Proceedings had by the Representative Assembly of the State Bar of Michigan at DeVos Place, Ballroom A, Grand Rapids, Michigan, on Thursday, September 18, 2014, at the hour of 9:00 a.m.

AT HEADTABLE:

  KATHLEEN M. ALLEN, Chairperson
  VANESSA PETERSON WILLIAMS, Vice-Chairperson
  DANIEL D. QUICK, Clerk
  JANET WELCH, Executive Director
  HON. JOHN CHMURA, Parliamentarian
  ANNE SMITH, Staff Member
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REPRESENTATIVE ASSEMBLY              9-18-14

Grand Rapids, Michigan
Thursday, September 18, 2014
9:06 a.m.

R E C O R D

CHAIRPERSON ALLEN: Call this meeting to order. Good morning, everyone. Thank you for coming here, and thank you for coming to Grand Rapids and DeVos Center. This is my hometown, and it's great to see everyone here. Some people have driven a long distance, and thank you for being here this morning.

Since we have got everybody in here, and they are sitting down now, I will ask Mr. Dan Quick whether there is a quorum.

CLERK QUICK: There is a quorum.

CHAIRPERSON ALLEN: Thank you, sir.

Our agenda is going to move somewhat fast today, and, as you noticed back in April, I talk fast, and I tend to move kind of quickly, and the reason why, I thought, twofold, that we can have some discussion with regard to our 10:00, it's about 10:15 discussion, that gives us some time for this discussion and, secondly, to leave at noon allows everyone to participate in the State Bar meetings and section meetings and the luncheon, and so we have an afternoon of free time to do some things that you have
wanted to do and haven't been able to do in the past. So we are going to, we are moving along, and we are going to do the adoption of the proposed calendar.

MR. ANTKOVIAK: Good morning. I am Matthew Antkoviak, 48th circuit. I am standing in today for Kathy Kakish, who is out ill.

With that in mind, I move to adopt the full calendar of meetings that was mailed to the Assembly members on August 19. I would note that there are typographical amendments on page two, the first of which deal with the William Winters, and the second pertains to the word perspective. I believe that a corrected agenda was e-mailed on September 15. With that in mind, I move that, in light of the amendments, I move to adopt the proposed calendar.

VOICE: Second.

CHAIRPERSON ALLEN: Thank you. Any discussion?

All in favor yes.

Noes?

The motion has passed. Thank you, sir.

Next we are going to move for the approval of the April 26, 2014 summary of proceedings. If everybody has had an opportunity to review those
proceedings, it was with regard to our meeting back in April. I would entertain a motion for approval of the summary of proceedings.

VOICE: So moved.

VOICE: So moved.

CHAIRPERSON ALLEN: Second.

VOICE: Support.

CHAIRPERSON ALLEN: Any discussion?

All in favor of approving the September 19, 2014 -- I am sorry, the April 26, 2014 minutes, please say yes.

Opposed?

The motion passes. That will be moved. We will be entering the summary of proceedings for the April 26, 2014 minutes.

And now we are going to be moving and filling the vacancies, and I would like to ask Judge Jeffrey Nellis, chair of the Assembly Nominating and Awards Committee, to come to the podium. Judge.

Judge Nellis has been the chair of this committee for a number of years, and I want to thank him personally for helping us out. He does a fantastic job of trying to get the circuits filled, and he takes the time out of his busy schedule, because he is now a judge, and he does call everyone,
gets them filled for us. Thank you.

(Applause.)

JUDGE NELLIS: Good morning. Before I start -- and I always do this, but I think it's important -- I want to acknowledge a couple people. First of all, Anne Smith, who, as you may or may not know, does a lot of work behind the scenes throughout the year with this group and in the executive office, and sometimes it's a very challenging job, takes a lot of time, and I just want to state publicly that I really appreciate all of the work that she has done this year in getting us ready for our meetings. So if we could just give her a round of applause.

(Applause.)

JUDGE NELLIS: The other thing I want to do is I want to acknowledge the efforts of our officers this year, Kathleen and Dan Quick, Vanessa Williams. As we all know, this has been a pretty interesting year, and they have had a lot of what I would say really difficult issues to tackle, and I think that they have shown some great leadership, and so then I would like to acknowledge them as well.

(Applause.)

JUDGE NELLIS: As for the vacancies, I am pleased to announce we only had one that we had to
fill on this time around, and that was the
23rd circuit, which, for those of you who don't know, it's right up in this area right here on the east side of the state, above the bay, and we were able to, through our committee, we are going to nominate Ann Victoria Hopcroft of Oscoda. So with that, I would make a motion that we, in fact, seat her as the representative for the 23rd circuit.

CHAIRPERSON ALLEN: Do I hear a second for the motion?

VOICE: Second.

VOICE: Support.

CHAIRPERSON ALLEN: Any discussion?

All in favor say yes.

Any noes?

No noes. Thank you. We have filled the position. Thank you very much. You may come to your seat. She should be here. Yes, thank you.

Today we have one proposal, and before we go to the proposal, I want to do a couple housekeeping matters. In April we had the clickers. Everybody had clickers to use to be able to vote on proposals. Those were borrowed, if you recall, from ICLE, and we do not have those today because someone else from ICLE doing its annual meeting needed to use those, and
since we only had one proposal, I didn't think it was fair that we trump ICLE, since it's theirs, and so we just are not using them today, but only one proposal I think will be simpler to be able to just count votes, but we will hopefully have those back again in April, because they were very helpful. They showed the amounts of the votes and the dissenting and the yes votes, and we were able to graph those, so those were nice.

The second thing is that Anne has mentioned, if you have your lunch tickets, great. If you do not have your lunch ticket, see Anne or Marge, and they will make sure you have your lunch ticket.

There is parking in De Vos parking ramp, is that correct?

ANNE SMITH: I have parking passes.

CHAIRPERSON ALLEN: We have parking passes for the parking ramp, which would be great.

Anything else? No, okay.

We are looking, and we are on time, we are looking at consideration of amendment MCR 7.109 record on appeal. We do have the document that was in your book, but there were some minor changes for clarification and tightening up the discussion a bit, and that was e-mailed to you last Friday through an
We also have in front of you the proposal. It's in purple, so if everybody could pull that out and take a look at it. It doesn't deviate much from the original that was published, so, again, if you have had an opportunity to read that, that's fine.

The proponents for this particular proposal, I would like to call Lorray Brown. She is co-chair of the Justice Policy Initiative Committee and Michael Blau, who is co-chair of the Justice Policy Committee with her, and he is also an RA member.

Could you please come to the podium.

MR. BLAU: Good morning. My name is Michael Blau from the 6th circuit but before the Assembly this morning as a member of the Committee on Justice Initiatives, the group which has adopted this proposed recommendation and is bringing it before you this morning.

To my left is Lorray Brown, who is co-managing attorney of the Michigan Poverty Law Program, also serving on the CJI, who will give you some background regarding the proposed amendment to the rule and hopefully will bring this before this body for a vote.

MS. BROWN: Thank you, Mike, and thank you.
Good morning. Thank you for putting this on your agenda, and on behalf of the Committee on Justice Initiatives we are asking the Representative Assembly to support the Amendment MCR 7.109 that would allow indigent appellants from agency appeals an opportunity to move for a waiver of the transcripts.

Currently MCR 7.109 requires appellants to pay for transcripts but doesn't provide for an exemption for indigent appellants, especially in agency appeals. And so this proposal is to create some options for indigent appellants in agency appeals to move the court to have a waiver of the transcript. As we all can recognize, that if an indigent appellant is not able to proceed with his or her appeal because of not having the funds for the transcript, it essentially becomes not a meaningful review on appeal, a denial of access to the courts.

And so we are asking that to do that that the proposal rule is really taken from another sort of mirror, another court rule that allows for waiver of transcript, and so the proposed rule is if the court finds the appellant from an agency decision is financially unable to pay for the transcript that the transcript will be provided at the public expense. This is taken exactly pretty much verbatim from
MCR 3.927, which is termination of parenting rights rule, which allows that. So hopefully this body would agree with us and support our amendment, proposed amendment. Any questions, I am here.

CHAIRPERSON ALLEN: First of all, I would like to hear a motion.

VOICE: So moved.

CHAIRPERSON ALLEN: So moved. Do I hear a second?

VOICE: Second.

CHAIRPERSON ALLEN: And discussion. Again, we have a three-minute limit for discussion, so individuals can come up to the microphones. If you stand too far back from the microphone from the floor, you cannot hear, and if I am having difficulty hearing it, I think people in the back are having difficulty.

MR. PAVLIK: I am Adam Pavlik. I represent the 54th circuit. I had a couple of questions with respect to this proposal. I am not opposed to the principles behind it, but I am wondering if it's necessary.

I remember reading in materials that the proponents indicated that they are getting flack from the agencies when there is a need to prepare these, have these transcripts prepared. At the same time, my
read of the Administrative Procedures Act, I think it's MCL 24.304(2), indicates that when an application for review is filed, and the Court Rule indicates that an application for review is equivalent to a claim of appeal in this context, it says that the agency shall transmit a copy of the transcript to the court, and it does not indicate that that transmission needs to be made contingent upon the payment of a fee to have this transcript prepared.

Moreover, just doing some quick research on this for today's meeting, I ran across an opinion, granted it's from the '70s, Justewicz versus Hamtramck Civil Service Commission, which seems to read the statute in the same fashion. So I guess I feel like, granted, I know that's pre-1991 or '90, or whatever year it is, et cetera, et cetera, but, nonetheless, I feel like this is a potentially unnecessary rule change, at least until such time as the Court of Appeals or Supreme Court definitively construes the APA in a fashion inconsistently with what I just articulated. I would feel like maybe the proponents should file a motion in court to compel the agency to produce the transcript before this kind of a procedure.

MS. BROWN: Well, a couple things. One,
the particular APA provision you are referring to, 24.304, was one that we actually, as legal services attorneys, were relying on as the assumption that the agency provide that, and before the Court Rules sort of changed and got revamped, I think that's what we were relying on.

However, when it got very clear and explicit that the appellant was responsible for obtaining and the department found that, they actually brought to our attention another case that actually interpreted APA definitively, that they don't need to provide it, and that is Tomlin versus Department of Social Services at 398 N.W.2d 490. That was a similar challenge on their 24.304 saying the agency should provide it, and the Court of Appeals, which is an unpublished opinion in 1987, did say that based on -- there is another provision of the APA MCL 24.286(2) that says that if you read it in conjunction that, no, the appellant needs to pay for it.

So their response was that, and so given that there is now this court rule that clearly expressed that they need to pay, they wanted to respond to that, so that's why we see there is a need now to have an expressed provision in the Court Rules that will allow an opportunity for the indigent appellant to make that
MR. FALKENSTEIN: Peter Falkenstein, 22nd circuit. My comment is a little bit more general. It's a question actually of the language that's proposed, this discretion of the court regarding a finding of financial inability to pay, and it doesn't seem to provide for any specific protocol for the court to follow to make that determination. My question is -- and you are tracking the language of the statute dealing with appeals from termination of parental rights -- is there any anecdotal evidence as to how that section has functioned in reality in terms of protecting the, sufficiently protecting the indigents and allowing them to get records on appeal? What is the track record of the courts in general as to how they have interpreted and used their discretion in this regard?

MS. BROWN: Well, I did speak to a number of people who have done termination of rights, and they have had no problems in getting the transcripts, so I am unclear in terms of the track record.

In terms of the discretion of the financial, the court making that determination, I think that's pretty much standard that courts have always made whatever you are filing for, a fee waiver of the
filing fees, that we have to submit an affidavit that the individual, based on the expenses, that the individual can't afford it and expenses and like that. I imagine it would be the same process if you are filing for a fee waiver and filling out the affidavit showing that you are indigent.

MR. SMITH: Joshua Smith, 30th circuit. Time is limited, so I will make my points quickly.

First, I believe what Tomlin says is an agency has to provide a recording of the hearing, not a transcript. But I know that, and I do represent full disclosure as an assistant attorney general of the Department of Human Services, amongst other agencies, but I know that one of the things the department had done in the past was provide those recordings in lieu of a transcript, because that's what Tomlin required. But, again, several points.

First of all, I think that comparing this to termination and criminal appellate cases are very distinctive, because those types of cases have constitutional considerations that are not present in an administrative appeal.

Second, I think the problem you are raising seems to be very specific to certain types of cases, i.e., public benefits cases. The problem is, amongst
others, that the language of the proposed rule really says an appellant from an agency decision. There are hundreds of different types of agency decisions. For example, if somebody has a day care license that they lose before an agency hearing, they can argue, since I no longer am able to procure a living, I am indigent, please provide my transcript on appeal. By the way, it's a ten-day hearing and $4,000, or what about a veterinary license or a CENA license or any of the other types of licensing. A person could make a credible showing they are indigent. If their license is affected, it affects their means of making a living. That's highly problematic.

Second, it says at public expense. What exactly does at public expense mean? You want the agency to pay for it? You want the court to pay for it? Who do you want to pay for it? I can almost guarantee that if this is something you want the agencies to pay for that they will probably seek a legislative fix to this, because they are not going to want to pay for the transcripts.

The average benefits case, you are probably talking about maybe a one to two-hour hearing max, but if you are talking different types of cases, particularly licensing cases, I have had them go up to
ten-plus days, and the transcripts on appeal were many thousands of dollars. Particularly in cases like that, I think that's unreasonable, regardless of whether the person can demonstrate indigency, that the agency should pay for that.

And a final point is that I think to a large extent this is intended to affect particular policy making the appellate system, not the hearing system, which is already accessible, the appellate system more accessible to indigents. It sounds in particularly like you are aiming at those who are either receiving or contesting a denial of public benefits. The problem though, I think, is that's a policy consideration. The Court Rules have control over procedural issues. They do not have control over policy issues. So to the extent that this does smack of policy, I would say it's eminently challengeable, both in circuit court and in a higher court.

MS. BROWN: Just a couple things. I note that APA talks about the recording, but keep in mind that the rule changed, and 7.109 now says that the appellant is responsible for the entire record on appeal and refers you to MCR 7.210(A)(2), which defines what that record on appeal means, which means includes the transcript, includes the pleadings, the
filings, testimony and the transcripts, so now an appellant from the agency is talking about a transcript, not just limited to the recording itself. So I sort of beg to differ on that in that sense.

In terms of the -- and in terms of, although this was prompted by most of the issues around DHS benefits appeals, the policies not only just sort of carve out only indigent appellants from administrative hearings and agency appeals. I don't think I can say one set of or group of indigent appellants from agency appeals are far better off or should get more favor than another indigent appellant from another particular agency appeal, so I think it would cover all appellants.

So we are not specifically trying to change the rule, but the key, important piece is an avenue, a vehicle for an appellant, whether it's from a DHS appeal or a Secretary of State appeal, to be able to file something with the court and the court making the determination if the transcript should be waived, I mean, in that instance.

Now, you mentioned in terms of the court saying public expense and who should pay for that, and I also talked to the folks in termination appeals cases and asked them about this particular rule, their
particular rule and what's the practice and how is it
being implemented through public expense, and it's the
court. The court is the one that pays for that.

So there is nowhere in the rules that
identify specific agencies in anything to be
responsible for that, but it's a court rule. It falls
on the court.

I think at this point -- I mean, that's
where, I think, if we are mirroring the termination of
rights appeals and provision for waiver of transcript,
I think that's where we would lead to.

MR. KOROI: Mark Koroi, 3rd circuit. I just
have a few comments on this.

The genesis of the creation of waiver of fees
for appeals is grounded in a 1972 case, Douglas versus
California. There is also a prior case, Griffin
versus Illinois, and one policy concern that was cited
was the fact that it's a closed system. The criminal
system is closed. Those particular cases, they
require the states provide appeal, applicable
resources from public funds to pay for appeals and
transcripts on appeal. And those line of cases have
relied heavily on the fact that public policy called
for situations in closed systems where a person is
brought through the system that indigents should be
given the resources by the government if they are not so, you know, not so already empowered, so they would have an opportunity to defend in a more even basis against the government.

This particular rule seems to adopt that type of public policy consideration. Many people that are brought in these agency decisions come in are barbers -- I have had barbers who are fighting for their lives. They can't speak English. They come here. They take a test, which they don't understand, and those cases are going to deprive them of their livelihood and a situation where if they do not have sufficient income, there is no way they can appeal, and I believe this addresses that situation.

One thing that has to be addressed also in this is who is going to eventually pay for this? Is it going to be the agency? Is it going to be the Attorney General's Office? Is it going to be the court system? Somebody has to fund this. I think that should be a primary consideration as to how the funds will be allocated, who is going to bear the ultimate burden of this. Is the legislature going to have to pass some act to fund this, fund the mandate if it's passed? I think that's another issue that should be addressed here.
MS. BROWN: I agree with your comment in terms of that the reasoning behind it is the indigent appellant is to be able to have access to the court and filing those issues, to be able to continue with their appeal and its meaningful review. And I agree with you. As I said, the issue of who is to pay for it, I think, usually when we are filing these waivers in a termination of parental right cases, it's been factored as a court expense, and it hasn't been identified as DHS would pay for the transcript for termination of parental rights. The court didn't identify that. The Court Rule didn't identify that, as well. So the proposal is to allow it to run its course as it does in the termination of parental rights cases.

MR. SMITH: I think the problem is it doesn't say that though. It just says public expense. I think that's something we should give some thought to. I mean, my experience, and I am fortunate enough to practice in most of the circuits outside of metro Detroit, because our Detroit office covers those, and my guess is there could be a lot of judges who look at that and say, public expense. You're a public agency, Attorney General or Department of Human Services or whomever it is. You pay for it. Because I have got
to tell you, our court is strapped. We don't have the money to pay for this. So there is going to be a big issue in terms of who pays for it, and I think, as a secondary thing, shouldn't say secondary, second consideration is I think it's highly, highly, highly problematic if you are talking about affording people a transcript based solely on indigency in any case whatsoever.

Again, you could have a party who is a medical doctor who is running a pill mill who spent all of his or her money on contesting the licensing charges and is now indigent when their license was, in fact, taken away, and now Dr. Jones or Dr. Smith gets $20,000 worth of transcripts paid for at public expense to go to the circuit court. And I think that is highly, highly problematic.

MS. BROWN: The reality is we can all come up with the worst case scenarios and say, wow, this is the worst case scenario, but if we look at the reality of the practice, we are not talking about, you know, legal services attorneys are not representing the doctors running the pill mills. We are talking about the indigent folks population out there who really need access to the court and who is not someone who hired a big law firm to do their defense and
administrative hearings and then now they don't have any money. I think we can always come up with a parade of horribles and get the extremes, but I think legislatively you don't want to try to legislate or impact rules based on a parade of horribles, because I think you can always come up with one.

MR. SMITH: The problem is that the rule as currently drafted allows that parade of horribles. We can come up with it because it follows the plain language of the rule. That's the problem. We are all sympathetic towards indigent Medicaid clients. In fact, it's quite possible that maybe the federal government might provide assistance as part of the Medicaid program to provide those transcripts.

CHAIRPERSON ALLEN: Thank you, sir, and I allowed a little bit more leeway because of the proposal times, but when you come up to the podium, the mike, you get to speak one time at three minutes.

(Applause.)

CHAIRPERSON ALLEN: Mr. Abel, if you have a question, you are more than welcome to ask your question if you would like.

MR. ABEL: I was just going to make a point of order about being able to speak once.

CHAIRPERSON ALLEN: Thank you, Mr. Abel. I
am glad you are awake today.

MR. ABEL: I am usually awake.

CHAIRPERSON ALLEN: Any other discussion?

Any other questions?

MS. BROWN: Thank you. Just appreciate it, and I appreciate your support and if you are so inclined, the CJI would appreciate that. Thank you.

MR. BLAU: At this time I would move for the adoption to amend MCR 7.109 to add a subrule F that states if the court finds the appellant from an agency decision is financially unable to pay for the preparation of transcripts for appeal, the court must order transcripts prepared at public expense.

One other thing that I would mention to the Assembly, that this is really the first step in the process. This is just a proposal that we would be sending to the Supreme Court. The Supreme Court could do nothing with this proposal. In effect they could open an administrative file on it, obtain additional public comment. So this is the first step in this process. But I would ask for adoption of the proposal at this time.

VOICE: Support.

CHAIRPERSON ALLEN: It's already been moved, but I thank you for making sure that they heard it
twice.

Let's vote on this particular proposal, the amendment MCR 7.109. All in favor say yes.

All those say no.

VOICE: Division.

CHAIRPERSON ALLEN: There is a division. Please stand for those who say yes. If we could have our counters.

VOICE: Who said it was close?

CHAIRPERSON ALLEN: I am getting old. My hearing is getting bad.

Thank you. You may sit down. The noes please stand.

CLERK QUICK: The vote is 61 in favor, 18 opposed.

(Applause.)

CHAIRPERSON ALLEN: The motion passes. We are now moving along to 9:30. At 9:30 we are presenting our awards. We have two awards to present at 9:30, 9:45. We are a little behind schedule, but that's okay.

For our first award, it would be doing the presentation of the Unsung Hero Award, and I would like to invite Elizabeth Jolliffe and Bill Winters, III, to please come to the podium.
And I would like to thank Ms. Jolliffe for doing the presentation this morning. She is also a member of the RA, and she has been on the Nominating and Awards Committee for quite some time, and I would also like to thank Mr. Winters -- he drove from Detroit, and he is partner of Susan Reed -- and I want to thank him also for coming here today.

MS. JOLLIFFE: Thank you, Kathleen. Good morning.

As written, the description of an Unsung Hero Award is as follows. The Unsung Hero Award shall be presented to a lawyer who has made an outstanding contribution to the improvement of the profession. I also would like to give you a less formal definition of an unsung hero. One who does great deeds but receives little or no recognition.

I nominated Susan Reed for her outstanding contribution to the improvement of the quality of criminal defense representation in southeast Michigan, primarily in Wayne County itself. As probably most of us know, Wayne County and the criminal division there is probably the busiest criminal division in the state with perhaps some of the worst crimes and the most horrific crimes in the state.

I nominated Susan, not only for her
commitment to her own clients, and she does represent people who are charged with some of the most heinous crimes. She herself will say, and when I first met her this is what really stuck with me -- I met her a handful of years ago -- she said, and she still says to this day, I represent murderers, rapists, and child molesters. She also does some divorces and represents people charged with lesser crimes than those terrible, terrible ones.

But it really stuck with me when I met her. I thought, Who is this person, and how does she do what she does? And I started sort of following her, and it was a couple years later that she was then appointed to represent the mentally impaired hired hitman/handyman in the Bashara, Jane Bashara murder case on the east side. It was then that some of us really started, who are not involved in the criminal defense world, really started to know a little bit more about Susan Reed. I started thinking, Who is this incredible woman, where does she come from, and what is she doing?

And the thing that I really learned then and that's really stuck with me and is truly the basis of my nomination for her and the reason she is receiving this award is because of the leadership and the
tireless energy that Susan has given truly to improving the quality of criminal defense representation in Wayne County. She has been a leader for a number of years. In fact -- well, she has been on the board for, I think, at least seven, for the criminal advocacy program in Wayne County, for which all the criminal defense attorneys have to be in that program, go through those classes. They have to have a mentor assigned. They have to do this annually in order to stay on the court-appointed list.

Susan, if you go to that website for the CAP program, there is a whole video tour of all the Frank Murphy Hall of Justice where the criminal courts are, and Susan is the person walking through the courthouse on video. Not only is she explaining what happens in each -- it's like going through a trial from assignments to preliminary hearings, et cetera, et cetera. Not only is she the person on the film who is walking you through these offices and telling you and introducing you to people in those offices, she is giving tips every single step along the way, because she cares about the quality of representation provided by the lawyers in Wayne County, but she is giving her own advice, her own tips about how to do that.

She is not concerned just about her own
clients and her representation of them but what's happening with the new and the young lawyers who are coming up who don't have jobs, who are representing, now trying to do court appointments. Susan cares about that. She is committed to that. She h.

As also now been elected for the fourth year in a row as the president of the Wayne County Criminal Defense Bar, which you have to be a member of in order to get the court appointments in Wayne County.

Just to give you a little context, then I will introduce her colleague, Bill Winters, so you know where Susan comes from, she is a graduate of Mumford High School in Detroit, 1964. She went to the University of Michigan, got a degree in education, became an elementary school teacher in Detroit and taught there for about six or seven years at least, then decided she wanted to go to law school. She was going to law school part time at night when she kept teaching. She loved school so much, she stopped going at night, she went full time, and she, I believe, has been practicing primarily in the criminal defense bar, and I am sure someone will correct me if I am wrong, since 1976. I can't think of anyone else who is more deserving as a recipient of the Unsung Hero Award than Susan Reed.
I now introduce her colleague and friend of mine, Bill Winters, who knows Susan very well. He is an active leader and past president of the Wayne County defense bar. Bill.

MR. WINTERS: Thank you. Thanks to Elizabeth Jolliffe. It's really a privilege and pleasure to be able to address the members of the Representative Assembly. It's really a privilege and pleasure to introduce my colleague and partner, Susan Frances Reed, our unsung hero.

As Elizabeth just said, I think Susan Reed is one of the top criminal defense attorneys, not only in the city of Detroit, in the state and the country. As Elizabeth said, Susan represents really some of the most difficult, most notoriously violent and vicious offenders that we know.

There are a number of judges here. I think Judge Catherine Heise, Judge Lawrence Talon is here, Judge Katherine Hansen. Judge Boyd, seems I saw, who has been visiting with us in 36th District Court. If you want to know anything further about Ms. Reed, ask some of these judges, because they call her when they have particularly difficult cases or difficult clients.

One of the ones that I just posted on
Facebook recently, a case that drew a little bit actually of international attention about a father who was accused of raping and murdering his eight-day-old child. The media convicted this man in the papers, but what they didn't really talk about after that was when Ms. Read got the case dismissed at the district court level based on insufficient evidence. Those are the kind of cases that she handles routinely.

By the way, Elizabeth, thank you for nominating Ms. Reed. Elizabeth talked about the number of CAP cases that we tried in Wayne County. I think the last known statistics that I have, 38 percent of all CAP cases are heard in Wayne County.

I met Susan Reed a long time ago, but I really got close with her when she was in the middle of a trial with the late, great Tom Trzcinski of the Wayne County Prosecutor's Office. This was in the middle of cop killing case, and if you knew Trzcinski, you knew this guy fought every step of the way. And Ms. Reed at that time, I saw her in the Continuing Legal Education Center up on the 8th floor of Frank Murphy laid out on a sofa. I was getting ready to call 911. I think after that point she somewhat changed her life, nutrition, and exercise patterns, because she lost -- I don't know if she wants me to
talk about that -- she lost a lot of weight, got healthy, and for those who handle criminal cases or any kind of high stress activity, you know how difficult it can be on your own body and on your own personal lives.

As Elizabeth just told you, I hear from my friends that Susan was the brightest kid at Tappan Middle School in Detroit. She had her choice of going to Cass Tech, Mumford. She has always been in advanced placement, of course as far as I know. Something I have never been involved in. Reed has always been one of those really smart people, just seems to get things quickly. Dad is a bus driver. Mom went to the University of California, Los Angeles. Her family is from Alabama. We have had a lot of talks about her days growing up in Alabama.

Elizabeth just told you a little bit about her background. Started off as Detroit public school teacher. Didn't talk about the incident that Susan has told me about where she is teaching elementary school, eastside, bullets come crashing through the window at one point. Reed goes on with her lesson plan like nothing ever happened. That's the kind of cool, calm customer that I know. Susan Reed, unflappable.
Elizabeth talked a little bit about the Bashara case. You can imagine the media, intense scrutiny. Nothing seems to bother Susan Reed.

She did this all basically while being a single mom, and for the folks in here who are single moms or moms in general, trying to practice law, it is an extremely difficult thing to do for you ladies. I admire you, and I particularly admire my partner, Susan Reed.

She managed to produce a great son and some great grandchildren. Her son, Gerald, is here with his lovely wife, Casey, and they have got some great grandchildren, Salena and Gerald. So in addition to practicing law and being a leader in the legal community, she has managed to raise a great family as well.

She started off right after law school, and after going into teaching, she got involved with a lawyer by the name of Steve Fishman, Elizabeth Jacobs, and there was some egghead lawyer by the name of Art Tarnow, who became a federal judge. This is the kind of company that she used to keep, until she got involved with me at least. Judge Tarnow and his long-time secretary, Cathy Pickles, is here as well. Cathy and Susan have been long-time friends for years.
But, as Elizabeth just told you, Susan is a real big proponent of an active and organized defense bar. She is active in the National Association of Criminal Defense Lawyers, Wolverine Bar, the Polish-American Bar, Criminal Defense Attorneys Association of Michigan, Women Lawyers Association. The list goes on and on and on. She is everywhere.

What she has really managed to do is take our local bar association, the Wayne County Criminal Defense Bar Association, to a new level. Started off with perhaps 80 or so members. We are now up over 500.

Elizabeth just told you about mentoring to young lawyers. Very active in that. Very active in creating and maintaining the Continuing Legal Education Center, which I think is unique in the country. We have advanced internet research, a number of different resources that we can use, and that is all thanks to Susan Reed.

What you don't hear a lot about and people don't talk about are the quiet things that Susan does around the building. We had one of our elderly senior lawyers take ill, could not appear. Susan covered his cases, vouched the cases. Didn't say a word about it to anybody. That's the kind of lawyer and the kind...
of person she is.

I have told you she is kind of quiet, never raises her voice to a client, never swears, never curses, but when she met me, unfortunately that kind of changed a little bit, because she got up at a retirement party and dropped an F-bomb at Elizabeth Walker's retirement party and brought down the house. She is quiet, but effective, and a perfect awardee for the Unsung Hero. It's a real great privilege to be able to address you. Again, Elizabeth, thank you, and thank you, Susan Frances Reed.

(Applause.)

CHAIRPERSON ALLEN: It is an honor to give you this Unsung Hero Award. You are the essence of what we do as a living as a lawyer in our profession, and I am so proud to give you this award today.

MS. REED: Thank you.

You have to excuse me. I just had some tears in my eyes after listening to all this.

First, I would like to thank the Representative Assembly of the State Bar of Michigan for honoring me with this award, but it is not just an honor for me. It is an honor for all attorneys who are working for the benefit of their clients, for all clients and for all attorneys in the state.
I did not set out to win this award. I set out to help my clients, to help every client that I could in Wayne County, to help all the attorneys there, the old ones, the new ones, and was totally surprised when I got the call from Judge Nellis saying that he wanted to be the first one to tell me I got this award. And I said, Well, I know there is another Susan Reed in the state. You must have me confused with her, because I think she works with immigration and does all these things, and I am just down here representing murderers, rapists, and child molesters.

No one wants to acknowledge defense attorneys, because that's what we do, but we do that for everyone. I tell people that if we don't represent those murderers, rapists, and child molesters, we will lose all of our rights. There is nothing wrong with being a criminal defense attorney, even though a lot of people don't recognize that. And I thank you, by giving this award to me as a criminal defense attorney, have acknowledged to the state that that's an honorable profession. To be a criminal defense attorney, something that is constitutionally mandated is something worthy of honoring. And, again, thank you for giving it to me on behalf of all the criminal defense attorneys in the state.
I just would like to acknowledge my son. He is sitting there with his family. He is the one that had to put up with me going to committee meetings and not being there for him all the time, but I think he came out okay. And Cathy Pickles, who has been with me since I first started in private practice almost 30-some years ago, and Elizabeth and Bill Winters who came forward and spoke for me today. Again, thank you. I accept this award on behalf of all criminal defense attorneys in the state, because we all work for the benefit of everyone here. Thank you.

(Applause.)

CHAIRPERSON ALLEN: Our next award is the Michael Franck Award, and the presenter of the Michael Franck Award is Webb Smith, and he is with Foster, Swift & Collins. Can you please come forward, Mr. Smith. Webb.

MR. SMITH: Good morning. I feel honored to be here this morning on behalf of our law firm to present the Michael Franck Award to one of our outstanding lawyers and fellow shareholders, Julie Fershtman. I also want to acknowledge the fact that I am proud that approximately ten people, ten members of our firm are here to celebrate with Julie upon receipt of this award.
Now today, as I do note that I have a little bit of gray hair, and it causes me to on occasion wonder what the benefits are from growing old, except that it beats the alternative. One benefit, however, is that I can look back on my experience of observing Michael Franck for 24 years that he served as the executive director of the State Bar, from 1970 to 1994, and to say that his career was distinguished is an understatement. He did many great things for the State Bar of Michigan. He did many great things for the profession in general, and his reach was not only within the state but in the nation. He cared deeply for the legal profession, and he wanted it to be proud and strong. He led the charge to establish updated ethics rules and accountability and to champion the concept of lawyer responsibility. He set a great example and, above all, he wanted all lawyers to do things the, quote, right way.

This award in Mike's name was established in 1998 to be given annually to an attorney who has made an outstanding contribution to the improvement of the profession. A review of the names of the prior recipients of this award reads like a virtual who's who in the legal profession. And it's with this history and this backdrop that this year's recipient
is to be measured. The judges, you, and your nominating committee have carried out this duty of making sure that this year's award winner lived up to the standards set by Mike.

Julie Fershtman is an exceptional lawyer. She is driven and motivated to succeed. She is a consummate professional. She has practiced for nearly 28 years. She followed in the footsteps of her father who had a general practice in the Downriver Detroit area. Her areas of expertise include insurance defense, commercial litigation, general litigation, insurance coverage issues, and equine law, to name a few.

In addition to being an exceptional lawyer, she has been active in her local bar association, state bar association, and the ABA. Her activities are well known to you, so I am not going to repeat them all, but I will highlight a few examples. She served on the board of directors of the Oakland County Bar Association for several years. See served as the chair of this Assembly about 13 years ago, and, of course, she served as the 77th president of the State Bar. In addition, she also serves as a member of the ABA House of Delegates.

While all of these activities are
exceptional, being an exceptional lawyer and being
active in the bar in and of themselves, that does not
make her deserving of the Michael Franck Award. The
things that make her deserving of the award are her
history of reaching out and helping others. She is
dedicated to the empowering of women lawyers, young
lawyers, solo and small practitioners. She wants
everyone to succeed in the practice of law, and she
has spent a tremendous amount of time and effort
making sure that that can happen.

She has achieved a great deal in her career.
She has written three books, several hundred published
articles. Her speaking engagements and her bar
association activities are legendary, and all the time
she has been able to practice at a very high level.
In all of these activities she has used her success to
help others, and she has set an example that will help
them become better lawyers.

As a lawyer, she spent 17 years as either a
solo practitioner or in a small firm, and so when she
speaks, she has a tremendous amount of credibility.
She encourages lawyers to dream big, to strive for
excellence, and to aim for a law practice that matches
their unique interests. She also encourages bar
association involvement as an essential component of
being a good lawyer. As a lawyer who actively
supports others, she consistently encourages other
lawyers to do the same. In her presentations, for
example, she advances the clear message that women
should support deserving lawyers as a means of
bettering the profession.

Julie was the fifth female president of the
State Bar, and her State Bar leadership was a shining
example which helped advance women in the profession.
A few weeks before her presidency she wrote a section
for an ABA book entitled, The Road to Independence.
Another example were her President's Pages, which were
outstanding, but one in particular where she entitled
it, Be Bold, Overcoming the Glass Ceiling in Michigan.
Her words to be bold resonated with lawyers and law
students throughout the state.

After completing her year as State Bar
president, she didn't rest on her laurels. She
developed a unique, empowering presentation and took
it on the road to bar associations throughout the
state. She has consistently supported young lawyers
and women lawyers through mentoring, and she has been
in the leadership role of the State Bar mentoring
program, and she has taken it upon herself to mentor
ten individuals who came to her through this program.
But with all that she has done, it's more important to stop and realize what an exceptional person she is. She is a person of tremendous inner strength. Two weeks into her presidency she was diagnosed with breast cancer. She had a double mastectomy, in addition to radiation and chemotherapy, but she never missed a beat. She kept her condition confidential initially, and she continued to remain active in her travels, writing, speaking, and public appearances with such intensity that few people realized that she had had that problem. She didn't want cancer to interfere with her mission of being an outstanding president representing you and our other fellow members of the Bar.

After several months, she went public with her situation, but she did it not to draw attention to herself. She did it to help others and encourage others to deal with their situations, to see their doctors, and, if they had a problem, to deal with it. Once again, it's an example of how she uses everything to reach out and help others. Julie is an outstanding attorney, as well as being an outstanding person, and we all have benefited from her efforts.

Now, I would be remiss if I didn't mention Julie's best cheerleaders, her husband, Robert Bick,
and their daughter, Katie. They have been very supportive of her throughout her career and have encouraged her along the way. If Mike Franck was here to present this award, he would thank them for their help. But since he isn't, I will do that for him.

As we look upon Julie and her accomplishments, one might be inclined and correct to say what she has done is absolutely outstanding. If you dig a little deeper, however, you realize it's not only what she has done but how she has done it. Like Mike Franck, she has done it, quote, the right way.

Please join me in congratulating Julie Fershtman, our newest recipient of the Michael Frank Award.

(Applause.)

CHAIRPERSON ALLEN: This is an honor to give Julie this award. I have worked with Julie on the State Bar. I met her originally with the Women Lawyers. I don't know if she remembers that, but that's when I first met her, and she is an example of a true leader.

MS. FERSHTMAN: Having served on the Assembly for many years, I know at this point you are looking at your watches, you are checking your iphones, and you are realizing we are way off the calendar, and
originally, actually I asked a couple of people if I could simply say hello and sit down and was told, say a few words. People want to hear something from the award recipient. So it's because of that prompting that I am taking a little more time, unfortunately your time, and holding up the agenda, but I promise I will not belabor my remarks all that much.

I would like to begin by thanking Tony Smith of Foster Swift for his very kind words. As many of you know, Tony himself is quite a role model in the profession. He was one of the first to serve on the Representative Assembly, as you are now. He is an icon in the legal profession for the prominence that he holds as a lawyer who embodies civility, professionalism, and also he is well known among people in my firm and perhaps by you for his sincere dedication to diversity and inclusion within the legal profession. So I can't be more proud of the fact that Tony gave the remarks before I took the podium today.

Also, as my law partner at Foster, Swift, Collins & Smith and for what he said, I think my bonus is going to disappear, because you are probably seeking compensation for all the time it took for you to be here and then to say all of those words. So my year-end bonus is probably gone and it's going to you
for those very kind remarks. As my husband would say, 
We need that bonus. We have a kid in college now. 
Please bring it back.

Thank you, everybody, Assembly members, 
officers of the Assembly, State Bar leaders. This is 
a tremendous honor, especially because it comes from 
you, from members of the Representative Assembly. 
It's a group, as you know, that I deeply respect, I 
served on for quite some time, and this award, 
frankly, the reason I greatly appreciate it the most 
is the award is named after Michael Franck. 
Michael Franck was a selfless, nationally known leader 
for promoting professionalism and inclusiveness within 
the bar.

You may not know this, but I actually met 
Michael Franck. I met him around 1993 or so when I 
had just become an officer of the Young Lawyers 
Section of the State Bar of Michigan. I was a young 
lawyer. I was just becoming part of the State Bar in 
a very meaningful way, and he called a meeting of new 
bar leaders at the State Bar of Michigan in the 
State Bar building, which now bears his name as the 
Michael Franck building, in a room which is now known 
as the Roberts P. Hudson room, and at that meeting he 
wanted to emphasize to all of the new, upcoming bar
leaders the importance of serving the bar, what it meant to be a bar leader and then some other tidbits and pointers that he thought that we should know.

Now, walking into a meeting at the State Bar offices as somebody who really hadn't been to the State Bar offices, I had just shown up for my Young Lawyer meetings all around Lansing and the state, I was expecting to see a giant before me, because everybody knew Michael Franck's reputation, from the ABA to the State Bar of Michigan. Unfortunately, what I saw that day was anything but a giant, at least in appearance. Michael Franck had an oxygen tank. He, I believe, had a wheelchair. He sat through the meeting on his wheelchair with an oxygen tank putting oxygen into his nose at the time, and the leader, the giant that I expected was somebody who was clearly fighting, probably unsuccessfully at the time, a battle against lung cancer. And despite that, though, and despite all that, he didn't have to run this meeting. He didn't even have to call this meeting.

Many of us know that the bar operates to a large extent on tradition and on protocols that have been established long before people like me got elected to the Young Lawyer leadership. But even though he was fighting a very important personal
battle, even though he was fighting for his life at that moment in about 1993, you could tell Michael Franck had a strength about him. He had a strength, he had a wisdom, and he had an unquestionable dedication to the improvement of the bar, and he showed that dedication by meeting with us and spending time with us that day.

Now we flash forward about 18 years later, and I was reminded of the intensity and the spirit and strength that Michael Franck brought in bar leadership just a couple of weeks after I was installed as the 77th president of the State Bar of Michigan. Just attending a routine doctor appointment, one interesting thing that I almost cancelled but I kept in part because of my mentor, Kim Cahill, remembering her experience and how she didn't know she had cancer duration her bar presidency. I kept that appointment with my doctor only to be told, again two weeks into a State Bar presidency, that I had a lump, later determined just within a week or two to be breast cancer, triple negative breast cancer. And I will never forget my gynecologist telling me, as well as my surgeon, don't Google triple negative breast cancer. Whatever you do, don't Google it. You don't want to know about it. You will be fine. We will take care
of you. And the doctors, of course, as Tony shared with you, recommended a very aggressive treatment protocol, all the while I had bar business to do.

There was a lot of bar business to do as the State Bar president, helped in part by the Representative Assembly, the other members of the Board of Commissioners, Janet Welch, our State Bar Executive Director, but I remained committed, just as Michael Franck was, to seeing that business through and staying focused on the task at hand.

So I hope all of us, all of us continue, as Michael Franck would advocate, serving the bar with dedication, commitment, intelligence, professionalism, and creativity. And, sure, all of us here, all of you on the Assembly, sure, you could attend your Assembly meetings a couple of times a year. Used to be three times a year incidentally years ago. It was brought down to two. Some of you are probably very thankful for that. The leaders here are probably breathing a sigh of relief, two is enough, but, sure, you can come to these Assembly meetings and do your business as a member of your circuit serving on the Assembly, but I encourage all of you to consider, really seriously consider additional ways in which you can make the bar proud and in which you can make a
difference in the profession.

Reach out to others, reach out to other people within the legal profession and offer yourself as a mentor to younger lawyers, particularly law students. Women lawyers, this will be a tremendous opportunity for you. Consider collaborating. Collaborate with others to develop programs, diversity initiatives, other types of educational programs, programs that help us do our job better as lawyers.

Nominate deserving lawyers for awards. I do that quite a bit, as some of you know. Let others know when they are making a difference how appreciated they are. If it isn't an award, let them know by an email, a call, just thanking them for the time that they serve. As you are here today, you are away from your offices. Your family, your friends, and maybe fellow lawyers may not appreciate the difference you are making. You understand how important it is. Let other people know how important it is as well. Thank them.

And be creative. If the bar association on which you serve isn't doing something that you think is worthwhile and meaningful, be creative, develop it, recommend it, advance it, and you can help make a difference for other people within our profession and,
of course, a difference for the public that we serve.

Now, before I go, because, again, I recognize we are way beyond our time allocation, and you are probably thinking of others things to get to right now, I would like to take just a few more moments of time, and I would like to thank a few people who have helped me personally along the way. First and foremost, I would like to thank my husband, Robert Bick, who is sitting back there. He has his hand on his head thinking, Why am I here? Why did I do this? Robert is a fellow lawyer, P39161, but it's important that he is proud to be a lawyer, and I thank him for his support and encouragement. Never once over the years, dozens of years, 20 years of bar involvement, has he ever said to me, Stop helping others, stop attending the bar meetings that you are going to. Why do you have to travel again? You are home too late. Robert never said any of these things. And I thank him for it. And I appreciate all he has done. He is telling me move along. I see that. Thank you, Robert. Our daughter couldn't be here today, but I thank her as well.

I would like to thank my law firm, Foster, Swift. We have a robust contingent of lawyers from Foster, Swift and staff. I would like to thank you
for enabling lawyers such as me to get involved and to serve our profession. We do have a couple of Foster, Swift members on the Rep Assembly today. We have Ray Littleton, 6th circuit. We have Tom TerMaat. He is here as well. I thank all of you. Serving with you within Foster Swift is an honor. This is just one example, by Tony being here, of how Foster, Swift supports others within our firm.

I would like to thank Janet Welch sitting up here today, and I would like to thank State Bar staff as well. They are carrying out the tradition that Michael Franck embodied of getting the job done properly, caring for others within our profession, caring for the public we serve and doing things right, doing the right thing with the work that we do.

Finally, I would like to thank all of you, everybody here on the Assembly today, for continuing to keep Michael Franck's memory alive, not just by the award but by the work you are doing. You are embodying and you are showing vision. You are showing dedication, and you are showing the type of commitment to bar leadership that would make Michael Franck proud.

Everybody, I am very deeply honored. It's a tremendous honor to join you today, especially up here
at the podium receiving this award, and I wish you a wonderful meeting. Thank you.

(Applause.)

CHAIRPERSON ALLEN: Thank you, Julie, and thank you, all award recipients, Susan, and thank you presenters. I know that sometimes it's difficult to award people, think of who we can give these awards to. These awards are wonderful. They allow us to understand our colleagues and allow us to understand how they manage the profession and help the public. Without these awards, I would have never known Susan, and that was an awesome presentation of who an Unsung Hero Award is. And I have worked with Julie. So these awards allow us to learn, to see who our colleagues are and get into their lives as well. So we have to keep aware of those so next year when we are looking for award recipients. I want you to look in your own circuit to see who we can give these to, because our vice chair, Vanessa, will be up here, and she would like to have a lot to chose from, so please think about it. You will have some time now for about a year to think about who would be good in your circuit.

Right now we have the schedule, and the schedule says we were supposed to have a break from
10:00 to 10:15. The schedule is short, so if we want to have a break, we could have a break. There has to be motion to pursue and you go past that break and just continue going through the program. Do we have a motion for that or would you like a break? Motion to continue?

VOICE: Motion to continue.

CHAIRPERSON ALLEN: Second?

VOICE: Second.

CHAIRPERSON ALLEN: We will continue.

The next program is the inward look of the State Bar, the year in review. This year has been a year of challenges for the Representative Assembly and for the State Bar. This year's challenges began with the introduction of the Senate Bill 743, the proposal that the State Bar be changed to a voluntary bar. In response to the introduction of this legislation, State Bar leadership strongly supported preserving Michigan's mandatory bar. The Michigan Supreme Court then issued Administrative Order 2014-5 creating this task force on the mandatory bar. Then the Board of Commissioners tasked its rules committee to review the State Bar's current structure to identify whether rule changes should be recommended to the bar or the Michigan Supreme Court.
While the task force deliberated, the Board of Commissioners' Rules Committee also deliberated and determined not to recommend any changes to the RA or the BOC governance structure. The Representative Assembly has also provided its input to the task force through comments you made at your April 2014 meeting on future changes to the RA and its desire to remain as a final policy-making body. The task force released this report on June 2nd, 2014.

The report recommended significant changes to the bar structure and governance. The principal features of that report included recommending that the State Bar policy positions first be vetted by an independent Keller committee and identifying categories of policy subjects that were either deemed Keller permitted and Keller prohibited.

The Board of Commissioners created a work group that responded to the task force report. Today the State Bar, the Representative Assembly remain in flux as we wait for the Michigan Supreme Court to determine which, if any, of the many proposed rules it will adopt. What is clear though is that there currently is not a bar-wide consensus on how Keller applies to the State Bar actions and policies and how to best protect the First Amendment rights of the
public and dissenting members. Today's RA meeting focuses on Keller's proper interpretation and the application of State Bar policy determination, whether made by the Representative Assembly or the Board of Commissioners.

First, outgoing State Bar president, Brian Einhorn, will speak about the state and the State Bar generally and offer his view on how Keller affects the State Bar and the RA actions. Next we will have a video interview with Robert Sedler, a distinguished Wayne State University constitutional law professor and a person that's an expert about what Sedler professes is the correct interpretation of Keller. Later, we will have the State Bar Executive Director, Janet Welch. She will discuss the Bar's response to this matter and provide input on a national level.

At this point, our president, still president, Brian Einhorn.

(Appause.)

PRESIDENT EINHORN: Thank you. It's been an interesting year where there is a curse or something to say we live in interesting times, so I have been given the blessing of living in interesting times.

Very quickly, and you are going to -- Robert
Sedler is a professor at Wayne State, teaches First Amendment rights, and the hope was that he would be able to be here, but he is teaching this afternoon and so he wasn't able to, so Kathleen and I did an interview with him last week in my office, so it will give you a good background of what it's about.

But just so that you are aware, what Keller says, what the Bar did -- this all came from something that actually happened before I was president and the Bar sent a letter to Ruth Johnson, Secretary of State, and asked her to revisit the campaign finance disclosure rules.

The Secretary of State's job, one of her jobs, the Secretary of State's job is to monitor the Campaign Finance Act to make sure people are following, they are disclosing, they are indicating how much money they collected and handling the money correctly and things of that nature. When Terri Lynn Land was the Secretary of State, she said that in relation to campaign finance issue ads, ads that extensively do not identify a candidate but only talk about issues, would be something that you didn't have to disclose.

And so the letter that Janet Welch and Bruce Courtade, the president, my predecessor, wrote
to Ruth Johnson and said, Listen, the law has changed, so you need to -- Citizens United came down and clearly says that this magic word test doesn't exist. There really should be disclosure, and we are not talking about disclosure in gubernatorial races and legislative races, just in judicial races.

    Judges deal with the facts of their case. Judges deal with the law of their case. Judges don't deal on a general basis as to whether bad guys should go to jail or whether tort reform should be changed or increased or contracted in some way. So they just deal with the case. So what the letter said is when you are talking about judicial campaigns, there should be disclosure, and there was a huge, not huge, but a loud pushback by certain groups that actually make their money off these 501(c) things. They raise the money, they get salaries for raising money and providing monies to campaigns without disclosing who the donors are.

    So what their position was basically is that the Bar was engaging in ideological activities. The Bar cannot engage in ideological activities because we are a mandatory bar and, therefore, they should be shut down. They should be made voluntary, and that created lots of different things that the bar has done.
to try to fight that off.

This is what the quote from Keller is, or one of the quotes from Keller. Keller versus State Bar of California, what happened, quickly, is that, this is in the '80s. Shocking, the people in California, lawyers in California or the bar association in California were opposing things like gun control and nuclear armaments and how many signs there were on the street. And so the members said, Wait a minute. I have to belong to this organization, and you are spending my money on things that I oppose. This is not right. And eventually the case got to the U.S. Supreme Court.

And what the Court said is the State Bar's use of petitioners' compulsory dues to finance political and ideological activities with which petitioners disagree violates their First Amendment rights of free speech when the expenses are not incurred for the purposes of regulation of the practice or improving the administration of justice.

So the back end of that is that when the bar is engaged in the regulation of the profession or in the administration of justice, we can engage in ideological activities.

(Applause.)
PRESIDENT EINHORN: Applaud the court. You don't have to applaud me. But that is the reality of it, and so that's what we dealt with.

And Kathleen has already touched upon the fact that after the task force came out with their recommendations that in my view would have basically gutted the Representative Assembly, tremendously impacted the sections and, frankly, would have, for all practical purposes, eliminated our ability to advocate on things such as judicial campaigns and elections and the integrity of the justice system, I established a committee that included Kathleen and Dan and Lori Buiteweg, who is a former chair of the Representative Assembly, and Steve Gobbo, who is a former Representative Assembly chair, and others, and we made certain proposals to the commission, which I am very happy to report 25 of the 31 people who voted voted to support the work group's recommendations. Four people opposed, but I find it fascinating that three of the four opposed sat on the task force. So they didn't think it was bad to vote for these things when they were on the task force, but then when they were sitting on the Board of Commissioners, they felt it was their duty to vote against it. It's a personal problem. Then two of the people also abstained, and
those two people, two of those people were also on the

So we have, the RA has support from the Board of Commissioners. They have support from me. They have support from Janet. And so I am hopeful that once the Court has an opportunity to review the comments that came from the Bar and from 65 individuals or groups -- I mean, if you add them up, if you include all the sections and you add the people in the sections, you could argue, you could say 20 or 30,000 people responded, at least in a collective way, to what the Court said and opposed a lot of the things that are in the task force, and 25 former bar presidents also signed on for basically saying that this is wrong. So let's hope that that's what the Court agrees to, because I think we need to continue to be able to advocate. That's what we are about.

The bar does a lot of things. There are a lot of programs. A small part of what we do is advocacy, but when we get around to it, the public has a duty to know -- when you are talking about free speech, you are talking about people being able to say what they want to say and also not saying anything if that's what they choose. But when you do a balancing test, when you are doing, and this is one of the
things that Professor Sedler is going to be talking
about, when you do this balancing test, the public has
a right to know stuff in order to be able to make
their determinations as to what to do, and who better,
when you are dealing with judicial campaigns, when you
are dealing with issues of justice, when you are
dealing with the administration of justice, who better
to do it than us lawyers? We know about it, we are in
it, we are the ones that can advise them, so hopefully
we can continue to do that in the future. So thank
you.

(Applause.)

CHAIRPERSON ALLEN: I think we are going to
do the video now.

(Video interview being played.)

PRESIDENT EINHORN: My name is Brian Einhorn.
As you know, I am about an hour away from being former
president of the State Bar of Michigan. With us today
is Professor Robert Sedler, professor at Wayne State
University, teaches First Amendment and constitutional
law at the University and has done it for a while.

The Representative Assembly wanted to have
Bob join us here at the meeting, but he has classes
this afternoon, so we are going to do it this way.

So, Bob, how are you?
PROFESSOR SEDLER: Fine. Thank you.

PRESIDENT EINHORN: I want to wish you a happy birthday. Today is September 11th, and he has the distinction of being the birthday boy on September 11th.

PROFESSOR SEDLER: Get used to it after a while.

PRESIDENT EINHORN: So just quickly, you do teach at Wayne State and other duties that are required?

PROFESSOR SEDLER: Constitutional law, correct.

PRESIDENT EINHORN: And you teach constitutional law. In addition to being involved in teaching, you have also litigated, haven't you?

PROFESSOR SEDLER: Over the years I have litigated a lot of constitutional cases, mostly as a cooperating attorney for ACLU. A number of these have involved the First Amendment, probably the most strongly of which was Doe versus University of Michigan. In 1989 was the first challenge to a speech code. That's a code that prohibited speech that created a hostile, offensive environment for minorities, women, and other people. It's not the kind of speech that I particularly want to protect,
but the First Amendment protects all speech.

PRESIDENT EINHORN: So political correctness?

PROFESSOR SEDLER: Politically, the First Amendment prohibits political correctness. As Judge Cohen ruled, that the code is unconstitutional, and that was followed by other courts, and eventually a Supreme Court decision reached the same result. Those codes as they existed at that time have disappeared because they violated the First Amendment.

PRESIDENT EINHORN: And I also wanted to, and we do also want to thank you for the award you won last evening as one of the champions of justice, and that is on DeBoer versus Snyder.

PROFESSOR SEDLER: I have also dealt with discrimination over the years -- race, gender, now sexual orientation discrimination, marriage equality. Yes, I have written and litigated in that area as well.

PRESIDENT EINHORN: So I want to congratulate you on that as well.

But today we want to talk about Keller versus California. We want to talk about, if you will, somewhat the attack that came on the bar for the position the bar took on campaign finance in judicial elections and have you just give the group a general
understanding of what the issue is sort of about.

PROFESSOR SEDLER: We start off with really
two points, that the primary purpose of the First
Amendment is for the benefit of the public. We want
the public to have all of the information so that they
can make ultimate decisions. That's really more
important than the right of the speaker to speak is
the right of the public to know. So any restriction
on the ability of the State Bar to take a position on
matters relating to the administration of justice, the
core function of the Bar, the courts, lawyers, the
operation of the administration of justice deprives
the public of very valuable insights that would be
relevant to their own decision making. That's one
part of the equation, but the other part of the
equation is that the First Amendment protects the
right to be silent, and that is not to be compelled to
be associated with particular ideas. Because the bar
is an integrated bar collecting dues from all of its
members, the dues support the bar, those funds cannot
be used to take positions on public issues that are
unrelated to the administration of justice. Let's say
gun control or abortion, anything like that. The
focus has to be on the bar's commenting on issues that
are germane to the administration of justice.
PRESIDENT EINHORN: Let me break it down. When we talk about -- we are an integrated bar, which means all 43,000 plus of us have to pay bar dues whether we want to or not. Some have said that this is a violation of the rights of lawyers upright.

PROFESSOR SEDLER: That's long been settled. The Keller case makes that clear, that the state can require an integrated bar. They can require lawyers to support the structure of the administration of justice. It is indeed a privilege to be a lawyer and the state then requires that lawyers, as I say, support the structure of the administration of justice.

PRESIDENT EINHORN: But we have lawyers who say, but the bar is taking positions, for example, on campaign finance in judicial elections, and I disagree with it, so you have interfered with my right of silence. So how do you --

PROFESSOR SEDLER: The answer is that the governing body, Representative Assembly, has been elected through a democratic process. They take the positions, they set forth by their own vote the position for the bar. Your right as a dissenting member is protected by the fact that the issues on which the bar takes the position have to be germane to
the administration of justice, and, as I understand, the bar plans to allow dissenting members to express their views on the website, which is good, because it gives the public more information. But as long as the matter relates to the administration of justice, the bar can take the position upon it, and its taking a position does not violate the right of the Assembly members not to be associated with ideas with which they disagree. That is the holding of Keller.

PRESIDENT EINHORN: So what Keller says basically is that, yes, a mandatory bar is not a violation of some lawyer's constitutional right?

PROFESSOR SEDLER: Right, that's long settled.

PRESIDENT EINHORN: And that so long as a bar association, at least a mandatory bar association, comports with making sure that their advocacy, if they are involved in advocacy or any of their other functions, are part of the administration of justice, because that's a core function, then they are not violating anybody's First Amendment rights?

PROFESSOR SEDLER: The example of campaign financing is a good one. If the bar were to take the position that there should be all kinds of restrictions on contributions and expenses --
PRESIDENT EINHORN: It we took a position on Citizens United.

PROFESSOR SEDLER: Well, Citizens United, for example, that would have nothing to do with the administration of justice, and for the bar to do that would violate the right of members who have a different view. But if they violated it in judicial elections related to the administration of justice, it is germane to the role of the bar. So the bar could take a position on campaign financing in judicial elections only, but not going beyond judicial elections.

PRESIDENT EINHORN: There is an idea, isn't there, that free speech proponents, such as yourself, believe that you don't limit speech. The more speech the better, right?

PROFESSOR SEDLER: Right, enhances the public information's function.

PRESIDENT EINHORN: So the public can understand what's there, and the public can decide which is good and which is bad and act accordingly, right?

PROFESSOR SEDLER: But, again, there are many strands to the First Amendment, and Keller involves another strand which is the right not to be associated
with ideas with which we disagree, to not have your money used to promote ideas with which you disagree. So, yes, we are very concerned about the right of the public to know, but we also have to protect the right not to be associated with particular ideas. And we do so in this context by limiting the bar to taking positions only on matters that are germane to their core function, namely, the administration of justice. Now, there are a number of matters that are going to be germane to the administration of justice, but the focus has to be on germane.

CHAIRPERSON ALLEN: I have a quick question.

PROFESSOR SEDLER: Sure.

CHAIRPERSON ALLEN: You are talking about the administration of justice. How do you determine -- how do you define administration of justice? That sounds very liberal.

PROFESSOR SEDLER: Courts, lawyers, court procedures, availability of lawyers, selection of judges. I use those five examples as related to the examples that relate to the administration of justice.

PRESIDENT EINHORN: The task force identified categories of State Bar programs, some of which assuming the development of public policies concerning the legal profession. That's a core function?
PROFESSOR SEDLER: That's a core function.

PRESIDENT EINHORN: The provisions of legal services and the courts?

PROFESSOR SEDLER: Again, we are talking about lawyers, we are talking about people having access to lawyers, we are talking about the administration of justice.

PRESIDENT EINHORN: Justice initiative programs?

PROFESSOR SEDLER: Certainly. I read a report, and whatever they favor clearly is germane.

PRESIDENT EINHORN: Including the development of proposals for effective delivery of high quality legal services?

PROFESSOR SEDLER: Yes.

PRESIDENT EINHORN: Germane. And so the term may be that, and the Representative Assembly can feature, is if they get involved in making positions regarding legislation are to be held to the Keller analysis?

PROFESSOR SEDLER: Yes.

PRESIDENT EINHORN: And that would be your advice to the future members of the --

PROFESSOR SEDLER: It's not a matter of broad interpretation of Keller or a narrow interpretation of
Keller. It is a correct interpretation of Keller, and the correct interpretation of Keller is that the bar's positions on public issues must be related to the administration of justice. That's how we protect the rights of the sitting members.

PRESIDENT EINHORN: Promoting increased resources for civil legal aid programs?

PROFESSOR SEDLER: Yes. All this is -- it's people's access to justice. Certainly that is the core function.

PRESIDENT EINHORN: Diversity included in the legal profession, how is that germane?

PROFESSOR SEDLER: Again, the legal profession is stronger if it's a diverse one.

PRESIDENT EINHORN: Making proposals with regard to court rules and legislation affecting all of those matters?

PROFESSOR SEDLER: Those matters, but those matters only, not things like tort reform or gun control.

PRESIDENT EINHORN: Let's talk about tort reform or medical malpractice reform. Lawyers have criticized the bar sometimes because we haven't taken a position on tort reform, because we haven't taken a position on some of the suggestions regarding medical
malpractice reform or drug reform, which some people say has something to do with access to justice.

    PROFESSOR SEDLER: This gets kind of broad. I think it is one thing for the sections, which as I understand are financed voluntarily, to take positions on those matters, but those are questions of substantive law, go way beyond what I call the process of the administration of justice. I don't think it's proper for the bar to take positions on questions of substance. I think it's fine for the sections to do so, but not -- because they are financed by voluntary dues, and you don't have the Keller problem.

    PRESIDENT EINHORN: The bar came under criticism from a couple people that the position that the bar took on campaign finance was a violation of a lawyer's First Amendment rights, other lawyers' First Amendment rights.

    PROFESSOR SEDLER: Not as long as it is limited to campaign finance in judicial elections.

    PRESIDENT EINHORN: So if the bar took a position on the present gubernatorial contributions being made from the governors, democratic governor's, republican governors?

    PROFESSOR SEDLER: We have gone beyond the administration of justice, and that's improper, yes.
Keep the focus on germaneness and the administration of justice.

PRESIDENT EINHORN: And so if the bar stays -- what the bar needs to do, what the Representative Assembly needs to do is to make determinations of what is germane to the administration of justice?

PROFESSOR SEDLER: Correct.

PRESIDENT EINHORN: And then the question comes in what is the administration of justice?

PROFESSOR SEDLER: Again, we talk about courts, we talk about lawyers, we talk about access to legal services, we talk about the process of the administration of justice, we talk about selection of judges. Use those as examples.

Sometimes you find something else. For example, if you are going to put a sales tax on legal services.

PRESIDENT EINHORN: Yeah, let's talk about that. You read that. They seemed to take -- not seemed, they did. They criticized the bar for taking a position on sales tax because they said that was for the interest of the lawyers.

PROFESSOR SEDLER: That's the problem with the sales tax. In theory it's collected by the
lawyer, but it must be paid by the consumer. I think the bar could take the position that a sales tax on legal services would discourage people from using legal services and, therefore, adversely affect the administration of justice. That's very different from putting a tax on lawyers, but the fact that it is a tax on legal services that could affect people's access to lawyers in the administration of justice makes it a core function.

PRESIDENT EINHORN: So the public has -- our first president, Robert Hudson, said is that any organization that doesn't first try to serve the public is not doing what they are supposed to be doing. That's what this organization is supposed to be doing.

PROFESSOR SEDLER: And it does a very good job of it. My wife, who is a geriatric social worker, is in her sixth year as a layperson member of the Attorney Grievance Commission. Every month she gets a briefing book of cases that the commission has to deal with. The public may not realize how strongly we lawyers regulate ourselves and how we protect the public by ensuring that lawyers do not -- properly serve the public. That is what we do.

PRESIDENT EINHORN: And do we serve the
public as well by taking positions, advocating our positions on our core functions?

PROFESSOR SEDLER: As long as they are limited to the core functions and germane. I keep using that word again and again, but that's the word you see in the cases. It's a concept that I think all of us can understand. We have given some examples. That should be sufficient to guide the bar in taking positions on public issues.

PRESIDENT EINHORN: So those who say that compulsory dues to all members imposes constitutional constraints on their public advocacy, because if I am opposed to any of those positions as a lawyer, I have to pay my -- got to pay $180. That's what the nondisciplined part of my dues are, and I disagree. So how is that balanced?

PROFESSOR SEDLER: Again, as in any governmental body, should the governmental body that elected its leaders, you are in the minority on this issue. The democratically elected leaders will take the position. Your rights are protected in the sense that the issue has to be germane to the administration of justice. And I think it helps that, as I understand it, the bar will provide for the dissenting views to be presented on the website. That is very
good, because it gives the public even more

information.

PRESIDENT EINHORN: There is a need for the
public to be informed on issues, right?

PROFESSOR SEDLER: To have the benefit of the
views of the bar, because that's the organization of
lawyers. Lawyers are supposed to have expertise on
issues affecting the administration of justice.

PRESIDENT EINHORN: And that serves the

public?

PROFESSOR SEDLER: That serves the public.

PRESIDENT EINHORN: And because that serves
the public, that's where the balancing act is?

PROFESSOR SEDLER: That is how we on the one
hand advance the public information, a function of the
First Amendment, while protecting the rights of
members who may disagree with those positions.

PRESIDENT EINHORN: Okay. So the court when
it distributed, our Supreme Court when it distributed
the report of the task force asked a couple questions.
It wanted to know whether the task force adequately
assessed the First Amendment problems concerning
required membership in a bar association.

PROFESSOR SEDLER: Well, the present system
where the bar can take a position and then dissenting
members can ask for a refund is insufficient. It's constitutionally insufficient. The members' money cannot be used for something that is not germane. The injury of the First Amendment rights is when the money is used, and so, clearly, that has, that has to change. And again, again, again, the bar can only take positions on matters that are germane.

PRESIDENT EINHORN: We keep repeating --

PROFESSOR SEDLER: We keep repeating that, but it answers most everything.

PRESIDENT EINHORN: One of the things that the task force recommended, they had these limitations on the ability of the bar to take positions on judicial elections, for example.

PROFESSOR SEDLER: That's wrong. Those matters relate, are germane to the administration of justice. Judicial elections only, not elections generally, not campaign finance, and not Citizens United. Judicial elections only.

PRESIDENT EINHORN: And on, for example, merit selection?

PROFESSOR SEDLER: Nothing could be more relevant to the administration of justice than how we select our judges.

PRESIDENT EINHORN: Right to lawyers.
PROFESSOR SEDLER: Again, that, I think we all recognize that that's an important issue.

PRESIDENT EINHORN: Kathleen, do you have anything?

CHAIRPERSON ALLEN: I have a question with regard to the Keller panel, because that was in the report in terms of the discussion of having a Keller panel. What is your view on that?

PROFESSOR SEDLER: My view is that the bar has to police itself. It is the bar's statement. The bar has the responsibility, so the bar should decide how it will enforce restrictions of Keller while at the same time enabling the bar to take positions on matters relating to the administration of justice.

CHAIRPERSON ALLEN: Are there any other limits that you can think of given, do Keller language impose on the bar related to its core functions?

PROFESSOR SEDLER: Well, again, this process one, that Keller has to be satisfied before the bar takes the position. That's the first point. Other than that, again, it's germane, core function, administration of justice.

CHAIRPERSON ALLEN: Would a policy and can State Bar actions on presented administration also involve policy issues that are affected by Keller?
PROFESSOR SEDLER: Well, these are all policies.

CHAIRPERSON ALLEN: And so that's pretty broad?

PROFESSOR SEDLER: Any issue involves a matter of policy. Correct? If you want to select judges by merit as opposed to election, that is a policy related to the election of judges. So things like policy or controversy or even ideology don't really have much relevance here. The question again becomes the matter of germane, core function, and focusing on the administration of justice, and I don't want to say narrowly define, but I want to use the term appropriately define; that is, more of a process, not substance, so that tort reform involves substantive law, that that is not what we are getting. Stay with the administration of justice, just administration of justice as a matter of process, the process by which the legal system enforces rights and liabilities, if you focus on process, you appropriately limit and avoid notions that, look, tort reform does or does not affect. Tort reform goes beyond. The focus should be on the process.

PRESIDENT EINHORN: To sort of conclude this, if you are giving advice, free advice, because you are
doing this for free.

PROFESSOR SEDLER: Right.

PRESIDENT EINHORN: To the Representative Assembly and to the Board of Commisioners. In the future when they are making an analysis on legislation, all they need to do is figure out whether the legislation involves administration of justice?

PROFESSOR SEDLER: Germane to the administration of justice.

PRESIDENT EINHORN: Germane to the administration of justice.

PROFESSOR SEDLER: Appropriately defined, not broadly defined to include everything related to the law. Relating to process. The process by which the legal system enforces and recognizes rights and liabilities.

PRESIDENT EINHORN: Kathleen, anything?

CHAIRPERSON ALLEN: I think that's it.

PRESIDENT EINHORN: Professor, thank you for your time, and congratulations again.

CHAIRPERSON ALLEN: Thank you very much for being here.

(Conclusion of video interview.)

(Applause.)

CHAIRPERSON ALLEN: Janet Welch. As you can
see, this has been a concept that's been consuming the
State Bar this past year, and it's important that the
Representative Assembly participate in this and
understand the different variables associated with the
Keller position, and Janet Welch, executive director
of the State Bar, is now going to provide us with a
national perspective and other interpretations as
well.

EXECUTIVE DIRECTOR WELCH: Thank you,
Kathleen. I really want to thank Kathleen for
inviting me to offer the national perspective on
Keller.

It's been over 30 years since the State Bar
of Michigan was involved in an existential crisis. In
fact, I am going to talk a little bit about that
history, that I am here to tell you that the
Representative Assembly could not have had a more
passionate or dedicated or tireless leader than
Kathleen on this subject. There were actually times
where I wish she had been a little less tireless so I
would have gotten more sleep, but she was amazing.

So when I found out from her a few days ago
that my presentation was going to be paired up with a
professional video featuring the legendary Bob Sedler,
I knew immediately I had to up my game. So I turned
to an upworthy generator. Do any of you know what upworthy is? You know when you are on Facebook or Yahoo and there is something that says something like, there is a picture of a woman who could be your next door neighbor only slightly more attractive that says, This single mom got mobbed at a train station. What she did next was genius, and you just have to click on it. So that’s sort of the format I felt I had to go to to keep your attention at this stage of the proceedings on this topic. So here is my attempt to make a very serious subject at least a little entertaining. With Kari’s help.

So while she is doing this, I want to thank the staff for performing a few miracles already this morning. Hopefully this will be another one. What we are getting ready to do -- this worked at 7:30 this morning, by the way.

So what we are getting ready to do is go through actually the history of the mandatory bar and the first challenges, where Michigan fit into that picture, and I am not going to go through a great detail about the fact that certain elements of the regulation of the mandatory bar in Keller are in flux. There was a case, for example, that challenged the ways in which mandatory bars -- I don't have an
alternative to my clever PowerPoint, but there was a case that challenged the way in which mandatory bars can collect dues and rebate money to challengers implicitly. That was before the U.S. Supreme Court, and all mandatory bars who used that mechanism as a mechanism of protecting the rights of dissenting members were just holding their breath thinking that if the case were broad enough -- thank you.

We skipped the beginning. We skipped my upworthy. No, back. Okay. There we go. Thank you. There is my click bait. I can't use it? I will tell you when to advance.

So my thesis is you can't understand the world in which the mandatory bar has been living unless you know how we got there. Next slide. There were no mandatory state bars in 1920. It was a voluntary bar world. So the first mandatory bar was established in 1921. Anyone want to guess which -- it's not moving at all?

VOICES: California, New York, New Jersey, Utah.

EXECUTIVE DIRECTOR WELCH: North Dakota, and I put a slide of a saloon, because I figured the number of lawyers in North Dakota in 1921 could fit in a saloon. May even still be the case.
So there were six jurisdictions that unified in the '20s, 15 in the '30s, three in the '50s, three in the '60s, and three in the '70s. Michigan was the 19th mandatory state in 1935. Let's hold it there for a minute.

We now have a majority of the jurisdictions that are unified, plus the District of Columbia, which has 100,000 members, Guam, the Commonwealth of the Northern Mariana Islands, and, depending on which day it is, Puerto Rico. Next slide.

So this is the way it fell out. If that makes any sense to anybody, talk to me, because, you know, which states decided not to be unified or didn't go that route, there doesn't seem to be any red state/blue state demographic coherence to it at all, but that's the way we are today. Let's keep on going.

So the mandatory bar was hot for three decades until this happened. This is the upworthy generator. 1961 was the first legal challenge to the mandatory bar and came from Wisconsin, which is sort of a volatile mandatory bar state. Lathrop V. Donohue. Let's go to the next slide.

What they said was, We don't have enough on the record to declare that this mandatory bar is
violating the constitution. Basically that's what they said.

So, when they said that in 1961, the folks who thought that mandatory bars were probably unconstitutional, really began sort of a race to get back to the Supreme Court, and it took them a while. As you know, they didn't get back until 1990, but, Kari, let's go to the next slide, because then the one after that, it would show the candidate, the leading candidate for Wisconsin, California, Florida, and Michigan. So that brings us up to the next slide, Falk V. State Bar of Michigan. Some of you probably were in practice, a few of you were in practice when this case was filed -- next slide -- in 1977.

There are actually two Falk cases, known to those of us who know the subject as Falk I and Falk II, and it was taken up to the U.S. Supreme Court in 1984, and it was denied. Next slide.

In the two decisions, Falk I and Falk II, were six different opinions, two special masters. There was a special master appointed before the first opinion and after the second opinion, and then a special committee was appointed, and all of this took seven years. So this year feels like it's taken about seven years. I can't imagine going through this for
seven years. Next slide.

So what the court did in Falk II, in the aftermath of Falk II, was appoint a special committee on Bar activity. Sound familiar? The committee considered several ways to accommodate the objection of members to the bar's lobbying activities, and they settled on an optional diversion system for the portion of the dues that were used for lobbying activities, and they allowed members to designate that portion of their dues to the State Bar Foundation. Do any of you remember that, having to do that? Next slide.

What is the relevance of Falk today when we have Keller that settled the question, as Professor Sedler kept saying, it settled the question of whether mandatory bars can exist and engage in some kind of ideological activity? So the answer is -- next slide -- that, and I believe President Einhorn pointed this out, that the order establishing the task force on the role of the State Bar began by citing Falk, and with this quotation from Justice Ryan, who commanded three votes in both Falk I and Falk II, and in Falk II one of those votes, incidentally, was Justice Cavanagh, the only member of the Falk II court who is still on the court.
So beyond that, the order establishing the task force on the State Bar also referenced Falk when they said the task force is charged with determining whether the State Bar's duties and functions can be accomplished by means less intrusive upon the First Amendment rights of objecting attorneys, citing Falk. That is a Falk quotation, not a Keller quotation, under the First Amendment principles articulated in Keller and in Falk. So the Michigan Supreme Court is telling us that Falk is still relevant, but they are also citing Keller.

So let's go to Keller quickly and talk a little bit about what Keller said, and this is the quotation that President Einhorn read, and I want to highlight in green what I think is what we are all trying to figure out right now.

So this is the holding, that the compelled association within a unified bar is justified by the state's interest in regulating the legal profession and improving the quality of legal services. That's what the activity has to be germane to, and you heard Professor Sedler continually define regulating the legal profession and improving the quality of legal services as the administration of justice, properly defined. That's his proper definition. Not all
states have that same definition.

    Every state was left to its own devices to answer the question about what activities are germane to the state's interest in regulating the legal profession and improving the quality of legal services. And the idea that that means any ideological activity having to do with the operation of the court, including judicial elections and election, is not something that all states have agreed upon, although Michigan, up until we are told otherwise, has taken to mean that it includes those activities.

    So the opinion, Keller really does leave a lot to the imagination, and here is the guidance it gives. Let's look at what's next. You have to keep -- go on to the next one.

    Compulsory dues may not be expended to endorse or advance a gun control or nuclear weapons freeze initiative. We know that. At the other end of the spectrum, petitioners have no valid constitutional objection to their compulsory dues being spent for activities connected with disciplining members of the bar or proposing ethical codes for the profession. There is a lot between those two poles, right? Not particularly helpful.
Keller itself -- next slide -- acknowledges that that is not very helpful guidance. Precisely where the line falls between those State Bar activities in which the officials and members of the bar are acting essentially as professional advisors to those ultimately charged with the regulation of the legal profession, on the one hand, and those activities having political or ideological coloration which are not reasonably related to the advancement of such goals, on the other, will not always be easy to discern. No kidding. Next slide.

Given the lack of bright lines, what are the safeguards the states have adopted to assure that the mandatory bar in their states does not use the ambiguity inherent in Keller in a way that tips the balance that Professor Sedler was talking about against the rights of dissenting members? There is no universally agreed upon answer to that question. Some mandatory bars have simply avoided lobbying activities altogether, but among those that do lobby, and the majority of mandatory bars do do some lobbying, all have adopted one or more of these safeguards.

The super majority. So while Professor Sedler did say that the democracy inherent in our State Bar overcomes the objections of
dissenting members as long as we stay within whatever the guidelines of Keller are. The super majority requirement is something that is the most common element, and actually Michigan adopted it prior to Keller in 1984 at the recommendation of that special committee. So special votes and processes on issues that impact ideological activity. Next.

Special notice requirements. Our special notice requirements have been in place since 1984, and, as was already referenced in the video, the State Bar Board of Commissioners recommended a more robust dissent policy and publication of dissent. And finally sanctions for violation. So next slide.

So let's go back to the mandatory bar states quickly and talk a little bit about their experiences and recent developments. Kari, you have to go through all these. Just keep clicking and eventually everything will work. This is the executive director playing with animation.

Virginia, West Virginia, and North Carolina are all mandatory bar states on this list, and you will also find them on a voluntary State Bar list. They have a voluntary and a mandatory bar, and only the voluntary bar does the activities that might be questionable.
California is always an interesting state, is in the process of converting to a fully regulatory state bar model with a separate conference of voluntary state bars taking on the lobbying advocacy roles.

Alabama and Mississippi claim to do virtually no lobbying, but that's perhaps suspect.

Arizona's scope of advocacy has been increasingly restricted, and they have, just within the last two months their Supreme Court has created a task force on the rule of the state bar. I am very enviable, giving that task force 18 months to do its work.

South Carolina has a broad-based advocacy program, including the public grading of judicial candidates, but it is currently experiencing rumblings of a challenge to its mandatory status from its legislature.

Washington has just completed a review of its role and is tending toward a more regulatory model.

Florida and Wisconsin -- finally, almost finally -- are almost never not subject to an attack on their mandatory status.

The Nebraska Supreme Court, finally, sent shock waves across the mandatory state bar world last
December in response to a challenge to the state bar's mandatory status that had been brought by a state senator who was a member of the bar and who was unhappy with the bar's advocacy concerning measures on father's rights. The Nebraska Supreme Court retained the mandatory state bar status but slashed the state bar's funding and its responsibilities, and they created a kind of hybrid that I have heard described by both the supporters and the opponents of a mandatory bar, both from Nebraska and throughout the country, as the worst of both possible worlds.

So I don't need to remind you what's happened in Michigan. We have just had a good description of that. The question is where are we? As Professor Sedler said repeatedly, it is settled law that a mandatory bar can speak on behalf of its members under certain conditions, but in the big picture, that's probably about all that is said.

What's going to happen? We are, of course, holding our breath to see what the Michigan Supreme Court will do, but which way is the wind blowing for mandatory bars in general? In terms of how to apply the settled law, the devil, as they say, is in the details or in the safeguards or lack thereof.
The State Bar of Michigan has always taken the need to act without ideological or partisan bias very seriously, and this year has provided us an opportunity to examine with great care whether there is more that we can do to ensure that our process works, particularly in an environment in which the substantive law concerning advocacy of unions and compulsory dues is questioned.

In its deliberations about the task force report, the Board of Commissioners in July adopted a set of changes to our public policy program designed to provide greater assurance that the important balance that Professor Sedler described between the value of the State Bar's uniquely qualified voice on issues central to the legal profession and the rights of dissenting members is appropriately struck.

Excuse me? I am sorry. I thought I was getting a question from the floor.

Among the changes the Board called for is a written explanation of every piece of legislation under consideration for a possible State Bar position, and I want to show you our first attempt at this new enhancement. This has been distributed to you. I think it is a step forward.

So let me conclude with this thought, the
nature of the mandatory bar is being scrutinized around the country, not just here, but nowhere more intensely or passionately than in the state of Michigan this year, and I think that's a good a thing. Our existential crisis has been taking place on a time table not of our own making and it has not provided us with the luxury of building consensus or understanding, and, as a result, I think some of our conversations have been maybe a bit sharper than they would have been if things had developed at our own instigation. But as uncomfortable as this moment has been for us, I think our dialogue is making us stronger. We can and must ensure that our voice as lawyers is not silenced and that as a mandatory bar we listen to and respect the voice and views of all of our members. That is the point of having a mandatory bar and of having a body like this Assembly, to come together and debate the key issues facing us as lawyers. Thank you.

(Applause.)

CHAIRPERSON ALLEN: I just want to say a quick note. I want everybody to take a look at this document that Janet provided once more. Why is this discussion relevant? This discussion is relevant because we are the final policy-making body. What is
before you all the time, policies and issues. So we could have skipped this discussion, but for the future you have to know what is dealing with regard to the drafting and the calendars committee when your proposals come to the leadership, and they look at these proposals so everybody understands at the beginning when you go to your sections and you get information, you want to do a proposal, that everybody understands these are the issues that are going to be brought up and that we are going to have to vet these issues before they come before this body for a vote, and this is a great guideline, and I want to show you that this is what we are moving towards so that proposals that come before the Board, before the RA are going to have something very similar to this, and it's important you understand the dynamics of where it came from and the history of it.

Is there any discussion? Anybody have any comments or any thoughts? You may come up to the microphones. If not, I would just like to introduce Tom Rombach, who is going to be our president within 45 minutes, because we are running a bit late, but if there aren't any questions, I would just like him to say a few words.

MR. ROMBACH: Thanks, Kathleen. It's
certainly an honor to be back here today. I have been sitting in these seats for a long time, probably since before the turn of the century. In fact, probably my proudest moment of bar service is when I was sworn in as chair of the Representative Assembly, something that my good friend, Vanessa, will experience here shortly as I see Judge Stephens in the back of the room anxiously awaiting her moment to swear Vanessa in, so I won't take a whole lot of your time. I am speaking at lunch, and much to many of the members' dismay, but it's something we are all going to have to live with, including myself.

Right now we are in, obviously, as Brian and Janet outlined, some turmoil. Certainly we have suffered our share of criticism, but one thing I would pull through this is, although our personal beliefs may be vastly different, we are all united essentially by two bonds. One of those is the love and respect for our legal profession, and the second is that we are always about fighting to protect the best interests of our clients and the public.

Through my discussions with a lot of the members of the Representative Assembly and, in fact, State Bar members around the state, really three goals have become increasingly clear. The first, that
people here, and in fact in our discussion in July it was very clear that people want to remain a mandatory bar. Secondly, that we want to maintain our public policy advocacy and, thirdly, that we want to preserve our governing structure, and the importance of that being that here in the RA, being the final policy-making body, that's both something that the RA, of course, share, as do the Board of Commissioners and their work group that Mr. Einhorn appointed and submitted their comments to the Supreme Court for their inspiration.

Again, these three goals I have held throughout this entire process very near and dear, but one thing is some people questioned -- Brian has been a very fervent, very passionate leader, and he wears his emotions on his shirt sleeves. I would not have my cool exterior sometimes fool you. I will fight as long and as hard as it takes to accomplish these goals. I will do so very forcefully, but I will also do so very respectfully, and that's something that I learned rising through the ranks here in the Representative Assembly, that we can all disagree sometimes without necessarily being disagreeable.

My emphasis this year, if we steer past this and while we are waiting for the next year to drop, is
going to be on addressing the needs of the 21st century lawyers and their clients. I am going to go more into that at lunch, and if we have a few moments, I would prefer if anyone had some questions, we will try to reignite one of these lively Assembly debates to get our juices flowing for lunch. Will you let me take a question or two, Kathleen?

CHAIRPERSON ALLEN: Sure.

MR. ROMBACH: If somebody wants to step up to the microphone, my hearing is still impaired at best, but I certainly, if anyone had anything to ask, instead of pulling you aside in the hallway, I will take the questions right now. If they are easy ones, I will answer them. If they are difficult, I am sure somebody else in the front can assign this to someone more capable than myself.

Okay. Well, I successfully put people to sleep before lunch rather than after lunch, which was my real goal, but I will see if I can do something for you over the course of our meal. Thank you very much for your rapt attention. Again, I certainly appreciate it.

(Applause.)

CHAIRPERSON ALLEN: As we are trying to move this along kind of quickly, because the goal was to
get it done before noon. Next, we are going to move for the nomination of the clerk. We have one individual who is asking to be nominated from the floor. His name is Fred Herrmann.

MR. CLARK: John Clark from the 3rd circuit. I would just like to nominate Fred Herrmann, also from the 3rd circuit, for the position of Assembly clerk. Fred's resume and letter of intent are included in the materials that everyone got for the meeting today if you would like to review those. With that, Fred Herrmann for clerk of the Assembly.

VOICE: Support.

CHAIRPERSON ALLEN: Second?

VOICE: Support.

CHAIRPERSON ALLEN: Second. I would also like to open the floor, though, for nominations from the floor. Are there any? No nominations from the floor, and so we have a support, we have a second.

All in favor of having Fred Herrmann as the next clerk for the Representative Assembly say aye.

Thank you, Fred. You can join us.

(Applause.)
CHAIRPERSON ALLEN: Fred has been an RA member for quite a long time, and you are going to be in great hands, because Fred is also part of the Drafting Committee, and it's important to have someone who understands the structure of the bar and the detail of the Drafting Committee looks at every proposal that comes through, and Fred has a keen eye for detail, and that's very important because he is also going to have to deal with these Keller issues that come before the body. So thank you, Fred, and thank you for joining us. Thank you.

The next is a presentation and recognition of Assembly members who are leaving their terms and service. I would like to thank those members, and after that I would like to thank the committee chairs. We have a few members that are, this is their last, very, very, very last meeting. You are more than welcome to join us again after you sit out a year, but we appreciate and thank the time you have committed to us. We have certificates that you can come up, and Dan Quick, who is our clerk, will present you your certificates.

In appreciation, William Josh Ard. Mr. Ard was also participating in our Assembly Review, and I thank him for his time.
Shayla Blankenship. Shayla has also participated and helped a great deal, and she was a chair also. Thank you, Shayla, for your time.

Becky Bolles, LaNita Haith, Krista Haroutunian. Krista has been a member of the RA for a long time. She also participated on the Special Committee that was formed in the April meeting and put an enormous amount of time on that committee. I want to thank her personally as well.

We have Terrence Haugabook. John Mucha. John also participated and helped out with our committee.

John Philo, Laurie Schmidt and Eilisia Schwarz. Eilisia, who was also chair of the Hearings Committee, if you want to thank her for taking the time to be here to do that.

And Mark Teicher. And the Honorable Margaret VanHouten, which was -- Judge VanHouten was not a judge when she started on the RA. During her term of the RA she was appointed for the judgeship.

Erane Washington and Christine Yancey.

Some of these members are not here today, but we do have their certificates and we will make sure we send it to them.

The second thing, I would like to thank the
committee chairs. The committee chairs have spent a lot of time this year returning my phone calls, setting up conference calls, and just taking time out of their practice to do things and to help out with the RA and to keep the RA breathing, in existence.

I would like -- the chair of the Assembly Review, Carl Chioini, he has been awesome and helped out with both the review, as well as the Special Committee.

The Drafting Committee, Fred Herrmann. Fred has had a tough job. On vacation, he has called, made some return calls on vacation. Thank you, Fred.

We have got Eilisia Schwarz again for the Hearings. She was very helpful. She was not able to attend the April meeting, but she did provide me with her input and thoughts. She is from a smaller district from Newaygo, which is north of Grand Rapids, and I thank her for her time.

The Nominating and Awards Committee, which was the Honorable Jeffrey Nellis. He has been instrumental in making sure that we have all of our vacancies and keeping our vacancies empty so that they are filled. And we have our awards also. If the awards are given properly, we usually have our conference calls to get our recipients for the Unsung
Hero Awards and Michael Franck. Thank you, Judge. Thank you for everything you have done. You have been a member of the Assembly for quite a number of years. Thank you for coming back and volunteering your time. I know it's busy being on the bench. Thank you.

And Special Issues, John Clark. John Clark has a larger committee, and he has allowed us to be able to use this committee to vet ideas and thoughts with regard to the RA and for changes in the RA and also his thoughts with regard to the task force and to provide us with information so that when Dan Quick and I sat on Brian's work group, we had more information in terms of thoughts of the RA because that particular committee has a broader cross-section of the circuits, as well as diversity. Thank you, John.

And those that I just named with regard to the chairs, we do a little gift here on the side. You can come up and get your gift if you like. If you would like to do it afterwards, that's fine, but do not forget your gift, because Anne will shoot me if you guys forget that gift. Then I will have to track you down and give it to you, and I live in Grand Rapids.

Before I get into the introduction of Judge Stephens, I just want to say thank you. I know
everybody doesn't like speeches, but I want to say
thank you for all of your kindness and support you
have shown me, not this year, but during my entire
tenure as a member of this important body.

At the beginning of the year I sought to
accomplish and address many things that would help
facilitate the RA's participation in state governance
and the changes to bring it basically to the
20th century, and you saw how I handled this when we
set up a website. We set up a quick website.
Ken Morgan of the 6th circuit, he spent a lot of time
helping me out. He used his resources to allow us to
have a little website called Yammer to have some
discussion and flow of information. We had 50
participants. We didn't have a lot of discussions,
but it was new and it was fast and a lot of people
didn't understand that we actually had this and we
were doing this. This was something that we need to
do in the future.

We weren't able to do everything we wanted to
do. We wanted to look at the rules and make things
faster with regard to possibly voting on the process
in terms of proposals to allow us to be faster, more
nimble and to work within the confines of some new
policies coming out. But due to the fact that we had
some unexpected issues, such as the task force and the senate bill, I was unable to accomplish those things. But we were able to at least look at the RA, have a blueprint of what we need to do for the future and understand what our needs are more. And I want to thank you for being there and for helping.

I have also a couple other people I want to thank. Robert LaBre, he was very helpful. He is the 43rd district. He helped and responded when we needed some help. We wanted some smaller input from some smaller districts. He helped Krista Haroutunian with the Special Committee with regard to the RA in evaluating our needs. I want to thank them. I thanked Ken Morgan already.

And I also want to thank the Bar staff. Anne always gets thank you, thank you, but Anne has been phenomenal. What doesn't Anne do? She does everything. She is very, very helpful. She is tolerant and she never yells at lawyers, which is really, really nice. And she had a lot of time to yell at me, and she never did. And I appreciate your time, Anne, I appreciate your energy, and I am very grateful for everything you have done for you us.

Janet, I think she left. Oh, there she is. Janet is very helpful. She tolerated me also, and I
thank her for doing that, and Janet tolerated me with a smile on her face, and I am amazed at that, so she must be a mother. I thank you very much, Janet. I appreciate your time.

I want to thank Judge Chmura for coming up here and doing everything. In April he spent a lot of time making sure we understood how the process was and making sure that we don't violate the parliamentarian rules, because we have a couple people in here that are quite well versed in parliamentary rules, and 54th district, Adam, just got certified with regard to that, and congratulations, Adam.

Let's see, I want at thank Marge. Marge isn't here, but Marge is also a person who has been very, very helpful and kind and making sure that at the Board of Commissioners meeting that I have everything in line.

I wanted to thank also two very special people, Dan Quick and Vanessa Williams. I didn't always see eye to eye with everybody with regard to the positions of the RA, but they were very kind, they were very supportive, and they are still here, and that's very important. Thank you very much, both of you, for your help.

So that's done with my speeches, and I know
people don't like speeches. We have had enough of them today.

What I would like to do now is take the time to swear in Vanessa. I would like to introduce Judge Cynthia Stephens. Judge Stephens, prior to her appointment to the Court of Appeals in 2008, Judge Cynthia Stephens served as general jurisdiction trial judge for 23 years. Judge Stephens was appointed to the 3rd circuit in 1985 after serving as a 36th district court judge. She was the chief judge pro tempore. She was a mediation tribunal chair and presiding civil division judge for the 3rd circuit for eight years. She is an Emory Law School graduate.

Judge Stephens has been admitted to the practice of Georgia, Texas, and Michigan prior to her election to the bench in 1981. She has served as vice chair of the Wayne County Charter Commission, associate general counsel to the Michigan Senate, the regional director of the National Conference of Black Lawyers, Atlanta office; a consultant to the National League of Cities Veterans Discharge Upgrade Project.

Judge Stephens has been active in bar work, including 16 years as a commissioner of the State Bar of Michigan. She chaired the Justice Initiative Committee, Communications Committee, and the
Children's Task Force. Judge Stephens is a former chair of the Association of Black Judges in Michigan, a former member of the executive board in the National Bar Association and Judicial Council. She has been honored by many civic and religious organizations, so many that I can't add them all up.

But I do not want to forget, we have to say this, she has been honored, the highest honor, the Roberts Hudson award in 2005. That is a great honor after all your years of dedication.

JUDGE STEPHENS: I think that's enough.

CHAIRPERSON ALLEN: Thank you. Just one more thing for the swearing in, I want to make sure that everybody is aware, this is a first time, we have Vanessa's daughter, Mackenzie Williams is here, and she is in the 6th grade at South Canton Scholars Academy, and we are having her participate in this event, and this is the first time, but we need to start lawyers young, so I thought that was a good idea.

JUDGE STEPHENS: Good morning. See, my job is to make sure you are awake to get to lunch. I had a really, really long speech, but I realized that there would be an insurrection.

Let me just do this. Let me, on behalf of my
colleagues in the judiciary, thank each and every one of you for investing your time in our profession. It's only when there is a robust, robust, independent voice of the lawyers that we have a system that works on behalf of the people. And in introducing and getting ready to give the oath to Vanessa, who is an incredible woman, I would be reminded of our colleague, our late colleague, Nelson Mandela, and be reminded that for all those years he was in Robben Island, he was still accepted as a member of the South African Bar. They didn't care what the government said. That's the kind of bar I want to see.

And so I would ask -- are you going to hold mom's hand? Okay. You do that a lot? No, I didn't think so. I understood that her daughter was, in fact, Ms. Independent.

One thing I would say about Vanessa is, as Nelson Mandela noted, an good head and a good heart are always a formidable combination, and that is your new chairperson.

If you would raise your hand and repeat after me. I do solemnly swear --

MS. WILLIAMS: I do solemnly swear --

JUDGE STEPHENS: -- that I will support the Constitution of the United States --
MS. WILLIAMS: -- that I will support the Constitution of the United States --

JUDGE STEPHENS: -- and the Constitution of the state of Michigan --

MS. WILLIAMS: -- and the Constitution of the state of Michigan --

JUDGE STEPHENS: -- and the Supreme Court Rules concerning the State Bar of Michigan --

MS. WILLIAMS: -- and the Supreme Court Rules concerning the State Bar of Michigan --

JUDGE STEPHENS: -- and that I will faithfully discharge the duties --

MS. WILLIAMS: -- and that I will faithfully discharge the duties --

JUDGE STEPHENS: -- as chair of the Representative Assembly --

MS. WILLIAMS: -- as chair of the Representative Assembly --

JUDGE STEPHENS: -- of the State Bar of Michigan, according to the best of my ability --

MS. WILLIAMS: -- of the State Bar of Michigan, according to the best of my ability --

JUDGE STEPHENS: -- and with the help of my colleagues and my family.

MS. WILLIAMS: -- and with the help of my
colleagues and my family.

JUDGE STEPHENS: Congratulations.

(Applause.)

CHAIRPERSON ALLEN: On behalf of the executive committee and of the RA members, I would like to give you this gavel that you are going to be able to use. Here it is, the same thing. Be careful, keep it away from little ones. She might hit you with it. Congratulations.

CHAIRPERSON WILLIAMS: Thank you, Kathleen. I do want to say thank you to Judge Stephens, not only for just swearing me in but for being a mentor. I do greatly appreciate that.

Thank you to my husband of almost 18 years, Renard, for always supporting my activities and especially thanks to the lovely Mackenzie, who sacrificed a day of 6th grade to come and be with us. I would like to thank my son, Reuben, who is a 14-year-old freshman at Brother Rice. He couldn't be here with us today, he is in school, but he sacrificed having me in attendance at probably every first spring soccer game. Since I started being on the Representative Assembly, the April meeting always conflicts with the games, and my kids are always very understanding and supportive of that.
At this time I do want to present thanks to Kathleen. We have had a long, incredible year.

I do want to make a correction that Kathleen made in her speech. She said that she didn't get to accomplish helping us to become nimble, helping us to improve technology and to do some of the things that she set out to do when we first started. I would advise you, Kathleen, that you did. In your passion to make sure that we had a voice before the Supreme Court, this body did act in a very nimble fashion. You put together a special committee. We were able to respond. We had a, I don't know what it's called, because I am not that technology savvy, but we had a blog where people had the opportunity to participate electronically in offering comments to the task force report.

So where you think that you did not accomplish that, know that you did. I think in all the years that I have sat on the Assembly, I saw us move in a remarkable manner and have a remarkable voice in front of the Supreme Court. So thank you for that passion and for your service.

At this time I would like to present Kathleen with her recognition from the State Bar, and it reads: The State Bar of Michigan honors Kathleen M. Allen,
Representative Assembly Chairperson 2013-2014, Vice Chairperson 2012-2013, Clerk 2011-2012, in appreciation for distinguished service to the Assembly, the State Bar, and all Michigan lawyers.

If you know Kathleen, you know she is passionate about what she does here with us, but she is passionate about her service to the indigent public in her service and in her practice. So thank you, Kathleen, on this September 18th, 2014.

(Applause.)

PAST CHAIRPERSON ALLEN: I am going to keep my words brief, because I have a goal to get you out of here before 12, and if I make it I am actually on schedule at 11:45. I talk fast, so I am going to slow down a little bit because I have a few minutes.

As I said in my email blast to you earlier this week, I sent out a couple this year, and I sent one earlier this week, and I want to consider my opportunity to serve you here as Representative Assembly chairperson to be a high honor and a great privilege. It has been a high honor and great privilege to serve the RA members as your colleague and to represent the State Bar members in my district. I am grateful, very grateful for your friendship, your confidence, and I am humbled by the trust and support.
this body has given me.

It's been a difficult year, and every time I called someone, you returned my phone call, and I know how busy people are when you are in a practice. My clients don't return my phone calls, other lawyers in cases don't return my phone calls, but this body returned every phone call timely. They even called me from their home, provided me with their cell phone number, and then dedication, and that is a gift. It is a gift of who we are as we are committed to the State Bar, and we are committed to this body, and we are committed to the organization, and I thank you. I have thank you for your work and your participation. And I didn't get an opportunity at thank everybody that worked in the chairs, underneath the chairs in your committees, because it is a great list of them, and I want to thank those people. I do have them.

They helped a great deal. In fact, they have listened to me. Richard Barron, gave me great advice, yelled at me. Great guy. Michael Blau, Michael Blau gave me his home cell phone number, and I called him right in the middle of the night one night, well not in the middle of the night. Nine o'clock you shouldn't be calling lawyers. They are still working, but not when you are with your family.
Kim Breitmeyer, she could be the typist and take down notes faster than anyone. She must have grown up with a typewriter in her hand. Or computer, excuse me. I am showing my age.

Lee Hornberger, he has called, he participated, he provided a statement to the Supreme Court, and now he is on the website, and now he is published. Thank you, Lee.

Fred Herrmann we talked about.

Marty Hillard. Martin Hillard is from my 17th circuit. I appreciate Martin. You take my phone calls. Martin works for Judge Sawyer, and even when the judge is here, he took my phone calls. I appreciate that. Thank you, Martin.

Josh Ard. Josh Ard returned my phone calls on the way to the airport when Josh was going on his trip, and he provided me with information and his thoughts, and I truly appreciate that, because he was ready to leave town, and he didn't have to do that, and he had his wife in the car, and I thank him and her for giving me that time.

Scott Garrison is a hard man to get a hold of. I got a hold of him though, and he made sure that he was available for a conference call, and I thank him for doing that.
Michael Thomsen, also very helpful. Thank you very much, because I needed to have these individuals for our confirmation in passing the proposal in April.

Laura Marji, very helpful. Everybody was present. I thank you.

Eilisia Schwarz. Eilisia was not able to be at the meeting, but she was very helpful in providing me with information.

Vince Romano. Thank you, Vince. He is always out there smiling, and when I see him I want to thank I him for participating.

Alana Glass. Alana Glass was almost done with being on the Rep Assembly, and I asked her to come back because it was important to have technology and to have some thoughts from the younger generation.

Nels Christopherson, he drove all the way from Marquette. Thank you very much for being here.

Alan Sullivan, thank you very much.

James Riggle, he called in several times. He also works in the U.P., and he was here and helpful. Thank you.

David Kortering, thank you very much.

Judge Nellis' team was Shenique Moss. Thank you very much, Shenique, for taking your phone calls.
and showing up even with your cell phone and being just out of court.

Pamela Enslen, thank you very much for showing or actually finding the time in your schedule to be on conference call with regard to individuals for the nominations.

Douglas Kaye, John Mucha, thank you very much for being present and helping out.

And, William Renner, thank you very much. He is from Branch County, and he is moving up because he was an associate this year, but thank you very much for taking the time.

Kathy Kakish. Kathy isn't here today. Kathy is not feeling well, and I am going to say Kathy has pneumonia, walking pneumonia and the flu so bad, and she called me on Tuesday and said that she wasn't going to be here. I suggested that she could wear a face mask and still be here, but she didn't think that was very funny and said no. Kathy has been instrumental in making sure that she gives the proposals and provided everybody to get together in order to pass these proposals. What people don't know is it has to go through the Rules and Calendar Committee and the Drafting Committee, so all these people I am naming have to be on conference calls in
order to get proposals passed, and it's in a short period of time, like a week, and that is very, very, very difficult.

And John Clark and his team. Robert Fergan from Washtenaw, thank you.

Shayla Blankenship, she called several times. Thank her very much.

Jeff Linden. Jeff Linden provided an enormous amount of help. He is a sole practitioner, and he took time out of his schedule to give me ten minutes before his client showed up, and when his client was there he still spoke. I want to thank him for giving his thoughts and ideas of how to make the RA better and perspective with regard to the task force.

Tim Kohler. Thank you, Tim. He sent me a nice email, and I want to thank you for being present and helping.

Jessica Fox. Jessica also helped and provided great information.

Ellsworth Stay, he is new to the Assembly. He is from Newaygo, and he is administrator in Newaygo, and I begged him to be on the committee because he had great insight. I want to thank you for hanging in there.
Thank you, everyone, for listening. I made my time, and I appreciate you being here.

(Applause.)

PAST CHAIRPERSON ALLEN: Meeting is adjourned. Thank you.

(Proceedings concluded at 11:50 a.m.)
STATE OF MICHIGAN

COUNTY OF CLINTON

I certify that this transcript, consisting of 118 pages, is a complete, true, and correct transcript of the proceedings and testimony taken in this case on Thursday, September 18, 2014.

October 10, 2014

Connie S. Coon, CSR-2709
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