. And so I am very hopeful that all of the forces are coming together right now to move us forward.

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

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

We did a report like this. It lead to the legislature, court, and executive branch forming a three-branch working group to work through these issues. They put on hearings. They had all the people come to say, you know, oh, they overreached on this report or they underreported on this, gave everybody, judges, prosecutors, public defenders, clients, victims the ability to come before them and hold hearings on this.

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

Now, Louisiana quadrupled the amount of money
being spent on indigent defense in the years after
Katrina. So if there was ever a dire economic
situation, it was post-Katrina Louisiana, that at the
end of the day when they realized that the
Constitution was being violated on a daily basis, the
Legislature of Louisiana created a complete statewide
indigent defense system with an independent board, all
the money coming from the state instead of from their
counties, they are called parishes, they meet all the
ABA ten principles. They looked to Montana, because
they felt they needed a mixed system too, so they have
staff public defenders in places like Baton Rouge,
New Orleans, and Lake Charles, and then they have
contract and assigned counsel in the suburban and
transitional and rural areas as well.

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

Now, we do look and say there is that
Michigan where you rank 44th for cost per capita on
indigent defense. You rank about third or fourth for
cost per capita on corrections. My sense is that if you look at the criminal justice system in whole, there will be cost savings by investing on the front end and saving on the back end, but those are decisions for other people to make.

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

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

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

In Wayne County we brought people from, you know, Massachusetts and California and Texas and other
places to come and look at that.

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

MS. GRAMZOW: Thank you.

CHAIRPERSON GARDELLA: Thank you, David, for the great presentation.

(Applause.)

CHAIRPERSON GARDELLA: It was very informative, gives us food for thought, especially when you are out there talking to your various legislators who represent your various communities in Lansing.

At this point --

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

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

Now, back on track for our proposal agenda. Returning to Matt Abel's proposal, that's item number 15 that was moved up, and that is consideration of
MR. OLSON: Mr. Chairman, in light of the debate that has been held on this in two separate meetings, I would move to call this question.

CHAIRPERSON GARDELLA: Is there support?

VOICE: Support.

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

Those opposed no.

And those abstaining yes.

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

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

Those opposed nay.

And those abstaining say yes.

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

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

Now all those opposed to the motion please
stand. You can all be seated.

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

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

(Applause.)

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

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

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

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

MR. ABEL: I am sorry. Thank you. In regard to that matter, the only comments that were received that I am aware of were those from the Attorney General, and it may be that this matter needs more discussion. I am not sure it does. It seems that the Attorney General missed the point, which is that the defendant who is doing the appeal is the one who should have the copy of the report.
CHAIRPERSON GARDELLA: Mr. Abel, this is item 12.

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

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

If the body felt that this needs more work,

Because there really were no comments on this aside from--well, there were no comments--that if we were to refer it, I would suggest that we refer it to the Assembly Review, I am sorry, Special Issues or Drafting Committee with specific instructions to seek comments from particular sections that are involved, basically any section that is involved in litigation where people are in court would be impacted, and I see those as criminal law, family law, general practice, judicial conference, legal administrator, litigation, negligence, prisons and corrections, public
corporation law, Civil Procedure in the Courts Committee, the Criminal Jurisprudence and Practice Committee.

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

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

CHAIRPERSON GARDELLA: Is there support for his motion?

VOICE: Support.

CHAIRPERSON GARDELLA: With the motion to refer it to the Special Issues Committee with instructions to refer the proposal to all of the sections of the Bar so that they can comment or make proposals to modify the proposal, whatever they choose, the support does go along with that. I see a yes on that. So any discussion on that proposal, or on the motion?

Hearing none, all in favor say aye.

Those opposed nay.

And any abstentions say yes.

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

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

MR. ABEL: Thank you. I appreciate it. I
may be a little more organized now. This is the proposal in which the Drafting Committee, when it was referred to them, replied, not by changing this, but by drafting their own two rules. As I was beginning to say, I don't have any particular ownership of this language. I just think it's important that pre-sentence reports be provided. It's something that I have run across in my daily practice,

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

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

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

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

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

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

JUDGE KENT: Thank you, Bob. Steve Gobbo could not be here today. He had to be in Cleveland
for some meeting on cemetery regulations, and he asked us to step in.

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

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

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

That's the essence of the report that we make as to that particular rule. We also investigated the companion rule in district court, which will be spoken to by our other speaker, and in juvenile court, which
I am familiar, and in juvenile court the Court Rule makes reference to the statute, which specifically allows the retention of the presentence, and which further makes reference to the opportunity for timely review in advance of sentencing. So we make no recommendations as to those rules.

With that having been said, I will defer.

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

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

So the Ad Hoc Committee was invited. People that signed up were Mark Boonstra, Kim Eddie, Gordon Gold, John Hammond, C.J. Horkey, Wally Kent, Marty Krohner, Mike McClory, David Perkins, Paul Ryan, Ron Foster, Richard Stapleton and Steve Taratuta.
the amendment of 6.201, which we have already dealt with. The Ad Hoc Committee, first they chose not to make any recommendations. That's just a footnote for posterity. The Ad Hoc Committee reached consensus recording amendment 6.245, the presentence, and did recommend the amendatory language which you have in your report. It's also noted that the other two rules, as Judge Kent talked about.

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

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

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

I am going to move that this body adopt the recommendation of the Special Issues Committee on
MCR 6.610.

CHAIRPERSON GARDELLA: Is there support?

VOICE: Support.

CHAIRPERSON GARDELLA: Any discussion?

Seeing no discussion, all those in favor of the pending motion say aye.

Those opposed say nay.

Any abstentions yes.

The motion is approved. Thank you,

Mr. Krohner.

(Applause.)

CHAIRPERSON GARDELLA: We have a second motion.

JUDGE KENT: And I will move the adoption of

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the recommendations regarding MCR 6.425(B) and (C) as set forth in your report.

CHAIRPERSON GARDELLA: Is there support?

VOICE: Support.

VOICE: There is no C.

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

CHAIRPERSON GARDELLA: Is there support to that motion?

VOICE: Support.

CHAIRPERSON GARDELLA: Any discussions?

Ms. Radke.

MS. RADKE: Thank you, Robert. Victoria Radke, 47th circuit. The issue that was presented before court by the good judge has two things, one is the provision of the presentence report adequately before sentencing but also a retention after
sentencing. The issue of the position that is stated only says that we are voting on to mandate the distribution of copies of the presentence report before sentencing. Are we going to amend that to include retention afterwards?

JUDGE KENT: I have to look at the manner in which it was set forth, and, yes, it was our intention that it should do so, and I believe that's included in our proposed 6.425(B).

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

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

MS. RADKE: Thank you.

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

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

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

MS. RADKE: Yes, Judge, I want to make sure that the position that the people are voting on, they understand that if they vote yes they will be not only approving that we ask the Supreme Court to mandate
distribution of the report prior to sentencing but also mandate distribution to counsel and the defendant

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

MS. RADKE: Thank you.

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

MR. HAUGABOOK: Yes, Terrence Haugabook, 3rd circuit. One of my concerns is if you have a defendant that's being incarcerated, and I deal with a lot of defendants who sometimes cooperate with the government, if you distribute their presentence report, and I have a lot of defendants sometimes when they sign confidentiality or cooperation agreements with us, they ask for them to stay with their lawyer because if they are going into a jail or something like that, people rifle through their materials. So you get somebody, you give him his presentence report, somebody down the line of a gang or an organization wants payback for this guy who testified and cooperated against him, somebody rifles through there, through his presentence report, finds out where his family members are, and then you have people starting to intimidate and harm family members of somebody who cooperated.

So you got to think in terms of that. What
about the incarcerated defendant. Do you want him running around with his presentence report with all of his personal information so that somebody can go into his cell or whatever and swipe it and annihilate his family or something as payback. That's something to think about.

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

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

CHAIRPERSON GARDELLA: Thank you. Any other discussion?

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

Those opposed nay.

Any abstentions yes.

The motion is approved.

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

As it relates to the mileage reimbursement,

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

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

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

(Applause.)

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

JUDGE STEPHENS: Thank you.

(Applause.)

CHAIRPERSON GARDELLA: One other item too, for our executive director, for all the things that
she does for us, a token of our appreciation, the Representative Assembly officers have given her a bottle of wine. She may need it after dealing with us all year long, but we hope that she will enjoy it, and might be able to use it yet today.

(Applause.)

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

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

(Applause.)

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

VOICE: So moved.
CHAIRPERSON GARDELLA: Is there support?

VOICE: Support.

CHAIRPERSON GARDELLA: All in favor say aye.

Those opposed nay.

Any abstentions yes.

The motion is carried, and congratulations,

Victoria.

(Applause.)

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REPRESENTATIVE ASSEMBLY 9-18-08

CHAIRPERSON GARDELLA: And I must say that

the Bar is in good hands and the Representative

Assembly is in very good hands for next year with your

incoming chair, Kathy Kakish, assistant attorney

general. She has done so much over the years, whether

it be the Drafting Committee, helping with other

special projects of the Bar. She will do an excellent

job.

Elizabeth Moehle Johnson has done so much,

not only on the Assembly, but the Bar leadership forum

and many other things.

Victoria Radke has done an outstanding job

just helping us get everything together and organized

and filling the vacancies and getting the awards done.

She has been a very energetic member, and so I know

that when I leave the tradition of energy for the

Assembly will continue, and I also encourage you, all

of you to keep your involvement up, because that's

what makes this organization so effective.

So congratulations, Victoria.

And next I have the pleasure of introducing

Judge Michael Talbot for the swearing in of our new

chairperson.
Judge Michael Talbot was appointed to the Michigan Court of Appeals in 1998. Previously he had served as a judge in the Wayne County Circuit, Recorder's Court and the Detroit Common Pleas Court, and worked as an attorney in private practice. He is a member of the Judicial Tenure Commission. He received his bachelor's degree from Georgetown University and his law degree from the University of Detroit, and so I would ask Judge Talbot if you could come on up to the front here.

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

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

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

I am not sure how much all of you know about her background. Some of you know probably quite a bit, but when she was quite young her dad and mom...
decided that it was necessary and for business opportunities when in early years, at the age of ten, she left Detroit and went back to Amman, Jordan, and as an English speaking person in that community she had to learn a foreign language. She went through schools there, had to acclimate herself to that experience and did well, and having done all that, having moved and learning Arabic and becoming fluent, she then went to school and completed at the University of Jordan her bachelor's degree in English language and literature, and then for seven years was with Jordan radio and television working as a newscaster. And also with Radio Jordan's foreign service in doing interviews, involving herself in foreign affairs.

Always had an interest and a fascination with law and American jurisprudence, and at some given point then after her many years of service there had the courage to literally get up and come on back and with no money go to Wayne State, get her law degree, as many of you had to do, struggle, work, and study at the same time, working for Ford Motor. They hired her in their legal division editing papers for them and a journal for them, and then she got a job with the Arab-American and Chaldean Council, worked for Channel 50 television. Don't worry. You will be all right. I can even do this. I can do the balance of this report.

I remember also then, having done all that, she came to work for the Michigan Court of Appeals,
and she worked in our research division for two years and then clerked for me for a year. She then was hired by the Attorney General, and you will see in the back of the room, if you wonder how she has done over there, well, those who are members of the Attorney General staff that are here just to share this moment, please stand. Take a look at that. Isn't that a great compliment.

(Applause.)

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

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

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

(Applause.)

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

You guys can take a look at what's happening or watch out there. Kathy, if you will raise your right hand, please, and repeat after me.
I do solemnly swear.

MS. KAKISH: I do solemnly swear.

HON. MICHAEL TALBOT: That I will support the Constitution of the United States.

MS. KAKISH: That I will support the Constitution of the United States.

HON. MICHAEL TALBOT: And the Constitution of this state.

MS. KAKISH: And the Constitution of this state.

HON. MICHAEL TALBOT: And the Supreme Court rules.

MS. KAKISH: And the Supreme Court rules.

HON. MICHAEL TALBOT: Concerning the

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State Bar of Michigan.

MS. KAKISH: Concerning the State Bar of Michigan.

HON. MICHAEL TALBOT: That I will faithfully discharge.

MS. KAKISH: That I will faithfully discharge.

HON. MICHAEL TALBOT: The duties.

MS. KAKISH: The duties.

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

MS. KAKISH: As Chair of the Representative Assembly.

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

MS. KAKISH: Of the State Bar of Michigan.

HON. MICHAEL TALBOT: According to the best
of my ability.

MS. KAKISH: According to the best of my ability.

HON. MICHAEL TALBOT: Congratulations.

MS. KAKISH: Thank you.

(Applause.)

PAST CHAIRPERSON GARDELLA: One last comment.

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

that I have here. I have the pleasure of passing the gavel to Kathy. She has a new gavel that she can use to keep everybody in order here. Usually you don't have to use it very often, so it's a pleasure.

Chairperson Kakish.

CHAIRPERSON KAKISH: Thank you very much.

(Applause.)

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

As now the former president of the State Bar of Michigan, Ron Keefe, described Bob as being a strong and vocal advocate for the Representative Assembly this year, and our Executive Director, Janet Welch, described Bob as having extraordinary energy.

That's true, he was a very strong and vocal advocate.

He had all this energy that he put in this last year, but also I would like to add that anybody who knows
Bob knows that he has this warm friendliness and sense of humor, and he did bring it with him into the entire

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

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

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

(Applause.)

CHAIRPERSON KAKISH: Now the second thing that is going to be given to Bob comes from Liz Johnson and me, so if Liz can approach the podium. As I mentioned, Bob does have a great sense of humor, and I am sure many of you have heard the bowling alley incident that Bob had with his six, seven-year-old son Bobby, seven-year-old son Bobby.
Well, Bobby was bowling, along with Bob, and he threw his ball down the lane. I am not good at bowling, so forgive me if I make a mistake here, and the ball apparently stopped in the middle of the lane. Well, Bob, being so energetic, couldn't wait for somebody, the owners of the place to come and pick the ball from the lane. Well, I am told that the lane has a lot of wax on it. So Bob went over there, tried to get the ball, slid, and stayed there because there was no traction for him to get up at all.

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

(Applause.)

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

CHAIRPERSON KAKISH: Now we move on to the next item on your agenda, and that is to recognize the chairs of the five various committees that are actually the backbone for their operation of the Assembly, and when I call your name, the chair of each committee, please come up, and, Bob, your job is not
over. You will be presenting the plaques to these individuals.

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

(Applause.)

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

The second committee is Drafting, Robert Buchanan.

(Applause.)

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

(Applause.)

CHAIRPERSON KAKISH: The next committee is Nominating and Awards, Victoria Radke.

(Applause.)

CHAIRPERSON KAKISH: Next, Rules and Calendar, Scott Wolfson.

(Applause.)

CHAIRPERSON KAKISH: Last but not least, and did I say five committees? Somebody should have corrected me. I am surprised nobody did. There are six committees. The sixth committee is Special Issues, Steve Gobbo. Of course Steve could not be with us today. He is out of town. He is flying in to
town, and he should be at some Bar function later on this evening, but Steve did a wonderful job on Special Issues and worked very hard for that. So a round of applause for Steve.

(Applause.)

CHAIRPERSON KAKISH: Moving on, there are several people now who have actually come to the end of their terms and are considered term limited. We certainly hope that we know that next year they can't be with us on the Representative Assembly, but you know you can take only a one-year absence and hopefully you will be with us the following year, and I would like to mention their names and, again, Bob will be giving you your certificate, but if you would come to the podium here when I call your name.

Deborah Blair.

(Applause.)

CHAIRPERSON KAKISH: Steven Drakos.

(Applause.)

CHAIRPERSON KAKISH: The Honorable David Herrington.

(Applause.)

CHAIRPERSON KAKISH: Alan Kanter.

(Applause.)

CHAIRPERSON KAKISH: Barbara McQuade.

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

CHAIRPERSON KAKISH: Donald Morgan.

(Applause.)

CHAIRPERSON KAKISH: David Perkins.

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

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CHAIRPERSON KAKISH: Vincent Romano.
(Applause.)

CHAIRPERSON KAKISH: And Terri Stangl.
(Applause.)

CHAIRPERSON KAKISH: Now three very short
items. First of all, a reminder to fill out your
attendance slips and to pick up your mileage and to
submit your mileage before the end of this month.

The second thing is to fill out your forms if
you have not done so for committee assignments and
section liaisons.

And, third, I look forward to seeing you at
the April meeting.

Can I entertain a motion now to adjourn this
meeting?

VOICE: So moved.

CHAIRPERSON KAKISH: Support?

VOICE: Support.

CHAIRPERSON KAKISH: Any discussion?

Hearing no discussion, this matter is now
adjourned. Thank you very much.

(Proceedings concluded at 3:37 p.m.)
STATE OF MICHIGAN
COUNTY OF CLINTON

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

October 8, 2008
Connie S. Coon, CSR-2709
831 North Washington Avenue
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