STATE OF MICHIGAN
STATE BAR OF MICHIGAN

MEETING of the REPRESENTATIVE
ASSEMBLY of the STATE BAR OF
MICHIGAN

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Proceedings had by the Representative Assembly of the State Bar of Michigan at DeVos Place, Ballroom A, 303 Monroe Avenue, N.W., Grand Rapids, Michigan, on Thursday, September 30, 2010, at the hour of 9:00 a.m.

AT HEADTABLE:

ELIZABETH M. JOHNSON, Chairperson
VICTORIA A. RADKE, Vice-Chairperson
STEPHEN GOBBO, Clerk
JANET WELCH, Executive Director
HON. JOHN CHMURA, Parliamentarian
ANNE SMITH, Staff Member

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CHAIRPERSON JOHNSON: Will you please take your seats so that we may begin.

Good morning, members of the Representative Assembly. My name is Elizabeth Johnson, and I am the Chairperson of the Representative Assembly of the State Bar of Michigan, the final policy-making body of the State Bar of Michigan. At this time I would like to call this meeting to order.

At this time I will call and recognize the Clerk of the Assembly, Stephen Gobbo, to indicate whether or not we have a quorum. Mr. Gobbo.

MR. GOBBO: Madam Chair, I am pleased to announce that we have a quorum.

CHAIRPERSON JOHNSON: Thank you very much, Mr. Gobbo.

Next I would like to call and recognize Mr. Michael Blau, chairman of the Rules and Calendar Committee. Mr. Blau.

MR. BLAU: Good morning, Madam Chair, I move for adoption of the proposed calendar.

CHAIRPERSON JOHNSON: Is there support?
VOICE: Support.

CHAIRPERSON JOHNSON: I hear some support. There has been a motion and support for approval of the calendar. Any discussion?

Hearing none, all those in favor of approving the calendar as presented, please signify by saying aye.

All opposed say no.

Any abstentions.

Thank you very much. The calendar as presented is approved. Thank you very much, Mr. Blau.

Next I would entertain a motion for approval of the summary of proceedings from March 27, 2010 meeting.

VOICE: So moved.

CHAIRPERSON JOHNSON: Thank you. Is there support?

VOICE: Support.

CHAIRPERSON JOHNSON: Thank you. There has been motion and support to approve the summary of proceedings of our March 27, 2010 meeting.

All those in favor signify by saying aye.

All those opposed say no.

Any abstentions.

The motion to approve the summary of
proceedings of the March 27, 2010 meeting is approved.

As many of you know by now, since we last met the Representative Assembly has lost one of its members. Paul J. Raine of the 6th circuit passed away in July. Paul served the Representative Assembly from the 6th circuit since 2002. Paul was also a past chairperson of the State Bar's Taxation Section. He is survived by a wife and two children. I would ask at this time for a moment of silence to remember Paul and his family and to acknowledge Paul's contribution to this Assembly and to our profession.

(Moment of silence.)

CHAIRPERSON JOHNSON: Thank you very much.

The next item is number two, filling vacancies. I would like to call Mr. Jeffrey Nellis, the chairperson of the Nomination and Awards Committee, to the podium to make his presentation.

MR. NELLIS: Good morning. We have two vacancies that we had to fill, one of course because of the untimely passing of Paul Raine. We also had one in the 10th circuit, Saginaw County. I just want to -- I emphasize again, and every time I talk at these meetings I always point out how it's always our goal to have a hundred percent participation. We have
been very fortunate over the past several years to be able to accomplish that. In conjunction with members of the committee, also Anne Smith again has been invaluable in helping us deal with these kind of last minute situations, also Liz Johnson, appreciate your help.

I just want to say, while I am up here I want to congratulate Liz for a very successful year. I think your preparation, your planning, your attention to detail has been greatly appreciated by everyone here.

That having been said, after going through the process, we have a replacement for the 6th judicial circuit, and at this time we would make the motion for the appointment of Daniel Cherrin of Royal Oak. And with regard to the 10th circuit, we would also move for Terri Stangl of Saginaw to be appointed at this time.

CHAIRPERSON JOHNSON: Thank you very much, Mr. Nellis, and thank you for those very kind comments.

There is a motion for these two vacancies. Is there support?

VOICE: Support.

CHAIRPERSON JOHNSON: Any discussion?
Hearing none, all those in favor of the filling the
vacancies for the 6th circuit with Daniel J. Cherrin
and for the 10th circuit Terri L. Stangl, please
signify by saying aye.

Those opposed say no.

Any abstentions.

The motion to allow Daniel J. Cherrin of the
6th circuit and Terri L. Stangl of the 10th circuit
has passed. The new members may now be seated in
their circuit. Please take your seats and thank you
and welcome to the Assembly.

(Applause.)

CHAIRPERSON JOHNSON: I would like to extend
my thanks to Jeff and his committee. They have been
working very hard under difficult circumstances in
these last few months to fill these vacancies. As
Jeff said, I am so pleased to say again that we are at
100 percent participation. Thank you very much, and I
would like to recognize the committee members if they
are here, John Mills of the 6th circuit,
Elisia Schwarz of the 28th circuit, Bruce Barton of
the 4th circuit, Anne McNamara of the 47th circuit,
Rick Paul of the 6th circuit, and the Chair,
Jeff Nellis of the 51st circuit. Thank you all very
much.
Our next item is awarding the Representative Assembly's Unsung Hero Award. This award is given to a lawyer who has exhibited the highest standards of practice and commitment for the benefit of others.

This year the award is given posthumously to Kevin J. Moody. Here to make the presentation of the Unsung Hero Award on behalf of the Assembly to Kevin's wife and family are Mr. Thomas W. Linn and Mr. Michael W. Hartman of the Miller Canfield firm where Mr. Moody worked for many years in their Lansing office.

MR. LINN: Good morning. I am Thomas Linn and the chairman emeritus of Miller, Canfield, Paddock & Stone. Previously I was the chief executive officer of Miller Canfield, and my successor, Michael Hartman, and I really nominated Kevin for this honor, and I want to thank the Representative Assembly for really granting this honor to Kevin.

Kevin, I mean, he was really a person of tremendous energy, tremendous life, tremendous spirit. He was a vigorous lawyer and would do anything to help his clients within appropriate ethical bounds.

But we are not here to honor him as a lawyer. We are really here to honor him for his work in the area of pro bono and the service to others in our
community. That's an important responsibility. I know you all take it seriously. We take it very seriously at Miller Canfield.

Sometimes our pro bono obligations run into our obligations or perceived obligations to try to make money, you know, and support ourselves. But Kevin for 20 years was the chair of our pro bono activities, and Kevin reminded us, told us about our responsibilities, challenged us to do better. He would find pro bono cases, and he would find people to handle them. He would stress to us every year our obligations to make contributions to Access to Justice and other appropriate pro bono charities, and Kevin was always there.

It's not an easy task being the pro bono chair in a large firm like ours, and Kevin did it with vigor, with enthusiasm and always with a great heart and a kind spirit. He was a fine man. Unfortunately, he was taken from us in the prime of his career, but he left a tremendous mark in the pro bono area, also his personal life. He was a great volunteer with youth organizations and other not-for-profit organizations in Lansing.

This is a tremendous honor for him, for our firm, and I thank you again for your kindness in
extending it to Kevin.

I would like to introduce Kevin's widow,

Nancy Moody, who is here to accept the award on behalf
of Kevin and her family. Nancy Moody.

(Applause.)

MRS. MOODY: Thank you very much, Tom, and I
too want to extend my thanks to the Representative
Assembly and in particular to Tom Phillips, who I know
spent a lot of time and energy at Miller Canfield
working on the actual nomination application and said
a lot of very wonderful things about Kevin, but they
were wonderful because they were all just the facts,
and I really appreciate that, Tom, and I appreciate
Miller Canfield's support in the entire nomination
process, so thank you all.

I thought because they gave us a few minutes
I would give you just a little bit of insight into who
this man, Kevin Moody, is, and I also want to
recognize that I am not here alone accepting this
award on Kevin's behalf. Kevin's mom, Marilyn Moody,
is here. Our son, Nolan Moody, is here. Our
daughter, Maureen, is here in spirit. She is out in
D.C. and couldn't be here, and then I have got about
15 family members, and we have got several Miller
Canfield attorneys who are also the professional
family. So thank you all very much.

I brought a little thing along that I wanted to read to you. When Kevin was in the hospital for his last stay and came home for his last journey, the word spread very quickly, and a little note arrived in our mailbox that was not mailed, it was placed there. It came handwritten. It came with a child's drawing, and the note said this. Deer Mr. Moody, I have never really known you well, but certainly well enough to be touched by your magic. The smile and friendliness you always carry is remarkable. When I look at you, all I can do is demand of myself to be a better person because of the fine one you have always been. This world is a better place and that is so because of the tremendous contributions you made to it. Thank you.

The letter was unsigned. But it had a postscript, and that said, P.S. if I were to sign this it would be unfair, for it would exclude all of the others who share such sentiments. Instead, I leave it open, because the reach of your impact has no bounds. And that is the kind of guy Kevin was.

The last thing I wanted to say was that when I first heard of this award, obviously I and all of our family members were very touched and very pleased. It's a great honor, and I thought, gosh, you know,
it's just too bad, because Kevin is not here, and he
would have loved to have known that he was given honor
and respect for all of the pro bono work he did over
his entire lifetime, but then I thought about Kevin.
He was not a guy that wanted attention. He was not a
guy that needed awards, and he really was just a
person, as Tom said, with a huge heart, a giving
spirit, a wonderful soul, and in the end it's actually
perfect that he is getting this posthumously, because
he wouldn't have needed it, but we will really
appreciate it. Thank you.

(Applause.)

CHAIRPERSON JOHNSON: On behalf of the
Representative Assembly, I present this plaque.

(Applause.)

CHAIRPERSON JOHNSON: On behalf of the
Assembly and personally I extend our sympathy to
Kevin's entire family. We are also very grateful for
the amazing work of Kevin during his lifetime, and I
hope that by honoring Kevin we here today remember how
important it is to make a difference for others in our
lifetime. Thank you very much and thank you to
Kevin's wonderful family.

Next, moving on to our Michael Franck Award,
but before we start the presentations on the award, I
would like to share with you an amazing story.

In reviewing the many nominations for these awards that the Nominations Committee and I read, a very glowing letter of support from Shel Stark came in on behalf of John VanBolt. We read further in the nominations and letters of support and found a very glowing letter of support from John VanBolt on behalf of Sheldon Stark. Neither of these men knew when they wrote their letters that they themselves had anonymously been nominated. I think it says a lot about each man's professionalism and character and also why they are both being honored and receiving the award today.

The Michael Franck Award is a very important award in the Representative Assembly. This is where the Assembly recognizes lawyers who have made a substantial contribution to the legal profession. The Michael Franck award is named after long-time director of the State Bar of Michigan, and it is this Representative Assembly's highest honor.

The Assembly's Nominations and Awards Committee received many excellent nominations for this award this year, but after extensive review decided unanimously to give this award to two distinguished lawyers.
Our first recipient this year is John F. VanBolt from the Attorney Discipline Board. Here this morning doing us a great honor and doing a great honor for Mr. VanBolt, a woman who herself fits the award and in fact was the recipient of the Representative Assembly award in 2003, a past member of this Representative Assembly, a woman who supports this Assembly greatly, it is my great honor, and I hope you will join in welcoming today to make the presentation our own Chief Justice of the Michigan Supreme Court, Marilyn J. Kelly.

(Applause.)

CHIEF JUSTICE KELLY: Thank you. Good morning.

VOICES: Good morning.

CHIEF JUSTICE KELLY: It's a real pleasure to have this opportunity to present a well-deserved award to John VanBolt, who has served so long and so well as one of the linchpins of our attorney discipline system.

There is a popular show on the Discovery channel called Dirty Jobs. In each episode the host, Mike Rowe, performs some difficult, dangerous, or unpleasant job under the guidance of an experienced worker in that field. The program's website has a top
ten challenging and rugged dirty jobs, like disaster clean-up crew member, coal miners, steamship boiler cleaner, sheep shearer, or back biologist to name a few. Each of us could compile our own top ten list of difficult and demanding jobs, and one that would certainly make my list and the list of most attorneys is the one John holds, executive director and general counsel of the Attorney Discipline Board.

That John has served in that capacity for 24 years and 30 years in the attorney discipline system says a great deal about his ethical standards and his legal expertise. His job calls for the tact of a diplomat, the firmness of a general, the moral authority of a pastor, and the leadership of a Fortune 500 CEO. Add to that the professionalism and civility that John has always demonstrated, even in difficult situations.

Now, many nomination letters, and there were over three from the Bench and the Bar, myself included, who supported John's nomination echoed the same themes over and over again. Elaine Fieldman, former chair of the ADB wrote, John enriched me as a lawyer. John set the example for professionalism and civility. Former State Bar President, Ed Pappas, who served on the ADB hearing panel, praises John as a
consummate professional who always provided sage advice. Bill Hampton, another former ADB chair, lauds John's work as absolutely outstanding and, as you heard, Shel Stark wrote a letter saying John is the epitome of fairness, an outstanding contributor and stalwart of our ethics program.

John Suhrheinrich, Judge Suhrheinrich, praises his outstanding leadership, and Professor Theodore St. Antoine describes John as being of the highest caliber, both professionally and personally.

Only someone of the highest caliber could have helped to maintain a discipline system whose integrity is beyond reproach. This has not been an easy task. Many of you will recall a time when in the '80s the Attorney Grievance Commission, the ADB's sister agency, was under a cloud and exposed the entire profession to controversy.

In her nomination letter, former Justice Patty Boyle described that difficult time and how John's guidance, institutional memory, and integrity helped ensure that the legal profession would not only continue to be self-regulating but that it would also have earned the public's trust.

As Justice Boyle observed, John VanBolt's exemplary service gave the members of the Michigan
Supreme Court complete confidence in the Board's competence and integrity. Indeed, in Michigan John is known as the go-to person on professional conduct matters, an ex officio member of the State Bar Standing Committee on Grievances for many years, he has generously given of his time as a speaker on numerous substantive and procedural topics and most recently he served as a member of the State Bar work program charged by the Supreme Court with reviewing a comprehensive proposal to amend discipline procedure rules.

But John's accomplishments are not limited to Michigan. He is also well known for his leadership on the national level, having been a founding member and past president of the National Council of Lawyer Disciplinary Boards, which he continues to serve as a member of the board. He is also a member of the ABA Center for Professional Responsibility and the Association of Professional Responsibility Lawyers.

As Judge Danhof observed in his nominating letter, the fact that John's colleagues throughout the country turn to him for advice and education speaks volumes.

In the famous novel To Kill a Mockingbird, one of the characters describes the hero, Attorney Atticus Finch, to Finch's young daughter Scarlett.
Here is what he said. There are some men in this world who were born to do our unpleasant jobs for us. Your father is one of them.

It's my great pleasure to present the Michael Franck award to another such attorney, one who for decades has done a difficult and essential job quietly, effectively, and with great personal grace. Please join me in honoring John VanBolt.

(Applause.)

MR. VANBOLT: Thank you so much, Chief Justice.

Chairperson Johnson, members of the Assembly, friends, colleagues, let me say a couple quick things. First, as far as the dirty jobs part goes, when I was in college I worked at the Flint Greyhound bus station cleaning the restrooms there. This is a piece of cake.

I would also like to say that when I was out having coffee this morning, I was talking with Shel Stark, and we really did mean what we said about each other in our letters, but Shel said, So have you got a joke? And I said, Joke? Nobody told me about a joke. I only got four instructions so far on this. Mark Armitage told me, Doesn't matter what they tell you, talk as long as you want. My wife Jane, who is
here, told me, Stand up straight. Bill Danhof said,
Wear a bright tie. And Anne Smith told me about five
minutes ago, The award is heavier than it looks. For
God's sake, don't drop it.

This is a special honor. As a former member
of this body, I do understand your traditions and the
seriousness with which you take your responsibilities,
and I am honored on that score. I am also honored
because I did know Mike Franck. I worked for
Mike Franck in a sense. You may know that the highest
award that the American Bar Association gives in the
field of professional responsibility is the
Michael Franck Award, so to receive an award with his
name on it has a very special meaning.

I only want to say a couple things, and it's
pretty much just going to be what you expect, which is
the thank you to the people who help me do my job, but
it has to be said. I don't get up in the morning and
say I am going to go off this morning and all by
myself deal with the problems of the attorney
discipline system. There are several groups of people
that support somebody in my position.

First among these in a sense is the members
of the Attorney Discipline Board. This is an
outstanding group of people on every level. Some of
them are here today, Bill Danhof, chairperson, is here and Carl VerBeek, who is a member of the Board, former chair of the Attorney Grievance Commission.

When I just look at some of the names of some of the people, for instance on the current Board, Tom Kienbaum, Craig Lubben, Jim Cameron, Andrea Solak, these are really top notch people, and then when I tell you some of the people I have been privileged to serve with over the years, Wally Riley George Bushnell, Ted St. Antoine, Judge Suhrheinrich, Judge Marty Doctoroff, Lori McAllister, Nancy Wonch, Miles Hurwitz, Patrick Keating. I don't know how the court comes up with these people sometimes. I don't know what they have to tell them or what kind of pressure they have to put on to get them to put in the time that's involved to be a member of the board, but I am extremely grateful.

Which brings me, of course, to the court, because it is the court, it is Chief Justice Kelly and her predecessors who have overseen the process and who have year after year after year appointed truly outstanding members of the Attorney Discipline Board.

We do joke a little bit at the Board that as far as administrative matters with the court go, really the worst thing is that they are in Lansing and
we are in Detroit and we are kind of out of sight, out
of mind. On the other hand, the best thing about our
relationship is they are in Lansing and we are in
Detroit. We are kind of out of sight, out of mind.

I don't have that kind of impediment as far
as my relations with the State Bar, which is the other
group, that I must say it is not an accident, I am
sure, that the Court Rule that empowers the Attorney
Discipline Board says that the goal of the discipline
process is the protection of the public. You probably
recognize that phrase. For many years it was on the
back of our Bar cards. It is still embedded into the
granite of the Roberts B. Hudson room at the State Bar
of Michigan, the language about no organization of
lawyers can long survive which has not as its first
principle the protection of the public. In that
regard, the State Bar, you, members of the Assembly,
the staff, Janet Welch, the people, the staff members
that I deal with at the State Bar, you have given of
your time. You have been enormously supportive, and I
thank you for that.

As far as groups go, the most important group
here, and I hope that they will stand in a second, are
the employees of the Attorney Discipline Board.

Mark Armitage, the deputy director; Sherry Mifsud, the
office administrator; Kathy Leal-Paredes and Allison Plourde, the two case managers; Jennifer Petty, our legal assistant, and Juliet Loiselle, secretary/receptionist. They really keep the place going, and there are three things you should know about them. One, they are enormously talented. Two, they are enormously dedicated, and, three, they are actually nice people. We actually go to lunch together, and not because we have to. We do get along well, and that I am grateful for. If you would please stand, I would appreciate it.

(Applause.)

MR. VANBOLT: They are the reason that I look forward to going to work in the morning, but fortunately for me at the end of the day I look forward to going home where I can see my friend, my date to the senior high school prom, my wife, Jane. Thank you.

(Applause.)

MR. VANBOLT: One of the things I do in my nondiscipline hours is sing in a chorus at University of Michigan, the Choral Union. I have done that for about 30 years, and last spring we performed a work with the Detroit Symphony at Orchestra Hall with Neville Marriner conducting and Michael York speaking...
words from the 1940's film Henry V, and because we did
two rehearsals and then three performances, I got to
hear these speeches from Henry V five times in a row.
So five nights in a row I got to hear Michael York
being Henry V exhorting his downtrodden troops on the
ev eve of the battle of Agincourt, and it resonated, all
five nights it resonated, and it still resonates, and
as I thought about coming up here today, it resonated,
because, although those of us who serve in public
service are not quite as beleaguered as those troops
were, we are not suffering from dirt, rain, mud and
dysentery, for example, but sometimes we do get the
impression that we labor in anonymity or that perhaps
we are not as appreciated as we might be, and
generally that's fine, but on an occasion like this,
with profound apologies to Shakespeare and
Michael York, let me just close by saying this.

This day, the 30th of September, shall ne'er
go by from this day to the end of the world but we in
it shall be remembered. We few, we happy few, we band
of brothers, for those who toil with me shall be my
family and be we ne'er so violent. This day has
gentled our condition. Thank you.

(Appause.)

CHAIRPERSON JOHNSON: Our next recipient of
this year's Michael Franck Award is Sheldon J. Stark from the Institute of Continuing Legal Education. Here to present the award on behalf of the Assembly is Mr. Jeffrey Kirkey of the Institute.

MR. KIRKEY: Thank you very much. It's a great honor for me to present this award to Shel Stark. Many of you know Shel. He has been running around at these annual meetings for many years, but for those of you who don't know him well, I would like to introduce you. I could go on and on about all of Shel's great qualities, but instead I would like to show you exactly what it is that makes Shel such a deserving recipient of the Michael Franck Award. I turn to one of Michigan's for most litigators, Ed Stein, to help put this together.

(View presentation shown. Dialogue as follows:)

MR. STEIN: Shel Stark is finally ready to answer questions. At long last we are going to hear what he really thinks. We are going inside Shel Stark. Tracy Allen, let's start with your first question.

MS. ALLEN: Shel, you practiced law for almost 30 years. What do you miss most about the hands-on practice?
MR. STARK:  Answering interrogatories
MR. STEIN:  Well, besides answering
interrogatories, what do you think was your most
significant contribution to American society as a
trial lawyer?
MR. STARK:  Fighting about little stuff.
MS. ALLEN:  You were known as a great
cross-examiner. What were your most effective
techniques?
MR. STARK:  (Grabbing tie and holding it up
as if it were a noose.)
MR. STEIN:  Some people may think that's a
little extreme. How many trial lawyers did you find
used such extreme methods?
MR. STARK:  Not as many as I wish there were.
MR. STEIN:  Shel, you were one of Michigan's
most successful plaintiff's employment lawyers. What
single tactic was most important to your big verdicts?
MR. STARK:  Screwing around with a lot of BS.
MS. ALLEN:  ICLE expanded its offerings
considerably during your tenure. To what do you
attribute that expansion?
MR. STARK:  The prominence of the lawyer
jokes.
MS. ALLEN:  And as an ICLE teacher you have
consistently received excellent evaluations. What do you think is responsible for those evaluations?

MR. STARK: We saw the same people over and over again.

MR. STEIN: You are now about to become a professor at U of D Law School. What teaching techniques do you intend to use there?

MR. STARK: The number one is the gotcha technique. You discover somebody isn't prepared and keep throwing questions at them until they are humiliated, keep melting on the steps.

Another is taking discussions off into totally abstract areas that have no relationship to the real world, to the practice.

MS. ALLEN: What kind of lawyers do you want your students to become?

MR. STARK: Attack puppies.

MR. STEIN: Why attack puppies?

MR. STARK: Well, one of the things I like about U of D is that their motto is practice ready graduates, and I am a great believer in that.

MS. ALLEN: And what attack puppy techniques are you going to teach them?

MR. STARK: Uncivil, unprofessional, obnoxious behavior.
MS. ALLEN: Let's conclude with a few questions about Shel Stark the person. Who do you most remind yourself of?


MR. STEIN: Shel, thank you so much. This has been an amazing adventure into the mind of one of Michigan's great lawyers. And thank you, Tracy Allen, and thank all of you for joining us inside Shel Stark.

(Conclusion of video presentation.)

(Applause.)

MR. KIRKEY: Fascinating, huh? See what I mean, he epitomizes exactly what we want in our lawyers. Okay, I will admit there may have been a little creative editing in that video, but we were just trying to make him look good.

All kidding aside, Shel Stark has had two remarkable careers, and he is embarking on a third. Following Shel's successful career as one of the state's premier employment litigators, we were fortunate to have him join ICLE. Shel brought the same energy, enthusiasm, and dedication for law practice to his new role as ICLE's education director.

Thirty minutes ago we kicked off the Solo and Small Firm Institute, now in it's seventh year. Shel
partnered with the State Bar of Michigan, with the General Practice Section and the Law Practice Management Sections to develop this two-day program that helps Michigan lawyers with practice management, technology, and substantive law. Shel has collaborated with the Business Laws and Litigation Sections of the State Bar as well as practice group leaders and law clerks to develop business and litigation boot camps tailored to the needs of new lawyers.

He worked closely with the ADR Section and SCAO to develop high level mediation training for Michigan lawyers serving both as trainer and mentor to over 1,000 Michigan lawyers who have taken ICLE's 40-hour mediation training. He partnered with the Family Law Section of the Bar to develop the Family Law Institute which has become in a short amount of time ICLE's single most popular program drawing more than 500 lawyers each year and many judges too.

Most recently Shel took on the challenge of developing education for Michigan lawyers who wanted to break into the field of bankruptcy. He reached out to the Michigan Consumer Bankruptcy Association and worked with its leaders to develop three very successful basic bankruptcy courses and a new consumer
bankruptcy institute. The list goes on and on. Shel is a master at bringing groups together to achieve a common goal.

He retired from ICLE on August 31st and is now a distinguished visiting professor at U of D Law School, and he will be mediating cases all over the state. I encourage you to visit starkmediator.com to find out more.

Shel has reached and inspired literally thousands of Michigan lawyers with his educational and mentoring activities. He exudes enthusiasm for law, lawyers, learning, and innovation. I am one of those thousand. Shel is my friend and mentor. All of us at ICLE appreciate Shel and what he has contributed to the Michigan Bar and we miss him greatly already.

Congratulations, Shel, on this tremendous award.

(Applause.)

MR. STARK: Thanks, Jeff. Thanks to the Representative Assembly, thanks to Ed Stein. God, I hate to be so transparent. Good-bye any influence I have ever had with the Bar.

This award coming from you bearing Mike Franck's name, and I too knew Mike Franck, is very meaningful to me, and I am deeply honored. Truth
be told, I have always wanted to be the person my
golden retriever thought I was, and I only regret that
she is not around anymore to see that there were a few
other people who agreed with her.

I promised my wife I wouldn't tell this joke,
but as I prepared for this I looked for a quote about
awards. Maybe you are familiar with this Jack Benny
line. I am just sorry, Rita, I can't resist. He
said, when receiving an award he said, I don't deserve
this award. But I also have arthritis, and I don't
deserve that either.

I want to thank the kind and generous people
who wrote letters on my behalf and supported this. It
is one of those amazing little ironies of life when
you work with such wonderful and talented lawyers and
people that I wrote a letter for John VanBolt and he
wrote a letter for me. If I had known I was up, I
certainly wouldn't have been so generous. I couldn't
be more thrilled to be receiving this with
John VanBolt, who I consider to be a friend and an
inspiration.

Some of my finest hours were spent toiling in
the vineyards of the Attorney Discipline Board. That
was some good work, and I appreciate your bringing me
into it, John.
It's always been a little amazing to me that you can be honored for doing something that you love and doing it with people that you want to be with and respect and giving back to this extraordinary profession that we are all a part of. Amazing.

But even when you are fortunate enough to be recognized and to have a moment like this in your life, no one ever deserved it on their own. We all stand on the shoulders of many other people. We are all part of a circle of supporters and colleagues and friends and family, without whom none of this would be possible, who enable us to spend our time in that way.

If you know me, you know that I am a movie buff and one of those people who stays after to watch the credits roll, and I have to tell you I love seeing who gets credit for being a gaffer, whatever that is, and a best boy, whatever that is, and the assistants and the drivers and the stand-ins and the music, and the lawyers and the accountants, and my all time fave, the caterers, who always have such great names.

And there are as many credits for the Michael Franck Award in my life. The mentors who tutored me and inspired me, people like Bill and Ernie Goodman, Don Loria, George Downing, Beverly Clark, Marianne Buitani (sp), the lawyers on
the other side who forced me to be the best I could be
if I was to get some justice for my clients. People
like Tom Kienbaum was mentioned, John Scott,
Bill Saxton, John Grady. The colleagues who
befriended me and helped me face the demons that the
trial lawyer grapples with. Kathy Bogas,
George Bedrosian, Mike Pitt, Red Pinske (sp),
Ed Stein, Deb Gordon. The family that stood behind me
and covered my back, made excuses for me and accepted
me warts and all. Forty-two years Rita Stark was
there.

(Applause.)

MR. STARK: And for the last 11 years the
extraordinary and gifted staff at ICLE. Boy, do I
know what John was thinking about when he recognized
the folks at the ADB. They carried out my plans at
ICLE. They implemented the ideas I brought. They
nagged my speakers, and if you have ever spoken for us
you know about that nagging. They are professionals.
They took care of the details, and they created the
illusion that I actually knew what I was doing.

So thank you to Jeff Kirkey, my successor.
They say that in every workplace there is a best
friend, and Jeff was my best friend. He has proven
his skill and ability by shepherding through and
getting me this award. We live by myths, and he has managed to pursue that myth on my behalf.
Stephanie Fisher and the course administration crew who make the trains run on time, and most of all to Lynn Chard for her leadership. I want to thank her for her leadership, for believing in me, for managing to supervise me. Can you imagine having to be my supervisor? Oh, my God. And for giving me the opportunity to contribute to the improvement of the profession we all love.

An award is not the end. It's the beginning of the next step. I appreciate this, I welcome this, I thank you for this, and I promise you I am going to continue to do what I love to do. Thank you.

(Applause.)

CHAIRPERSON JOHNSON: Congratulations to all of our award recipients today. At this point I would like to inform you that our award recipients will attend today's luncheon, the inaugural luncheon, and they will be acknowledged and their names will be mentioned in the program. We are very proud to have all of them acknowledged again at the luncheon, and we encourage all of you to attend.

Pursuant to our calendar, we will now take a break. We will take a break for ten minutes, and we
will be in recess until ten minutes after 10. Please be back in your seats ready at ten after 10 to begin again.

(Break was taken at 10:00 a.m.-10:15 a.m.)

CHAIRPERSON JOHNSON: Will you please all take your seats so that we may proceed. Will you please all take your seats. Thank you very much. We are now back in session.

I have just been informed that Ms. DeVries from Access to West Michigan has not yet arrived. Without objection, we will move her remarks to immediately after our lunch.

Moving now to tab number eight, the chairperson's remarks. I stand today before an extremely talented and vibrant body of attorneys and judges. This Representative Assembly, our Representative Assembly, the final policy-making body of the State Bar of Michigan.

Looking out over this hard working group of professionals makes me very proud to be part of this legal profession. The fine work this Assembly has done this year is very gratifying. I am honored to serve this Assembly as your chairperson. I am most pleased with the work done by this Assembly in the pro bono arena.
This Assembly in March unanimously supported a proposal on pro bono that is a model for attorneys in every state. We can look forward to and hope for its implementation in the near future. I thank the Supreme Court for its consideration of this important proposal.

This Assembly and the State Bar have worked on many areas of importance to the legal community and the public this year. Not only in the area of pro bono, but in civic legal education. Lawyers and judges give of their time to make sure that students in our state learn about the law in a meaningful way. With cutbacks in school budgets this year, the need for such programs only grows. I thank the State Bar, this Assembly, and all the lawyers and judges that assist in civic legal education programs, such as the mock trial program, Constitution Day and Law Day programs, and the new professionalism in action program. I urge you and fellow colleagues to continue to support these worthwhile programs now more than ever. Together we can make a difference.

The support you have shown to our Representative Assembly's Access to Justice fundraiser and food drive is phenomenal. Your generosity at last spring's meeting and now today at our annual meeting
is amazing.

As Edmond Burke once said, the only way for evil to triumph is for good men to do nothing. Clearly the good men and women of this Assembly have again stepped up and done something very positively to make our profession better and to make a positive difference in the lives of the citizens of our state. Together we can make a difference. You have made a difference this year, and I am most grateful.

Speaking about those who have made a difference, the Representative Assembly is fortunate to have had the support this year of some incredible individuals at the State Bar building. I would like to take this moment publicly to thank some very special people who have made my year as chairperson so very rewarding.

First, I would like to recognize and acknowledge the hard work from the State Bar Executive Director, Janet Welch. We are so fortunate in the State Bar of Michigan that we have such a talented leader, somebody who is so familiar with policy and law and working with people. We are so grateful for your leadership, Janet.

Every member of the staff of the State Bar has contributed greatly to this Assembly in some way,
large or small. This past year, for which I am most appreciative, our receptionists at the State Bar building were always there to greet me with a smile on my many trips to Lansing. Jim Horsch and his wonderful staff worked tirelessly on reapportionment numbers for the Assembly last fall and the spring. Kari Thrush and her staff helped to coordinate meetings, including this annual meeting, our 75th annual meeting.

Naseem Stecker and Samantha Meinke helped to coordinate our media and public relations for the Assembly. Greg Conyers contributed greatly with support to the Assembly and encouraging our Assembly to tackle those tough but important diversity issues. Anne Vrooman for her ease in explaining complex numbers and ideas. Candace Crowley for her assistance in the successful Upper Peninsula tour. Elizabeth Lyon for keeping the Assembly ahead of all of the important policy issues. Nancy Brown and her staff in member services for always handling our meetings with great professionalism. Cliff Flood, our State Bar counsel, for being there throughout the reapportionment and all the many other legal questions and decisions this past year. A very special thanks to Marge Bossenbery, executive coordinator, who helped...
with everything and was invaluable in my work on the
Board of Commissioners, as well as on the
Representative Assembly.

Very special thanks to Dawn Evans who
graciously and professionally helped me as I started
my term and helped the Assembly and the entire
State Bar with items too numerous to mention. And a
thank you of the highest magnitude to our own
Representative Assembly guru, Anne Smith, who has
tirelessly worked day and night for the good of this
Assembly, not only today but for many years. I am so
grateful for all of you. We are truly fortunate to
have Janet and her incredible staff representing our
profession and our Representative Assembly.

Thank you to the many volunteers who have
helped this Assembly this year. Our parliamentarian,
Judge John Chmura, Chief Judge of the 37th District
Court, has been very helpful, always professional, and
truly knows the Roberts Rules of Order. The Assembly
is grateful for your expertise and your many hours of
service. Thank you, Judge Chmura.

Thank you to our very special court reporter,
Connie Coon. Connie has been the court reporter for
this Assembly for, I believe it is 26 annual meetings.
We could not handle our meetings. We could not do our
jobs without Connie. Thank you, Ms. Coon.

Special thanks to this year's Assembly committee chairs. They will be mentioned later, but I want to acknowledge them individually. Rob Buchanan, Drafting Committee; Marty Krohner, Hearings; Krista Licata Haroutunian, Special Issues; Mike Blau, Rules and Calendar; and Jeff Nellis, Nominations and Awards. My job was made so much easier by your professionalism and hard work.

Thank you to our State Bar President, Charles Toy, who you will hear from in a moment. Charles has done a tremendous job this year as president. You all know that, but what you don't know is what a great supporter he has been to me and to this Assembly this past year. I will be forever grateful.

Thanks to the all of the past chairs of the Representative Assembly, many of whom are present here today. Their wise counsel has been invaluable for me and one of the main reasons for the proposal later today before you on the Past Chairperson's Committee. Their institutional memory and their assistance has been of great importance, and I thank all of you. In fact, will you please stand, all the past chairs of the Assembly that are present here. I know you are
here, so please stand. Thank you.

(Applause.)

CHAIRPERSON JOHNSON: And now a very special thank you to the officers of the Assembly. To Clerk Steve Gobbo, I am very grateful for your hard work this year. Thank you for all you have done with this Assembly, and we look forward to you in the next few years in our leadership role.

And to our Vice Chair, Victoria Radke. I am so appreciative of your support and hard work and especially for your friendship. I know that the Assembly will be in good hand with these two leaders.

And most importantly a special thanks to all of you, my friends and colleagues of the Assembly. As Abraham Lincoln once said, The better part of ones life consists of their friendships. I know that for me the better part of my life includes the friendships here of all of you, my friends and colleagues of the Representative Assembly. I am grateful and humble that you have chosen me to serve as your chairperson this year. I thank you my dear friends and colleagues for the opportunity to serve. Thank you.

(Applause.)

CHAIRPERSON JOHNSON: Thank you all very much. I have a quick announcement. A pair of glasses
was found in one of the restrooms here. If they are yours, they will be up front with our Vice Chair, Victoria Radke. Also, Anne Smith has asked that I let you know, for anybody who is parked in the DeVos parking garage only, she has parking passes, and if you will see her at lunchtime. The DeVos parking only.

I would also like to recognize at this point -- I understand that Supreme Court Justice Alton T. Davis, Tom Davis, is now in the room, and I would like him to stand and be recognized by this Assembly.

(Applause.)

CHAIRPERSON JOHNSON: Thank you very much, Justice Davis, for being here with us today.

Next, moving on to tab number nine, remarks from the president. Charles Toy is the 75th president of the State Bar of Michigan. Charles is a dynamic, intelligent attorney who has been an incredible president of the State Bar this year, but probably more importantly to this Assembly, he has been a great supporter of the Representative Assembly and what we do. I have had the great privilege of working with him this year, and I hope you will join me in recognizing and thanking the president of the
State Bar of Michigan, Charles R. Toy.

(Appause.)

PRESIDENT TOY: Good morning. This will be a brief address, and, judges, you know what brief means. I will be done in about 40, 50 minutes, something like that.

I am going to have three parts to this address. Number one is a thank you, number two is encouragement, and lastly a challenge.

I want to thank you for what you do day in and day out in your jobs. From the position of State Bar President, as I need to ponder what to write about in the President's Pages that hopefully you all read all year long, but you get a chance to look introspectively, you look at the profession, and you start realizing some things that you don't have time to think about while you are working in the trenches, while you are perhaps filing a motion, while you are answering interrogatories, while you are participating in this process that's adversarial, but what you are really doing is upholding the constitution. You are relying on an independent judiciary. You believe in the rule of law.

How would you like to be an attorney in a country where there is no independent judiciary? And
I could go on and on, but I won't, so thank you for what you do.

During this year as State Bar President, I am exposed to many attorneys. I see the altruistic side of those attorneys. In fact, you had a small glimpse of that this morning, because in the awards that were given, if you listen to the nominee and you listen to the award winner, you hear the altruistic side of our profession. And that's what makes our profession a great profession.

We heard it last night in the awards assembly over and over. But not only do I want to thank you for what you do from day to day, but how about what you do in your communities as people of influence. Each one of you are a person of influence. You serve on boards, you help community organizations, you provide law-related education, you participate in activities such as coaching, Habitat for Humanity, shelters, perhaps a rescue mission. We celebrate with you through A Lawyer Helps program. You can see examples of it on the web page and also in the Bar Journal. That's why many times you will see attorneys wearing "A Lawyer Helps." If you don't have one of these pins, see me, see Elizabeth. We will get one for you.
So if you think about our profession, in a nutshell as a profession we serve and protect the public. As a State Bar we serve you and we protect the public, and in serving you what we are really doing are giving you the tools, helping you, assisting you to serve and protect the public. So it's all about serving and protecting the public, and that is why being a lawyer is the greatest profession of any profession. We are helping others.

Now, let me encourage you, and the encouragement is very simple, continue to serve and protect the public, continue to do what you are doing, but also think of those that perhaps are underserved, those who cannot afford an attorney. I want to encourage you to take seriously our professional responsibility to provide pro bono services or to give $300 so another attorney can provide pro bono services. This is a critical responsibility of our profession. It's even more critical because of numbers that you have heard, and I am not going to repeat those numbers, but those numbers, it's critical that we fulfill that responsibility. What we need is more unsung heroes like you heard about this morning.

Lastly, a challenge. Michigan, as you know, is undergoing a dramatic change in demographics, a
dramatic change in the economy. The Judicial
Crossroads Task Force, which you will hear about later
in this meeting, is studying the judiciary in relation
to Michigan's changing demographics and economy.

Similarly, are there any policies of the
State Bar that need to be reviewed, examined, perhaps
new policies promulgated in light of Michigan's
changing demographics and economy? I have no
particular policy in mind, but changes in Michigan are
unprecedented, and so, therefore, should the policies
be reviewed in light of the unprecedented changes?
Are there some policies perhaps that are obsolete.
Are there some that are anachronistic? Are new
policies needed? I challenge the Representative
Assembly to review and update State Bar policies and
in doing so you will be, we all will as a profession
be better equipped to serve and protect the public.

In ending, I want to tell you what a champion
of the Representative Assembly your Chair, Elizabeth
Johnson, is. On many occasions when we sit as a Board
of Commissioners she will say, This is a policy
decision. This should come to the Representative
Assembly first. And she is our constant reminder of
how important a task you are asked to do. Your work
really can be inspirational. I don't know if you have
ever thought about it in that sense, but it can be. So thank you, Elizabeth, for your service, for your leadership, thank you for those reminders. And I want to tell you that you are in good hands, because Victoria Radke, she is already starting to remind us of those same things.

I also want to thank you lastly for your service as members, continue to debate, continue to resolve policies that uphold the finest traditions and responsibilities of our profession to serve and protect the public. Thank you very much.

(Applause.)

CHAIRPERSON JOHNSON: Thank you very much, Charles. The State Bar will greatly miss your leadership.

The next item on our agenda is number 10, remarks from the executive director. I have already said a few things about Janet Welch, but I think it's important to note that Janet is always there for the attorneys and judges of this state and especially for the Representative Assembly. We are one of the most fortunate state bars in the country because we have a person who is as knowledgeable about legal matters as Janet Welch is. It gives me great pleasure to introduce to you, to reintroduce to you our Executive
Director, Janet Welch.

(Applause.)

MS. WELCH: Good morning. Thank you, Elizabeth.

I want to start by elaborating personally on an obvious thing, and that is that the Representative Assembly is not an abstract concept. It is the people who compose the Representative Assembly and in particular the leadership of the Representative Assembly. I was thinking about that, because at this meeting of the Representative Assembly when there is a changeover every year, and I have gone through the cycle every time I think, How is the Representative Assembly going to function without, in this case Elizabeth Johnson, and then I think back, Well, I think that every year.

And so the consoling thing is that the Representative Assembly always manages to choose people who are passionate advocates for the profession and they are passionate advocates for the Representative Assembly and they are tremendously hard, tireless workers. You do that all the time, so there really isn't any reason to have that what's going to happen next feeling that I feel every year and I think other people do as well. Victoria will be
a wonderful leader.

But part of it we are feeling I think is that every leader of the Representative Assembly has a unique personality and brings that unique personality to bear, so I want to say just a short amount about the personality that Elizabeth brought to the Representative Assembly, and, again, I am elaborating on the obvious, but she has been the consummate gentlewoman. She is such a role model of civility and composure and kindness, and I think that is one of the marks she will leave behind, and that's her stamp of personality on the Assembly.

She is so gentle and polite and civil that sometimes you forget what a passionate advocate she can be, and suddenly you realize she has just beaten everyone on that point with a big smile on her face, and so I have no doubt that she will go on and continue to serve the profession, but she has left her mark on the Representative Assembly, and we will miss her.

I have the luxury of my remaining I think six minutes of talking about just a couple of items, because the big items that you need to know about are going to be presented to you by other people today. The Judicial Crossroads Task Force, the Master Lawyers
Section, indigent public defense, which are big items, and I look forward to hearing what the experts on that have to say to you about them.

I do want to tell you about something really important that's about to launch in the next few weeks, and that is the State Bar's Triennial Economics of Law Practice Survey. In the past it has had limited participation, and that means that it's usefulness has been somewhat limited. You may remember this from the Smith V Khouri decision of the Supreme Court a couple of years ago on calculation of attorney fees. They pointed to, the opinion pointed to the State Bar's Law Practice Management Survey as being, economic survey, as being a uniquely important tool and pointed out some of its limitations, and in response to that we had a committee which took the survey apart and put it back together again in a way that we think will be easier for the membership to fill out.

For one thing, we have divided the survey into people in private practice and everyone else, so that will make it easier for both groups to fill out the survey. It's streamlined. You are going to be getting an e-mail, click on the link in the e-mail or go to the State Bar's website to fill this out. This
is not a Nike situation. This is not a "just do it" situation. This is just do it and tell everybody else to do it, because it's very valuable to the whole profession that the results of the survey are as representative as possible.

This year we are going to do what some other state bars have done successfully, and we are going to incentivize people to take the survey by having a drawing for prizes. I think I need to say nothing more than iPad, but there will be more than the iPad, so pay attention and please fill out the survey when you get it.

It occurred to me when I realized that I had a little bit of time that I have not told the Assembly a couple of things that I have told the Board of Commissioners and that I just told Solo and Small Firm Institute, and I want to make sure that I don't miss telling you this, because I think that this is the body that needs to be aware of potentially huge changes in the practice of law that some people think are happening, because this body is going to have to deal with how that affects the Rules of Professional Conduct and what we want to recommend to the court about what we should be doing about that.

These are what many people looking at the
global situation and the practice of law think are the
two biggest game changers coming our way. The first
is disaggregation of legal services, and think about
this as you hear what we have to say about the
Judicial Crossroads Task Force.

  Bottom line is, if you are charging attorney
fees for something that can be done at nonattorney
rates, chances are now and increasingly in the future
some attorney is going to be outcompeting you for that
service, because they are only going to be charging
attorney rates for what attorneys are uniquely
qualified to do, which is to bring to bear their legal
knowledge and skills on a legal problem. So that
means document -- that explains, for example, why the
big firms are outsourcing document preparation and
they are outsourcing anything that is not specifically
the lawyer part of practicing law.

  Bigger picture, how and where legal work gets
done is changing, and this isn't just about the fact
that it's now possible to practice law out of your
car. It's about the transnational nature of business
and the fact that even clients in family matters are
crossing borders, and the practice of law is crossing
borders.

  I want to tell you that England, the
birthplace of the common law, has decided that
beginning next year nonlawyers can own law firms.
Kind of gives you the ethical shivers. This is what
it would look like. It means that the equivalent of
Wal-Mart -- and there may even be Wal-Mart in England,
I don't know -- that Wal-Mart can provide legal
services. So you walk into a Wal-Mart, the Wal-Mart
greeter says, You looking for legal service? It's
over there behind the toilet paper.

Very scary concept. But I want you to think
about this. If that idea turns out to be profitable
for the people who practice law and Wal-Mart, what are
the barriers that are going to keep it from coming to
happen in this country?

Second thing I want to tell you about is that
the proponents of the change in England, one of the
reasons that they got that across is that they said
right now legal services are not affordable to the
poor. We are not making them affordable, and this
will help.

So I guess that's a challenge for us. If it
turns out that they are right and that is a more
affordable way to provide legal services, if it makes
it more accessible, if we don't have a better answer,
shame on us, and part of what we are talking about
today I think and always talking in terms of ATJ is is there a better answer?

Third, and this is what I told the Solo and Small Firm folks, I don't know whether it's true, but this is what they argue in England. They said this will actually be a benefit to solo and small firm lawyers, because what solo and small firm lawyers complain about most, billing, payroll, taxes, that will be handled by Wal-Mart, or if you want to feel more upscale, Costco, whoever.

I wanted to tell you that because I have told the Board that, and now I have told Solo and Small Firms that this is the most important thing for you to be thinking about. It may not happen next year or the year after that, but, you know, hang in there. We are going to have to be grappling with some of those problems, and I want to leave you with the image that the author of the book called The End of Lawyers uses to illustrate sort of what the world in which we are now living. By the way, I don't think that lawyers are ending, and neither does he, but it's a good book.

He talks about the training that the Black & Decker Corporation does for its managers. All the new managers come in, and they say the first question they ask is, What is Black & Decker selling? And, you
know, what's our iconic thing that we are selling? And everybody eventually gets around to saying it's the Black & Decker drill, that's what people think about, that's a brand, and ultimately they say, No, what we are selling is this, and they put up a big PowerPoint picture of a hole in the wall. They say, That's what our clients want. They buy the drill, but that's ultimately what they want. If there was a cheaper way to get that hole in the wall, that's what they are going to go to.

So I guess the point for us is that people don't want a lawyer. They want their problem solved, or better yet, prevented. And so it's our individual challenge, and I think it's our collective challenge as a Bar and as a Representative Assembly, to convince the public, as the State Bar's campaign says, A Lawyer Helps. That's what's coming, and I thank you all for working with us in making sure that we get the answer right. Thanks.

(Applause.)

CHAIRPERSON JOHNSON: Thank you very much, Janet.

The next item is number 11, presentation by the Master Lawyers Section Planning Committee. We have two presenters with us today, two very
distinguished lawyers. Ron Keefe, past president of
the State Bar of Michigan, and Greg Ulrich, past
chairperson of the Representative Assembly. Mr. Keefe
and Mr. Ulrich.

MR. KEEFE: I was actually in a pretty good
mood until I heard Janet. We will get started
anyways. I am delighted to be here, because this is
the place I started, and the place I always end.

I am here today really to give a brief report
about the new Master Lawyers Section that will debut
tomorrow, and so Greg and I are going to do it. Greg
served with me as the co-chair of the planning group,
and there were a number of distinguished lawyers that
were in that group. I know Vince Romano worked with
us in the group, and thank you very much, Vince, for
your help. There may be some others that I missed
here today, but I apologize for that.

Greg will talk about some of the specifics,
but what I want to do is to start with a little
background, because I know lawyers like background.

When I began my term as president three years
ago on this site, I challenged at that time the senior
members of our Bar to see what they could do really to
apply their experience to make this profession of ours
to better serve the public and the needs of the people
of Michigan in particular, and I saw this sector really as an untapped resource, and I asked those who are planning on retirement to rethink that idea of retirement and took the position really that retirement from a job doesn't necessarily need to be retirement from the profession.

And when we were talking about this and looking at the demographics, we found that, and this was three years ago, about 52 percent of the lawyers in Michigan who were active resident members were 50 years and older, and 23 percent were 60 and older. So this is, I think, a significant and dramatic shift in our profession, which is consistent throughout the country with other bar associations. I know the ABA has similar statistics.

But I think it also presented us with an opportunity that may not have been there before, and I think maybe, I don't know if Charles talked a little bit about pro bono needs in this state of ours, there just aren't enough lawyers to go around. Certainly there are for those that can afford them, but for the rest of the crowd, it's not. It's pretty bare.

So one of the first things I did, along with the Board of Commissioners, in November 2007 is we established a Senior Lawyer Planning Group, Senior
Lawyer Section Planning Group, and the idea was to explore and make recommendations to the Bar for programs and services and structures within our Bar association that really would provide a response to this significant and continuing increase in the number of lawyers who are over 60.

The planning group made its initial report to the Board of Commissioners in January 2008, and at that time they made a number of recommendations, and one of those recommendations was to explore whether we ought to create a new senior lawyer -- a new entity within the senior lawyer structure, and it would be similar, that the recommendation is that it would be similar to the Young Lawyers Section.

That brings us to this moment, and, as I said, Greg is going to talk a little bit about the details of the new section, but after three years of work with the planning group and with the Board of Commissioners and the staff of the State Bar, of course led by Candace Crowley and Anne Vrooman, we have created and tomorrow we will transition from a Senior Lawyer Section to Master Lawyer Section.

I am excited, of course, about this, because I have been with it for three years now. I think it's really the opportunities for senior lawyers under this
new section to do pro bono work, to start mentoring relationships with new lawyers and establish programs related to retirement and cutting back and even closing down law practices. Those are some of the programs we are looking at starting.

As I said, Greg is going to now flush out those details of how this new section is going to operate, but I wanted to get my licks in. I appreciate very much your attention, and thank you. We are looking forward to tomorrow. I am sure Greg will talk about it. There will be a program, a very nice ceremonial program tomorrow around 10:00, but I will leave that up to Greg. Thank you.

(Applause.)

MR. ULRICH: That was Ron whispering to me, It's show time.

I am not going to go through the minutia of the section, because, frankly, that's something for the section to not only deal with but also to be developing over the next few years, the early incarnation of the Master Lawyers Section.

The model that was examined was the Young Lawyers Section. Young Lawyers Section, as you may recall, is automatic membership up through age 35. The opportunity, though, of that type of model is
that, without the necessity of dues for a section, it draws in members of the Bar at an early point in their career to help nurture, to help them in their own expression of professionalism, their own engagement in the practice, to network, to create friendships and relationships.

When you get to the latter years, and when we are looking at the Master Lawyers Section and the criteria for that is going to be age 60 or 30 years of service, you have a wealth of wisdom, a wealth of experience, life experience, professional experience, that only comes from the years, the intervening years from young lawyer status to that point in the professional career.

So to tap that was the objective and to bring it to the point of being able to interface, to draw on existing resources in the Bar, that is the Bar's current operations, for instance, Practice Management Resource Center, the Lawyers and Judges Assistance Committee, areas that are existing within the Bar that can dovetail with some of the needs that do develop, frankly, over time. I am one of those who understands what the aches and pains are that you start getting once you get past 50.

There are a number of us who are in no way
thinking of leaving an active, professional life, and whether it was because a family member practiced till they were 90 or even were working in a nonlegal setting to latter age, the opportunity is in our profession, as in some others, to continue to be vital, to be engaged, to be contributing not only to the profession but to draw on contacts, resources, relationships, however you want to call it, the rain-making of latter years, the connections that might help your community, those are all resources that are inestimable and something I think all of us would feel that is appropriate for us to offer.

When the committee met, and we have had a good deal of resources from the Bar staff. Candace is sitting back there, Anne Vrooman, even in more recent time Danon Goodrum-Garland on bylaws drafting. We drew on the best resources we could attain, and we came up with some particular areas, and I am going to cover just the areas, I am not going to go into the details, but among them are we wanted to have some means of supporting an attorney's ability to continue to practice law, whether it was malpractice coverage, whether it was a reduced workload, transitioning your workload. You are still drawing clientele, but you would rather that somebody else handle work. A lot of
us manage to work that out, but the idea was for the
Master Lawyers Section to be a resource for that.

There was a point when I was on the Ethics
Committee where the question came up about an attorney
whose spouse was holding onto the files in the
basement of the house and wouldn't release them, and
that's one of the areas, the transition of practice or
the conclusion of a practice where you would see the
master lawyers looking at it and solidifying the
process, maybe picking up on the more volunteer
process we have with the Attorney Grievance
Commission, but at least structuring it so there is an
easy transition and everybody in Michigan who is an
attorney in Michigan will know what to do.

The value of those who have a lifetime of
experience through communications, newsletters and
also looking at other bar associations or the
State Bar's affinity bars so that we can dovetail with
training and programs.

There is also the goal of contributing to the
community, and that's something that I would hope
would make any individual feel good about what their
role in the profession and their role in society is,
and the idea would be to provide opportunities of
pro bono much more than we have today. In some
respects that would dovetail with the existing pro bono programs, but it would also be potentially having programs that are community based, local bar based so it's closer to home.

The program on Friday is not just a nuts and bolts of let's do the transition from Senior Lawyers to Master Lawyers. There is a significant program. It starts at 10:00, and it's over here in the Grand Gallery Overlook, Room C and D. Ed Pugh, who will be coming on as the Master Lawyers Section chairperson, will be welcoming people. Tony Jenkins, our new president, will be moderator, and we'll have a group of panelists who are going to be talking on the community-based pro bono contribution that Master Lawyers can make.

It's going to include Robert Grey, who is a former president of the ABA; Michael Chielens, the executive director of Legal Aid of Western Michigan; David Shaltz, a pro bono lawyer and who is of counsel of Chalgian & Tripp Law Offices; and Dick Fellrath, who is a counsel member of the current Senior Lawyers Section, and will become counsel member of the Master Lawyers Section. The program is something that I would invite all of you who will be staying over till tomorrow to attend.
This is an opportunity that I hope in terms of the name is not lost. It would have been fairly easy to go in lock step with Senior Lawyer Section. We have a number of positions in life -- senior vice president, senior attorney, senior partner -- that have very positive connotations. We did wrestle with the negatives, and it was through the creative collaboration of the committee that options started to come up, and Master Lawyers was a focus on the mastery of our profession, the skill set, the wisdom, the self-confidence, the common sense of law that can be brought forward and continue to contribute.

This isn't a payback in my eyes. This is a continuation of moving forward, so I invite you on Friday to attend. Attend the transition meeting, and if there is anything that you have in the way of a question, Ron and I are available, the committee is available. The committee did an extraordinary amount of work in meetings. Some of them, the members, are commissioners, former commissioners, judges, Judge Gribbs was on it, Judge Harold Hood. It was a cross-section, and we hope that the product is something that will remain valuable to the Bar in the future. Thank you.

(Appplause.)
CHAIRPERSON JOHNSON: Thank you very much, Ron and Greg, for your presentation and your hard work.

The next item is number 12, the update on the Judicial Crossroads Task Force. We have again another distinguished leader of the Bar. Our presenter today is Mr. Ed Pappas, former State Bar president and former member of this Representative Assembly.

MR. PAPPAS: Hello. Well, Elizabeth just told me that I have 30 seconds.

CLERK GOBBO: And, Ed, I have got the clock right here.

MR. PAPPAS: All right. Actually I am going to give you very quickly a little bit of the history of how we formed the task force, what we have been doing over the past year, and where we are going. And I am going to ask Justice Davis to spend a very short time telling you what he has done with the judges, and we will do this in a very limited time.

But to give you a little bit of the history, about two years ago, in 2008 when I was president-elect of the Bar, I met with a few judges and lawyers about how we might increase judicial compensation for state judges because state judges had not received an increase in compensation, even a cost
of living increase, since 2001. That was an election year, and we decided to wait until after the election to form a larger committee to talk about strategy.

After the election, the governor in her State of the State Address recommended that there be a ten percent cut in the compensation of all public officials, including judges. So we changed our focus and we asked Barry Howard, who was my co-chair of the task force, to represent the judges and the Bar in front of the SOC Commission and the legislature, and the SOC Commission recommended a ten percent cut in the compensation of all elected officials, except judges, based on constitutional reasons, and the legislature followed suit.

We then had a meeting with a much larger group of lawyers and judges at the State Bar offices and decided because of the economic crisis that we were facing in Michigan and because there were forces looking to change the structure of our court system in their own ways, we decided that if there was going to be a change in court structure, if there was going to be court reform, it should not occur, it should not be done by the legislature, by the executive branch or by the public, a few piecemeal initiatives, rather it should be the judges and the lawyers who make those
important decisions.

And this wasn't just a state crisis. It was a national crisis, and one of the judges at an ABA convention said that if you are not at the table you will be on the menu, and none of us wanted to be on the menu of the legislature or anybody else.

So we formed this task force, which is made up of 28 people, half judges, half lawyers. The judges are represented from every court, the District Court, Circuit Court, Probate Court, Court of Appeals, and the Chief Justice of the Supreme Court sits on our task force.

We also formed four committees. The Court Structure and Resources Committee, which Justice Davis has chaired, and that is made up of all judges, 24 judges, and he will talk a little bit about that briefly. We also have an Access to Justice Committee, a Technology Committee, and we have a Business Impact Committee, and the committees have worked diligently and very hard over the past year. The task force has met a couple of times. The committees have already made some recommendations that will be considered by the task force in late October of this year, and I am briefly going to tell you what some of these recommendations are, because the recommendations allow
for a more efficient court system providing better
service to the public with much less resources. And
the recommendations include consolidating court
functions, and if there has to be a reduction in the
number of judges, it will be done based on reliable
data which the task force and SCAO have developed, and
it will be done only by attrition. Nobody is going to
lose their job.

Recommendations also talked about creating a
trial court judicial council with authority to
implement changes in our judicial system. Also
creating a justice advisory board to promote access
and fairness goals. We are also talking about
removing politics from the determination of judicial
compensation.

The recommendation talked about implementing
a statewide technology system. If we are going to be
more efficient, we have to have uniform technology
throughout the state.

Increasing the use of problem solving courts,
creating a pilot program to test the effectiveness of
business dockets, supporting statewide standards for
the delivery of indigent public defense, improving
child welfare outcomes and translation services.
These are just some of the recommendations that the
task force will be considering.

We believe that the recommendations are going to be transformational. They are going to be sweeping, and you are going to be hearing a lot more about these recommendations in the future, and we are going to be looking for your input and your support in implementing these recommendations. We are going to have an implementation committee that's going to go to all the stakeholders, which includes the State Bar, not only the Board of Commissioners, but the Representative Assembly. We are going to go to the legislature, the governor, municipalities, counties, everybody who has an interest in improving and making our court system more efficient.

And with that, I am going to ask Justice Davis just to talk for a couple of minutes on his work with the judges in connection with this task force.

JUSTICE DAVIS: I can't tell you how pleased I am to be in the presence of a group of lawyers. You know, I was a circuit judge for 21 years, and for the last five years I have been in the Court of Appeals we almost never see lawyers. It's great to be with you. It's sad but true. I have always heard of the Representative Assembly, and I have never been here,
so it's a great privilege for me.

What you are hearing today is the face of the future, and you should heed it well. The committee that I chaired, Judicial Resources and Structure, was comprised of eight judges from each of the three benches -- probate, district and circuit -- and I don't know how well you know your judicial history, but 10 or 15 years ago you couldn't get three judges from three different benches in a room without having an argument in three minutes.

These judges met from September to June, the second Tuesday of every month for a full day, and we spent all the time from September up until January looking at the system and looking at the economics of Michigan as it stands today in trying to determine what the future was going to look like before we took our first vote. In January we began to vote on what we thought we should be doing going forward, and we came up with about ten recommendations which are published by the State Bar. They are recommendations to the overall task force, and all of them were unanimous. And that is what we are going to be doing going forward.

Now, what does that mean to you as lawyers? There are going to be changes, but it's not going to
be dramatic in the sense that it's going to upend your practice or it's going to upend the system as you know it. That's the last thing that we want to do, but the changes are intended to provide better service to the people of the state of Michigan with the recognition that we are going to have less public resources to do that, and we must be prepared for that.

Sandburg said, I think, in a poem one time that the fog crept in on cat's feet, and that's about how this is going to go. But it's all a piece. In the work that Ron is talking about today with his new section, it's important. These are all kind of collateral, but they all go together.

What Janet was talking to you about with this book, The End of Lawyers, you really need to read that. I have read it. It's the future. We are not going back to the quill pen and parchment. It's not going to happen. It's a world of technology, and we must fit within it. And as the lawyers, you are the ones who will explain to the public what we are doing for their benefit, because that really is our overriding mission, whether you are a lawyer or a judge, it's to serve the public and to uphold your oath of office.

So when we get these recommendations out, we
are going to be looking to you to help us implement, and it's going to be good for you to do it, it's going to be good for Michigan that we do it, and it's going to be absolutely essential, and I know we can count on you, and it's going to give me the opportunity to come back and visit with you more, which I am looking forward to. Thanks. 

(Applause.)

CHAIRPERSON JOHNSON: Thank you very much, Justice Davis and Mr. Pappas. We appreciate the hard work that you and your committee have been doing this past year.

The next item is number 13, recommendation to add a new Representative Assembly standing committee. At this time I would recognize the proponent, Krista Licata Haroutunian, who is the chairperson of the Special Issues Committee.

MS. HAROUTUNIAN: Hi, my name is Krista Licata Haroutunian, and the issue at the moment is the formation of a new standing committee of past chairpersons of the Representative Assembly.

This item was brought before Special Issues, and we voted unanimously in favor of the formation of this committee in concept, which would allow for the utilization of institutional memory for this body, and
on behalf of Special Issues we are asking for the R.A. to refer this concept to the Rules and Calendar Committee to allow for a more definitive outline and purpose and direction and bylaw changes where appropriate. The idea would be that this proposal with the bylaw change would then come before the Assembly for approval at the April meeting.

So, therefore, on behalf of Special Issues and myself out of the 6th circuit, I move that the concept of a new standing committee of past Representative Assembly chairpersons be referred to Rules and Calendar for their consideration and for later presentation to the R.A. for consideration and approval at the April meeting.

VOICE: Support.

CHAIRPERSON JOHNSON: Thank you very much, Krista, to you and your committee. The motion, and I heard a support. There has been a motion and a support by the Special Issues chair to refer the matter of the new Representative Assembly standing committee to the Rules and Calendar Committee. Is there any discussion?

Hearing none, all those in favor of the motion to refer the issue of a new Representative Assembly standing committee of past chairpersons
committee to the Rules and Calendar Committee, please signify by saying aye.

Those opposed please say no.

Any abstentions?

The motion to adopt a new committee, a standing committee of the Representative Assembly, past chairpersons committee, to refer to the Rules and Calendar Committee, has been adopted. Thank you very much to Ms. Licata Haroutunian and to her Special Issues Committee.

The next matter is number 14, our public defense update. Speaking to you today is Elizabeth Lyon, and, as most of you know by now, Elizabeth Lyon is an incredible, hard-working, dedicated woman who has kept this Assembly abreast of all of the policy issues, and she has not only kept us aware, but she has kept us two steps ahead of everybody else.

So, Elizabeth, it's with great pleasure I invite you to address the Assembly.

MS. LYON: Thank you very much for that warm welcome, and it's such a pleasure to be with you all again this afternoon. Certainly it's always a highlight to be able to present to you on important policy matters that are being pursued and advocated for by the State Bar of Michigan.
I do want to focus on public defense reform, as we often do during our short time in this presentation. But quickly before I get into that, when we spoke last March, I talked to you all about a potential sales tax on legal services rearing its head again, that the State Bar had been advocating against that. I am pleased to say that conditions look favorable for the current legislative session that we will not see a sales tax on services proposal, period, which means we wouldn't see a sales tax on legal services.

It will certainly be a new dynamic to be considering come January 2011 with a whole new executive branch and a very new House and Senate. We are still trying to see if that threat will re-appear in the next legislative session, and, quite frankly, we appear to be, you know, we are poised to be fighting that fight for some time until it's finally dead.

Moving on to public defense. I think I have been able to have conversations with many of you who have a particular interest in this area. Quite often I get the question, Is anything really going to happen? This is such a big issue. And I have to tell you, especially working in the day-to-day minutia of
trying to get very significant legislative reform through that quite frankly helps a constitutional right that we all believe in but then is on its face to protect the rights of criminal defendants and will cost a significant amount of money that is new, that's not currently being spent, and a term limited legislature with horrific budget problems, you rightly ask the question, Will this ever get done? And it's such a pleasure for me to come before you, because it gives me the chance to list for you what we did the last six months, and I can always happily arrive at a conclusion that every time I come before you I can report significant and positive movement forward.

I want to hit on three main things today quickly, and then I can open myself up for questions.

We have talked before about House Bill 5676 that was introduced by Representative Bob Constant and Justin Amash. You might know, he is from Grand Rapids, that Representative Justin Amash won his primary bid for a congressional seat and is pretty much guaranteed the general election win given the makeup of the district. He will be moving on to congress, but he continues to be very passionate about accomplishing something before he leaves in the new year.
We have now gotten together through a legislative work process that was established by Chair of the House Judiciary Committee, Representative Mark Meadows, we brought together in a new way that is significant the Michigan District Judges Association, the Michigan Judges Association and other groups who have been working on this, and I am really pleased to report that I think we are very close to a strong consensus between those judicial associations and the State Bar about what reform will look like in Michigan and what are our consensus principles.

That might sound on its face like not a lot, but actually when you have the voices of the judges and the Bar and others joining, it is a very positive and forceful thing. So we are working on a phased-in implementation plan. We will not see 5676 as introduced likely enacted. We will see a scaled down version of it. We will likely have to go back to the legislature for a phase two implementation, but we are looking on a preliminary commission that will start moving this ball forward in Michigan.

Another interesting development, the State Bar has not been involved in the state legislation that I talked -- excuse me, the state litigation that has been going through our State
Appellate Courts, the Duncan lawsuit. I told you last March that it was up before the Supreme Court for oral argument in April. We were pleased to see on April 30th an order issued unanimously that affirmed the Court of Appeals ruling that would have allowed that case to proceed.

We were surprised. I can say that on July 16th we saw another order issued that rescinded the April order by a vote of 4/3 that essentially killed the case, if you will. It reversed the Supreme Court in that the litigation not move forward, that it should be remanded to the trial court for summary disposition.

I am told by the litigation team that is comprised of both lawyers here in Michigan and lawyers in New York and who have brought this type of litigation in other states that they are continuing to pursue other litigation strategies and they haven't given up yet.

The last thing I want to mention to you all today, and it's incredibly timely. Perhaps I am sharing with you some breaking news on this development. Just this week on September 27th U.S. Senator Patrick Leahy, who chaired the Senate Judiciary Committee, introduced a bill that would be
the Justice Reauthorization Act. One of the things that has really kept us motivated is help from our federal government that we saw sort of talked about by our U.S. Attorney General Eric Holder and other officials in the Department of Justice. The introduction of this bill embodies much of what we expected from them in the form of help.

Important in this bill is that it would give DOJ the authorization to sue states for repeatedly violating the 6th amendment right to counsel, but it has a two-year delayed effective date. So essentially what it would do, it would give a carrot and stick approach, basically give states two years to be compliant, to fix any systemic issues, and after those two years DOJ can start filing lawsuits against states, and their ability to file lawsuits will actually be very broad. They can file it against individual defense attorneys, they can file it against counties if we have county base system, or they can file it against the whole state. This is significant if it passes. It will also provide some assistance to states for that two-year period in which to bring their systems into compliance.

I can tell you through conversations I have had with our friends in D.C. and Department of Justice
that Michigan is the focus of this legislation, that
the officials there are very -- what's a good word to
use -- unhappy with how things have been progressing
in Michigan, and they really, even in the press
release issued by some of the national organizations
cited Michigan as a prime example and a prime target
state to which DOJ would begin applying its authority
to these lawsuits if Michigan did not do something in
two years.

So I want to back up to what I told you
about, the idea of doing a phased-in approach. A
current strategy that we are pursuing is to use this
federal legislation to really convince the legislature
that they have to take a step forward. By doing a
phase one commission they really set up the structure
in which the state can have a new system reformed in
which to avoid a lawsuit. We like the stick of the
lawsuit approach. We do not like the lawsuit. So we
want to make sure that we use that to avoid the
lawsuit, because we certainly know that our state
can't afford that either.

So I am not sure if I have completely eaten
up all of my time. I am happy to answer your
questions either in this forum or individually. I
will be around the next few days if you want to find
me. I will leave that to Liz.

CHAIRPERSON JOHNSON: Thank you very much, Elizabeth. And I would like to remind the Assembly members today to take what you have learned today about the various policy issues, take them back to your circuits and continue the conversation with your colleagues.

Next item is number 15, the American Bar Association delegate report, and to give the report today we have Ms. Vanessa Williams who is, we are very proud to say, our Representative Assembly member who is on the ABA Delegation.

MS. WILLIAMS: Thank you, Madam Chair.

As she indicated, my name is Vanessa Williams. I sit in the Assembly from the 6th circuit. I also serve as one of your State Bar delegates.

Just briefly today I would like to give you just an update of what occurred at our annual meeting in August in San Francisco, just some of the great highlights of being able to be there. The ABA Medal this year was present to Ruth Bader Ginsburg, and she did address the house, so that was very nice.

As you all know, we changed the president, so the presidential gavel was passed to Stephen Zack of Florida. One of his focuses this year will be civil
education. He also had a great commitment to civil
rights.

House chair also changed to Linda Klein of
Georgia, and we heard from our new president-elect,
which is William T. Robinson of Kentucky.

One of the other highlights which was
something unusual, well, not unusual but really nice,
the State Bar of the house members from the state of
Alabama actually brought a recommendation to recognize
the 50th anniversary of To Kill a Mockingbird by
Harper Lee, so that was a very delightful presentation
for us to take part in.

For a highlight of the recommendation in
terms of rules and regulations and constitutional
amendments, most of the ones that I will talk about
will be the ones that passed, but I do want to bring
your attention to one that failed, because we talked
about this at our last meeting, and it was in regards
to amending the ABA Constitution of Rules and
Procedure in regards to providing each territory with
a house delegate.

As you may recall, currently some of the
territories do not have representation in the house.
Others may have one delegate, and then I think there
are two that share one delegate. The provision was to
give each territory one house delegate vote. That provision failed, and it actually failed twice during the meeting, so we will not have that. I am sure it will come back again.

There was also a significant change to the house of delegates' role in the accreditation process for law schools. As you may recall some years back, I think in 1999, the Department of Education indicated that there needed to be a separate and independent entity, and so the Counsel Section of Legal Education and Admissions of the ABA, it's not of the ABA now, it's an independent entity, but they would still bring back appeals to the House of Delegates. So if a law school did not receive its provisional accreditation, they could appeal to the House of Delegates and the House of Delegates would take a look at that and then refer that matter back to the council.

Based on changes that took effect in July of 2010 from the Department of Education, the House of Delegates can no longer be involved as an appellate entity in the accreditation process. So the council will make all decisions in terms of provisional and then permanent accreditation as to the law schools and would be that appellate entity or appoint an appellate entity. The Houses of Delegates can no longer do
that. We will just receive notice of those decisions.

What we talked about before, new implementation of dues, we talked about that at our last meeting, and, as I told you, in February at the midyear meeting there was a lowering of ABA dues for judicial members, solos and nonprofit practitioners. There was to be in August the lowering of dues for all members, and that did not occur. That motion was initially put on our agenda. It was withdrawn, and we were told it was withdrawn for economic reasons but at the midyear meeting the recommendation will come back for a vote.

There were a number of different things regarding civil education, urging states and territories to provide funding for that. There was also a recommendation passed to urge states and territories to eliminate barriers to same sex marriages.

In the criminal law arena we saw a lot of action. There was a recommendation to urge the DOJ to continue its commitment to investigate misconduct by its lawyers. There was also a recommendation for states and territories to provide unified or consistent standards throughout the country for different forensic laboratories, examiners to have a
nationwide database for fingerprint analysis.

And then one important to prosecutors, there was a recommendation passed to request that trial courts of an appellate court when making an opinion as to prosecutorial actions that they distinguish between simple errors and prosecutorial misconduct. There was also a recommendation to provide a consistent judicial standard in terms of amending the ethics portion of the model code in regards to judges.

And starting this new Bar year I have a new appointment to the ABA's Commission on Youth at Risk, so the next two recommendations are very near and dear to me that I wanted to bring to your attention.

There was a recommendation to provide legal counsel to juvenile offenders throughout the process when there is some type of status hearing to determine whether they would be tried as adults or as a youth. And a last one was to increase the foster care guardianship age to 21. And people might say, well, what's the big deal with that?

Currently foster care children age out at 18. In the state of Michigan we have a huge population of foster care children, and there is some current pending legislation to address some of the issues in our state, but the Children's Defense Fund has found
that there is a correlation between the number of foster care children and juveniles who end up in the criminal system.

And so if you look at a state like Michigan where we spend almost more than two times the amount of money on prisons than we do on our education for our kids, I think it's important that we try to break one of these issues, which is the foster care system that is a part of that pipeline to prison for our youth, and so I think in our state, just as in many other states across the country, it will be important to urge that the foster care guardianship age is increased to age 21, and that will provide those children some more guidance through their adulthood rather than at 18 them aging out into the system and not really knowing where to go.

One last thing I will talk about is that there was a recommendation to change Model Rules in terms of trust accounts, and that change will just try to align what the Model Rule requires with the new banking laws that have occurred over the past couple of years.

I do actually have recommendations with me. If you wanted to take a look at those, you have my contact information in your agenda today. If you ever
have any questions or concerns, you have the right to
give me a call and voice your opinion as to how you
think your State Bar delegate should vote, and if you
ever care to follow along with our annual or midyear
meetings, you can often catch them on the ABA website.
They do a live streaming, and just recently they
started where you could follow along if you tweet.

Thank you again for letting me come before
you. As always, let me know if you have any questions
or concerns. Thank you.

(Appause.)

CHAIRPERSON JOHNSON: Thank you very much,
Vanessa. We really appreciate your effort and the
work you do, not only on the Assembly, but with the
ABA.

I have been asked by the chairperson of the
next matter, the Special Issues Committee, if they
could have a two-minute recess for the Special Issues
Committee to meet briefly. If you will please not
stray far from your seats, we will, without objection,
resume this meeting in approximately two minutes.
Thank you.

(Break taken 11:36 a.m.–11:38 a.m.)

CHAIRPERSON JOHNSON: This meeting is again
back in session. Referring to the next item,
number 16, the update and consideration of the Revised
Uniform Arbitration Act. After a discussion of the
Special Issues Committee, the committee is not ready
to report today and the matter will remain in the
committee. I thank the Special Issues Committee and
their chairperson Krista Licata Haroutunian.

At this time the body will be breaking for
the inaugural luncheon. The inaugural luncheon will
go until approximately 2 p.m. We ask that you be back
here in your seats ready to begin at 2 p.m. We will
begin our session after lunch as close to 2 p.m. as
possible. This is the inaugural luncheon. As many of
you know, that sometimes goes a little longer, but we
will make every effort to be back here starting at
2:00.

Please remember, and you may have a little
time now before lunch, to fill out your committee
assignment requests for next year and get them to
either Victoria Radke or to Anne Smith.

I thank you. We are now in recess until
after the inaugural luncheon. Thank you very much.

(Lunch break taken at 11:40 p.m.-2:10 p.m.)
CHAIRPERSON JOHNSON: Would everybody please
find your seat so that we might get started. Thank
you very much. We are now back in session.
At this time I am very happy to introduce to you Ms. Nicole DeVries of Access to West Michigan, the group that we partnered with today here in Grand Rapids for our Representative Assembly and State Bar of Michigan food drive that we are holding in conjunction with our Access to Justice fundraiser as we celebrate the State Bar's 75th anniversary. As those of you just heard Tony Jenkins remarks at the inaugural luncheon, today more than ever we as lawyers need to step up, whether it's in a food drive or our Access to Justice fund reserve or in providing pro bono programs, and today Ms. DeVries would like to say a few words to us about our participation.

MS. DEVRIES: Thank you. Good afternoon, everyone. My name is Nicole DeVries, like she said, and I work for Access to West Michigan. I am the poverty education director there. Access is a local nonprofit serving the Kent County area, and we do hunger and poverty work in our county. We help to oversee the network of a hundred group entries here in the Grand Rapids area and all over the county helping to meet needs in our community.

So right now our patrons are serving over 7,000 households each month, so that's about 20,000 men, women, and children just in this area, so imagine
what it is across the state from where you all are from as well. We also work with churches in the area to help meet needs in their community, and we do poverty education and advocacy work.

So I just wanted to thank you for your involvement and thank you for those who donated food and for all the work you are doing, and I think that's really important that you guys are also involved in these kind of issues that you are helping in your own way. So I just want to thank you for that.

(Applause.)

CHAIRPERSON JOHNSON: Thank you very much, Ms. DeVries, and thanks to all of you who have participated and contributed to today, and a special thanks to Board of Commissioners member and past chair Bruce Courtade for helping put us in contact with the Access to West Michigan food drive.

Moving on to the next item is number 18, consideration of legislation for the Uniform Collateral Consequences of Conviction Act. Our proponent today is Mr. Martin Krohner, Assembly member and member of the Committee on Justice Initiatives.

Mr. Krohner, if you would like to come to the podium.

Additionally, Ms. Miriam Jane Aukerman is
also going to be a proponent.

MR. KROHNER: Thank you, Madam Chair, members
of the Representative Assembly. I am Martin Krohner,
co-chair of the Criminal Issues Initiatives of the
State Bar. With me is Miriam Aukerman, who is a
member of the Criminal Issues Initiatives, and she
will be doing most of the discussion about the
Collateral Consequences Act.

Ms. Aukerman is a member of the West Michigan
Legal Aid and heads up the reentry program for Western
Michigan Legal Aid. Also, she has developed through
their offices a weekend site that has been up and
running now for a few years that provides information
about various collateral consequences for criminal
convictions.

To keep the matter rolling quickly, I am
going to bring up Ms. Aukerman, who will head the
discussion, and hopefully both of us will hopefully be
able to answer some of your questions. Miriam.

MS. AUKERMAN: Thank you, Marty. Good to be
here today.

So I talked to some people a little bit just
now, and I want to first of all talk about why the
Uniform Collateral Consequences of Conviction Act is
important.
There are over a hundred million Americans that have some type of criminal history record on file. The estimate is one in three adults has some kind of criminal history on file, that would include arrests. One in four have a criminal record. There are estimates between 13 and 17 million Americans have been convicted of a felony. There are a lot of people out there, probably people in this room, who have criminal history.

At the same time we have this staggering number of people who have criminal records. The internet and technological changes have vastly expanded access to that criminal record information. As technological changes have made screening people for records much easier, states have started imposing more and more, and Michigan is no exception, more and more collateral consequences on people who have criminal records. These are real barriers. Not talking about what private employers do or private landlords, talking about state imposed legal barriers to housing, to employment, to education, public benefits, to licenses, and those kinds of opportunities and benefits.

These collateral consequences, particularly for lower level offenders, not necessarily so true for
people convicted of more serious offenses, but for lower level offenders these collateral consequences can be much more significant than the consequences of the criminal penalties themselves. According to Bureau of Justice statistics, nationally 60 percent of those convicted of felonies are not actually sentenced to prison.

For those individuals and for individuals who are convicted of misdemeanors, the collateral consequences may be much more important. We are talking, you know, if you are looking at a short amount of jail time or probation, something like deportation or a loss of housing or loss of the license that you need to do your job, the loss of the opportunity to have contact with your children. All of those things can be more significant to you as a criminal defendant than the actual criminal sanction.

But the way that we think about criminal sentencing and criminal consequence has really been within a criminal framework in terms of what are the criminal consequences while ignoring the fact that the collateral consequences are so significant.

Defendants often don't know what those consequences are, and there are hundreds of them. They are scattered all through the MCL's.
scattered through federal law, and so it is, as a practical matter, very difficult for attorneys to provide advice about what those consequences are.

The other thing that's important to recognize is that criminal sanctions are tailored to individuals. We have sentencing guidelines. We look at what the history was, what the nature of the offense was, and the appropriate sentence is determined.

Civil consequences don't work that way. They are typically imposed automatically as a function of law. You don't look individually should someone lose their ability to work in a particular profession, just boom, you have been convicted of this, you can no longer work in this field. So they are not tailored in the same way that criminal sanctions are, and what happens as a result is that the collateral consequences are often quite inappropriate and not related to the person's offense or ability to work in a particular field, pursue an education, or otherwise access opportunities or benefits that are denied based on the criminal record.

However, short of expungement or pardons, which are in most cases not available, there aren't mechanisms to relieve these collateral consequences,
so you have a consequence that's completely inappropriate for the individual, and there is no way for that individual to come back and say, you know what, I am a great health care worker, and, yes, I had a run-in with the law that has nothing to do with my ability to work in this field, and I would like to be able to continue to work in the field that I am trained for and went to school for, you know, spent my money on an education for. There is no way to go in and ask for that in many, many cases. There are some exceptions around licensing, but a lot of statutory barriers are automatic.

Collateral consequences are a national problem. This is not an issue that is unique to Michigan, and so the Uniform Law Commission, a lot of very bright legal minds from all across the political spectrum -- criminal prosecutors, defense attorneys, judges -- came together to try to identify how do you address this very significant issue, and they promulgated the Uniform Collateral Consequences of Conviction Act. The Criminal Issues Initiative of the State Bar then looked at this, convened a working group. Basically the version that you have in front of you is quite largely the same as what the Uniform Law Commission adopted, what they promulgated. There
is some reference to Michigan law. There is a few
minor changes that are addressed in the materials, but
it's essentially the same thing.

What we are now asking the Representative
Assembly to do is to support and advocate for state
legislation that would implement the Uniform
Collateral Consequences of Conviction Act. There is a
sample of what that act would look like that's in the
materials, but I want to emphasize today we are
discussing, I think it's not helpful to discuss the
specific wording so much, rather we should look at the
overall principle of adopting legislation to address
collateral consequences. So I would like to focus
next on what that framework is in the legislation.

Basically what the UCCCA does, there are
four, I would say four central things. First of all,
it provides for the collection and compilation of
collateral consequences in one place so they are easy
to identify. I have been working in this area since
2003, it's what I do full time, and I still see
collateral consequences periodically that I was not
previously aware of or I didn't know were out there.
It's very, I think it would be tremendously helpful
for attorneys to have a place where they can reference
that material. As Marty mentioned, we have a website
where we have a lot of that information available, but it's certainly not comprehensive.

There is federal requirements now that every state creates a compilation, and the ABA is working on that, and that will be sort of the nucleus of what's required under the act, but that would, of course, need to be maintained and updated over time. So that's the first thing, making that, creating that compilation so that information is available and accessible.

The second thing is requiring notice to defendants about what the collateral consequences are at important points in the proceedings, which would be adequate or formal notification of charges at plea or sentencing, actually sentencing, and when leaving custody.

The idea here -- two ideas here. One is that at the sort of decisive state in making a decision, for a defendant to make a decision, that person needs to know not just what the criminal consequences are but what the civil consequences are, because those can be, again, much more significant. It could involve deportation. It could involve loss of employment or loss of housing, and those consequences can be very, very significant. So it's important for there to be
notice.

That notice is not going to be the judge sitting down and reading through the thousands, you know, thousands of consequences that are out there but providing defendants with information, a notice set out in the act itself in Section 5 saying here are the types of consequences you can experience and here is where you go for more information so that people are noticed that this is an issue for them.

And then, with respect to people coming out of custody, they may have been in custody for a while, they may not know that they can't have a firearm, or they may be unaware that their right to vote is restored when they leave, when they are finished with incarceration. So it is providing that kind of information, so people can act upon their rights and also recommend what prohibitions apply to them, so that's the second piece. First collection, second notification.

The third thing I think is basically to say that if there is convictions that are not convictions, a conviction that's been expunged or pardoned, if a person goes through a diversion program and the case is dismissed, that collateral consequence is not to be imposed in those kind of cases. I think there are
defense attorneys, maybe prosecutors, in the room who would be surprised to know, for example, that you can have a case dismissed under 7411 or under the Holmes Youthful Trainee Act and not have a conviction and nevertheless be barred for life from working in long-term care employment or something like that. So it's giving people, if there isn't a conviction, there shouldn't be a collateral consequence is the idea.

And fourth, the act creates mechanisms for relief from these consequences. Again, these consequences aren't tailored in a way that criminal sentences are, and so it creates safety valves. There are two types of mechanisms that the act envisions. The first is an order for limited relief, and basically what this does is it permits the court to lift a specified sanction if there is not an unreasonable risk to public safety.

To give you an example, the individual is pleading guilty to a particular offense but if that person has that conviction they would be barred upon employment in their profession as a matter of law. So the court would he have the discretion to look at the circumstances and say, all the other collateral sanctions apply, but the automatic barrier here, the automatic barrier that says you cannot work would not
an apply. Doesn't mean the employer can't fire that person and say, I don't want you, doesn't prevent that kind of private decision making, but it says, if the employer continues to want that person, there is not a legal barrier to that person continuing to work, because they have gotten that order of limited relief.

The second is a certificate of restoration or rights, and this is basically a more generalized relief from collateral consequences that comes after a period of time.

I should point out that these relief mechanisms do not apply in three particular areas. They do not apply on the sex offender registration. They do not apply to driver's license, issuing motor vehicle issues, driver license suspensions, and they do not apply in the context of law enforcement Department of Corrections employment. So those barriers, a court could not lift those kinds of barriers.

Those are the four things that I see as central to what the act does, and you can look at yourselves. It's obviously a complex piece of legislation with a lot of different pieces to it.

What the act doesn't do I think is also very important to focus on. The act does not provide a
basis for invalidating a conviction. The fact that a person did not get notice, the fact that there is some kind of collateral consequences out there, that is not a basis for invalidating a plea, simply not. It does not cause an action for money damages. It does not affect the duty of an individual's attorney to that individual, so for the defense attorneys out there who are saying I don't know anything about collateral consequences and I can't advise my clients about this, it does not impose a duty. What it does is it creates information that's available, but it does not impose a duty on the defense attorney. It may, because the defendants are going to get notices, it may prompt more questions certainly, but it doesn't impose a duty.

So let me just finish very quickly by saying, again, this is a complex piece of legislation. I would really like us to focus on the overall picture. Should defendants be notified about collateral consequences, should those consequences be collected, and should there be a relief mechanism for those consequences? That's what we ask you to look at today.

MR. KROHNER: Thank you very much. Any questions? Oh, I have to make the motion first, I am
sorry. Put the cart in front of the horse. Going to get the language correct.

Motion being moved that the -- should the Representative Assembly support and advocate for the state legislation that would implement a Uniform Collateral Consequences of Conviction Act?

CHAIRPERSON JOHNSON: Do I hear support?

VOICE: Support.

CHAIRPERSON JOHNSON: There has been motion and support that the Representative Assembly support and advocate for the state legislation that would implement the Uniform Collateral Consequences of Conviction Act. Any discussion?

MR. POULSON: Barry Poulson, 1st circuit. I am a public defender, and I speak to this topic in support of the proposal.

First of all, collateral consequences, as described, are tremendously complex and perhaps became more aware when the Supreme Court finally decided the Dia (sp) case, and that said that attorneys like myself in the public defense sector must notify clients of their immigration consequences, and I think the Supreme Court said a simple reading of the information of the statute would tell you what you needed to say.
I called an immigration attorney with the seven pages in my hand, and that attorney -- I said, can you give me this in a nutshell, and before they hung up on me I could hear laughter. So just that one tiny consequence is tremendously complicated, and yet that's the requirement of my position. I get censored by fatalism because I didn't tell a client the situation, a client who might, by the way, be quite evasive about their immigration status.

The second thing is that the compilation that you described would be tremendously helpful, at least I can go to someplace or point to someplace. I read Attorney Kelly's letter, and I have to note that research as of this morning, 18 percent of the people in Michigan are illiterate, in some jurisdictions 49 percent, so I don't know whether written notice is going to be adequate here, but I think the notification to the client or to the attorney with the client is going to be helpful too. There are injustices that happen, and there are some consequences that we haven't explored yet.

If you are convicted of this felony, I have already been asked, does that mean I can't get renewed on my MMA card? I mean, I am going to be stripped of my MMA card. Can I have my MMA medicine in jail?
Well, maybe not smoke it, but can I have a tinch?

What about crossbow. Can I hunt with a crossbow even if I can't hunt with a gun? These are complex issues to our clients, so I am very supportive of this measure. I recognize its incredible complexity, but if the first step is simply compilation and our broader discussion of these, I think it will help a lot. Thank you.

CHAIRPERSON JOHNSON: Thank you very much, Mr. Poulson. At the microphone over here, Judge Kent.

JUDGE KENT: Wally Kent, 54th circuit, Tuscola County. He is a public defender. I am a Probate juvenile court judge, and over the course of the last 34 years have learned that we all make mistakes. I suspect if those of us here today would examine our consciences we could say to ourselves there but for the grace of god go I, and there are all things that we are fortunate enough to perhaps not to have been caught at or punished for.

One of the things I have learned in the course of my experience as a judge in juvenile court is that people's brains mature rather slowly and, in fact, the experts would tell us that people's brains are not mature until probably the age of 25 or so. If you look at statistics, the vast majority of offenders
are under 25, and yet they have to live the rest of their lives with the consequences of what they did as a result of their youthful, I almost say stupidity, but I would rather say immaturity.

There is a collateral consequence, not only to these offenders, but to society. These offenders are condemned to a life of low production at best, and society must make up for the deficits of their opportunities by supporting them as public charges or supporting their families as public charges.

Way back in law school, and I won't tell you how many years ago, Jerrod Isro (sp), who's a wonderful professor of criminal law, taught me that there were at least four R's to criminal law, and I would suggest that they are paired. We may look at either rehabilitation and restitution or we may look at retribution and restraint.

Many of the advanced societies in Western Europe are far more advanced than we already, and yet their criminal experiences are far less than ours. That is, their criminal rates are far lower than ours. If we don't do something like this, our offenders are condemned to become recidivists, much like those persons who can't get their driver's licenses back because of driver's rehabilitation fees.
I would suggest that this is the first step toward correcting what has been an insensitivity to the needs of society, not just the needs of the offenders, but the needs of society as a whole, and so I whole heartedly support this resolution.

CHAIRPERSON JOHNSON: Thank you very much, Judge.

MR. KRIEGER: Thank you, Madam Chair, Nick Krieger from the 3rd circuit. I would like to move that we commit the matter to the Special Issues Committee.

VOICE: Support.

CHAIRPERSON JOHNSON: There is a motion to have this go to the Special Issues Committee. Is there a support for that?

VOICE: Support.

CHAIRPERSON JOHNSON: There is a motion and support to have the motion before us on collateral consequences of conviction to go to the Special Issues Committee. Is there any discussion?

VOICE: Could I speak in favor of that, and the reason I would like it to go to committee is so that we can vet it a little more. My name is John Reiser, 22nd circuit, Ann Arbor, Michigan. Apologize.
I know you are talking about big picture thinking, but we have got 12 pages front and back, maybe more, about some pretty detailed stuff, and while I am certainly in favor of notice of additional legal consequences, kind of exchange advice of rights pursuant to what we have done now given Pinea (sp) V Kentucky, some of the stuff I just don't know what it means.

For instance, under Section 10, an individual convicted or adjudicated for an offense may petition for an order of limited relief from one or more collateral sanctions related to employment, education, housing, public benefits, or occupational licensing. And I know that sex offender registration doesn't count, but one of the collateral consequences of being a sex offender is that you can't live near a school. Well, residency is different than registration, so can someone apply to live near a school and could a judge do that? And I also don't know what authority that district court judges or circuit court judges are going to have to weigh in on administrative matters or what experience.

So I think this needs a little bit more reflection by our group, and I would support giving it to the Special Issues Committee so that they can come
back with a report after we have all had a chance to
reflect on it and weigh in a little more. Thank you.

CHAIRPERSON JOHNSON: Thank you, Mr. Reiser.

Gentleman over here at the microphone.

MR. LINDEN: Good afternoon. Jeff Linden, 6th circuit. I have a question really, and it relates --

CHAIRPERSON JOHNSON: Does it relate to the motion?

MR. LINDEN: It relates more to the motion to refer to Special Issues Committee in that is the prior motion that's pending that we are recommending consideration and discussion of uniform act in this form that we have been provided or that we are recommending that the legislature adopt this language, because if we are only recommending that the issue be considered and discussed and debated and modified, then I don't see the need for the Special Issues Committee at this juncture. But if we are recommending to take a position on the language that's in this book, then I would agree with the motion, and I think that's, for me it's a sticking point of clarification.

CHAIRPERSON JOHNSON: I am going to let Mr. Krohner speak to that. Thank you very much.
MR. KROHNER: Thank you, Mr. Linden. Members of the Representative Assembly. In answer to Mr. Linden's question, the verbiage that's attached is advisory only, advisory only. It is not what we are asking to be submitted to the legislature, but what we want to do is to have the motion pass so that we can at least get the ball rolling to have the legislature to devise an act. They want to base it on what has already been promulgated by the Uniform Committee already, as Ms. Aukerman stated, minds a lot greater than a lot of ours because of the breadth and depth of the group that worked on it, then that's fine, but this is not the final language. It is only a guide. I hope that answers your question.

CHAIRPERSON JOHNSON: Thank you very much, Mr. Krohner. Does that answer the question, Mr. Linden? Thank you.

Over to the microphone here.

MR. BARRON: Richard Barron. I just wanted to speak against the motion to refer. I would refer the body to the history on item 16, the RUAA referral was over a year ago, and the Assembly has not received a decision on that. It seems to me whether we are in favor of a proposed uniform state statute is not one of the more difficult issues that we should have to
entertain. I think we ought to decide that we are in favor of it or we are not.

CHAIRPERSON JOHNSON: Thank you very much.

Microphone here.

MR. ROMANO: Vince Romano, 3rd circuit. Part of my ability to decide whether or not we should refer it or proceed with it today has been confused by the last little discussion we had. How will the language, the verbiage that's in front of us that precedes this position that we vote on, how will that be associated with the future of advocating for state legislation? In other words, does the language that we are looking at become a part of our advocacy? If it does, then we do have some questions.

MS. AUKERMAN: My understanding is that what is attached is a sample. That sample was what was endorsed by the Criminal Issues Initiative of the State Bar. What we are asking the Representative Assembly to do is advocate for passage of a Collateral Consequences of Conviction Act, not necessarily tied to this specific language, because I don't think, frankly, one can ever come to consensus on language in a group this large. That's something that the legislature -- there is going to be a lot of opportunities to define some of this language down the
road and for different groups to weigh in. I don't think this will ever get out of this body if it's a question of adopting particular language.

CHAIRPERSON JOHNSON: Thank you very much.

Yes, at the microphone.

MR. MCCLORY: Michael McClory from the 3rd circuit. I am speaking as the prior chair of the Probate & Estate Planning Section where we have had experience with the Uniform Act and different legislation. You want to be careful about anything getting out. I respect what you are saying about it could be something different, but oftentimes legislatures can kind of run with something without perhaps giving it as much examination, and this is not a fair analogy, but it's like saying we want to save Social Security, but there is a tremendous amount -- it's really not a fair example, but there can be policy differences, and even though I am on the Special Issues Committee, and we have already got plenty to do and we are not looking for more work, I think it would be prudent to refer that down and to look at some of the, even the general parameters to make sure what we are, in fact, endorsing if we want to put other different qualifiers in so we can reach an informed consensus. I agree we can't craft
legislation. We can look at what's in the Uniform
Act, which can serve a significant template, and the
only other question I had was, has this been enacted
by any other states at this point? It just came out
July 2009, but I don't know if you guys know that.

MS. AUKERMAN: I know it was passed by the
senate in Wisconsin. Elizabeth Lyon would know the
latest on where it's been passed, but I don't know
that.

MR. MCCLORY: I know it's been a while, and
it's a slow process, but I think it might be a little
prudent for us just to look a little more closely at
this.

CHAIRPERSON JOHNSON: Thank you very much.

MR. CHADWICK: Tom Chadwick from the 8th
circuit. I move the previous question. In other
words, I ask that we close debate and vote on the
motion pending, that is the motion to send this to the
committee. I believe that my motion requires a second
and a two-thirds vote but is not debatable.

VOICE: Support.

CHAIRPERSON JOHNSON: Motion and support to
close the debate on this matter. There was support
over here? Yes, thank you. There is a motion on the
floor to close the debate which is not debatable. We
need a two-thirds vote.

All those in favor of closing the debate on
the motion to send this proposal to the Special Issues
Committee, please signify by saying aye.

All those opposed say no.

The ayes have it. The debate will be closed
on the motion to send this proposal to Special Issues.

There is a motion and support on the floor to
have the proposal of the consideration of legislation
for the Uniform Collateral Consequences of Conviction
Act to be sent to the Special Issues Committee. All
those in favor, please signify by saying aye.

All those opposed say no.

I think we are going to need to have a count
on that. I will again ask you, and when I ask you,
will you please stand and remain standing until the
officers and the tellers that have been asked to count
have the numbers.

Please all those in favor please stand now.

This is all in favor of having it go to the Special
Issues Committee.

(Vote being counted.)

CHAIRPERSON JOHNSON: Those people may sit
now. All those opposed to sending the matter to the
Special Issues Committee, please stand now.
(Vote being counted.)

CHAIRPERSON JOHNSON: Thank you to the tellers, and you may be seated now. The motion passed. The proposal on consideration of legislation for the Uniform Collateral Consequences of Conviction Act will now go to the Special Issues Committee. Thank you, Mr. Krohner, Ms. Aukerman, for your assistance in this matter.

VOICE: What was the vote total, if we could?

CLERK GOBBO: The approximate vote was 59 to 43.

VOICE: Thank you, sir.

CHAIRPERSON JOHNSON: The vote was 59 to 43.

Moving on to the next item, number 19, consideration of ensuring equal access to court and administrative proceedings. The proponent is Michael J. Blau, Assembly member, and Thomas Thornburg, the Committee on Justice.

MR. BLAU: Thank you, Madam Chair.

Michael Blau, 6th judicial circuit. I stand before the Assembly this afternoon for a proposed resolution regarding equal access to identification documentation, and I have the pleasure of introducing Tom Thornburg to provide some background regarding this issue so that we can discuss and take action on
it, and Mr. Thornburg is co-managing attorney with Farm Worker Legal Services.

MR. THORNBURG: Thanks, Mike. As Mike noted, I am co-managing attorney of Farm Workers Legal Services. I also represent an assistant project of ours, the Michigan Immigrant Rights Center. We are both statewide programs, nonprofit programs, with six attorneys and four law grads and assorted legal assistants based out of Kalamazoo. I am also a member of the Justice Policy Initiative and have been a member of its ad hoc identification subcommittee, and the subcommittee studied the need for photo I.D.'s in order to access justice in Michigan following a 2006 report by the Brennan Center for Justice, New York University, that found millions of Americans do not have government-issued photo I.D., such as a driver's license or passport, especially the poor, elderly, and minority. So for over six months earlier this year, the I.D. subcommittee of Justice Policy Initiative reviewed the effects of having no government-issued photo I.D. on immigrant litigants, witnesses, and participants in our justice system.

We informally surveyed other practitioners and courts and other sections. For instance, we got this response from the State Bar of Michigan
Administrative Law Section. Quote, it is state policy
to require that persons entering state office
buildings produce photo I.D., including facilities
within which administrative hearings are held. As a
result of our six-month review, the JPI adopted the
position that's in your materials in July, which calls
on the Representative Assembly to adopt a resolution
calling for the Secretary of State to promulgate an
administrative rule that reflects the legislative
definition of legal presence under MCL 28.291(3), as
amended in 2008, with the purpose that eligible
immigrant residents of Michigan can obtain
state-issued photo I.D. documenting their identity.

I will give you a little background. Some of
you will certainly remember in 2008 following the
attorney general's opinion that only United States
citizens and lawful permanent residents could legally
be Michigan residents for purpose of obtaining a
driver's license or a state I.D. The legislature came
back and amended the Motor Vehicle Code, as well as
the statute regarding state I.D.'s to include
residents who can document their legal presence in the
United States. Again, the legislature amended the
Motor Vehicle Code and the I.D. Act specifically to
include Michigan residents who can document their
legal presence within the United States.

The legislature also required the Secretary of State to adopt rules pursuant to the Administrative Procedures Act after noticing comment to administer the statutory amendment. Later in 2008, the Secretary of State issued guidance in the form of a chart published on the website without taking formal rule making in which the Secretary of State specified acceptable documents, which exclude many, many government issued documents that a legally present Michigan resident would have.

As a result, it's estimated that tens of thousands of legally present Michigan residents are prohibited from obtaining a state identification card, which, of course, is universally recognized, along with a driver's license, and required for security purposes to access courts and other government buildings or just where justice is administered or government services are provided, and also many legal processes require notarization of applications and affidavits which in turn require that the affiant produce a government issued identification documenting his or her identity to the notary.

I have listed in the proposal that's in your materials some common categories of excluded Michigan
residents, those who are excluded by the present
guidelines under which the Secretary of State operates
to determine whether to grant an I.D. to a Michigan
resident. They might include some that you are
familiar with. For instance, beneficiaries of
approved visa petitions who are awaiting available
visas.

As you may know, residents of Michigan who
are applying to become lawful permanent residents of
the United States are often in a queue for between two
and 12 years after their initial petition has been
approved and before they have a visa that's available
for them under the quota system that the federal
Department of Homeland Security employs.

Another category, residents in deferred
status granted by the United States customs or
citizenship and immigration service to battered
immigrants under the Violence Against Women's Act and
other victims of serious crimes after approval of
their petitions. There is still a lag time before
they would ever get a document that would be on the
Secretary of State's list.

Another category are immigrants who have been
granted asylum and refugee status by the United States
Government. They actually would not necessarily have
a document from the Secretary of State's list.

Workers and students with approved nonimmigrant visas. Forgive me, I am not an immigration lawyer. We have immigration lawyers in my shop. But those are recognized as those visas that start with letters like, the H1B VISA or the student visa and all those visas who have applied timely for another approval but whose visa has expired. There is also a lag time, and those folks don't have the documentation that's required to get state I.D. issued to them currently.

And, finally, people who are bona fide green card holders. They are lawful permanent residents. They hold an unexpired version of the green card, that's the I551, that's just not recognized by the Secretary of State as acceptable proof of legal presence, and as I was preparing this yesterday a family of farm workers came into my office in Kalamazoo that included Mrs. Garcia, who was complaining that for a year she has been trying to take all of her documents to a Secretary of State branch to get a photo I.D. She didn't want a driver's license. Her grandson drives her, but she had had a previous photo I.D. and it had expired, and she uses it for all sorts of purposes, to access offices that
she needs to. She is on Social Security. She has been a lawful permanent resident of this country for over 25 years, owns a home, but cannot get a state I.D.

So we looked at all the documentation she had, and we sent her to the Kalamazoo branch of the Secretary of State thinking that, well, maybe there is a difference with that branch from the others, and sent a law grad with her to explain that the version of the green card that she holds is a valid version, it just happens to be an older version that did not have an expiration date. Even with our office's assistance she was denied the I.D. yesterday because of the Secretary of State's overly restricted documentation requirements.

By calling for the Secretary of State to pursue formal rule making regarding the definition of legal presence for state I.D.'s, the Rep Assembly can promote equal access to government I.D.'s and ultimately equal access to justice.

MR. BLAU: So I would like to move that the Representative Assembly adopt a resolution to support equal access to identification documentation, specifically that the Secretary of State should promulgate an administrative rule reflecting the
definition of legal presence so that eligible noncitizens may obtain state issued photo I.D.'s document their identity.

VOICE: Support.

CHAIRPERSON JOHNSON: There is a motion and support. The motion is that the Representative Assembly adopt the resolution to support equal access to identification, that the Secretary of State should promulgate an administrative rule reflecting the legislative definition of legal presence so that eligible noncitizens may obtain state issued photo I.D.'s documenting their identity.

Is there any discussion? At the microphone here, please.

MS. HAROUTUNIAN: Madam Chair, Ed Haroutunian from the 6th circuit. I have a question of clarification, and that is the issue as set forth says, Should the State Bar of Michigan adopt the position calling for the support of equal access to identification documentation, and then, as Mr. Blau though indicated in the motion, he said specifically that the Secretary of State, and that language is on the following page, and I would just want to make sure that it was clear that in making reference to the words "for the support of equal access to
identification documentation" that those words really meant that the Secretary of State should promulgate an administrative rule reflecting the legislative definition of legal presence so that eligible noncitizens may obtain state issued photo I.D.'s documenting their identity, and am I correct in that point, and then I would like to make another point.

MR. BLAU: I wish at this time to withdraw the motion as brought before the Assembly and to provide instead that the Representative Assembly adopt a resolution to support equal access to identification documentation.

MS. HAROUTUNIAN: So the latter language is not a part of the motion, or the resolution?

MR. BLAU: Just the language that I recited.

CHAIRPERSON JOHNSON: Procedurally, there had been a motion and then a support on that. I would need unanimous consent from this body to allow the withdrawal of that motion.

All those in favor of allowing the proponent to withdraw his previous motion, please signify by saying aye.

Any opposed?

Any abstentions?

Thank you. That motion will be withdrawn,
and we will allow the proponent to state an additional
motion. Mr. Blau.

MR. BLAU: That motion then would be should
the Representative Assembly adopt resolution to
support equal access to identification documentation?

CHAIRPERSON JOHNSON: Thank you. Is there
support?

MR. REISER: Did he say the resolution or a
resolution? I am sorry, I didn't hear it. That says
the above resolution.

MR. BLAU: A resolution.

CHAIRPERSON JOHNSON: I believe he meant
"the".

There is a motion on the floor. Is there
support?

VOICE: Support

CHAIRPERSON JOHNSON: There is a motion and
support to the motion that the Representative Assembly
adopt the above resolution to support equal access to
identification documentation. Is there any
discussion? The microphone here.

MS. HAROUTUNIAN: Madam Chair, Ed Haroutunian
from the 6th judicial circuit. I would respectfully
indicate that in my judgment that that proposition is
just too doggone broad, and I think that if, in fact,
there is the desire to go with a proposition that in my judgment, not that it matters to this Assembly, but my judgment would be that the Secretary of State should promulgate an administrative rule reflecting the legislative definition of legal presence, period. The latter words would attempt to suggest that that's the result that is being secured from the Secretary of State.

Our task, I think, and what's being asked, I think, is that the Secretary of State promulgate an administrative rule reflecting the legislative definition of legal presence. We don't know what the Secretary of State will do in that definition process, and I don't think that we should suggest what the Secretary of State should do. I think we should simply say what I think is the essence of this proposition is that the Secretary of State ought to set forth the legal definition of legal presence.

CHAIRPERSON JOHNSON: Mr. Haroutunian, what you are saying is that what you would want are the words "so that eligible noncitizens may obtain state-issued photo I.D.'s documenting their identity" omitted?

MS. HAROUTUNIAN: Madam Chair, right now the motion is, as I understand it, that the Representative
Assembly adopt the position calling for the support of an equal access to identification documentation. I am suggesting that I don't know what that means, okay. Maybe I am alone in that regard, but I don't know what that means. I am suggesting that what it apparently means is that, and what's being wanted, is that the Secretary of State should promulgate an administrative rule reflecting the legislative definition of legal presence. That's what's wanted here, and that's what's being asked be voted upon, but I think that, therefore, the motion needs to be in that sense and then to vote on it one way or the other.

CHAIRPERSON JOHNSON: Mr. Reiser.

MR. REISER: John Reiser, 22nd circuit, Ann Arbor. Mike, you have got my support. I support this in concept. Whether it's done by the Secretary of State administratively, I guess that might depend what happens in the fall election, I don't know, whether it's done by the legislature through their branch of government, I don't care. My concern is that on the bottom of the second page of tab number 19 we refer to the above resolution, so I think we need to incorporate that by reference somehow. The above resolution A, which we just struck for some reason, or is it the whole body of the above resolution starting
the synopsis, the background. So I guess what is it that we are voting on specifically that we want somebody else to do? Thank you.

CHAIRPERSON JOHNSON: Thank you, Mr. Reiser. Mr. Blau, do you have a comment on that?

Mr. Blau has indicated that it is to cover the paragraph immediately above the word opposition where it says, "The Secretary of State should promulgate an administrative rule reflecting the legislative definition of legal presence so that eligible noncitizens may obtain state-issued photo I.D.'s documenting their identity. That is the above resolution that the motion was discussing.

Mr. Krieger.

MR. KRIEGER: Thank you, Madam Chair. Nick Krieger from the 3rd circuit. I think this makes a lot more sense in the context of urging the Secretary of State to adopt an administrative regulation, because otherwise, as has already been stated, it's kind of ambiguous. So I think it's best if we reference that language specifically in the resolution.

My only concern is that, as you were stating before, the Secretary of State put something on the website apparently without notice and comment, and, if
I am not mistaken, under Michigan's APA there is an exception to notice and comment for interpretive rules, which this would probably be, interpreting a legislative phrase, legal presence, so I would actually think it would be best if we put in there after an opportunity for notice and comment and public participation. I think that would accomplish what we really want here, which is for us or other interested organizations to be able to submit concerns, comments, proposals, things of this nature to the Secretary of State before she or he promulgates a rule. I guess it will be a she regardless, but before she promulgates a rule. That's all I wanted to say.

CHAIRPERSON JOHNSON: Judge Kent.

JUDGE KENT: Wally Kent, 54th circuit. It's abundantly clear to me that the end goal is to make sure that anybody who is legally within the country and particularly within the state of Michigan has access to appropriate photo I.D. The problem is that the Secretary of State, perhaps the legislation as well, has been poorly drafted and excludes some people who properly should be able to obtain that I.D. because they are legal aliens, not illegal aliens, but because of poor draftsmanship they are not included. I have to agree with Mr. Haroutunian that this as
presented and even as amended still is not clearly
drafted. I suggest, but do not move, and invite
comment from others that perhaps this should be tabled
for redrafting and brought before the body next time.

CHAIRPERSON JOHNSON: Thank you very much.
Is there any further discussion? Mr. Barton.

MR. BARTON: Bruce Barton, 4th circuit. As I
understand what's on the floor at this time, and I
don't understand what's on the floor, but I heard a
motion that was substantially the original motion
which was withdrawn, and then we started talking about
instructing the Secretary of State, and I did not hear
that in the original, in this second motion, but
regardless, at this time I am opposed to the
resolution.

This is the policy-making body of the
State Bar of Michigan. We are faced perhaps with a
policy problem, but I don't see it as our function to
instruct the Secretary of State how to handle the
problem or even to change the present situation
regarding the problem. Basically for that reason I am
opposed to the motion, and I would suggest that if
somebody came back in April with a little more clear
language, with a little more clear direction, I might
change that opposition, but as of this time I am
opposed.

CHAIRPERSON JOHNSON: Was that a motion to have this referred to Drafting?

MR. BARTON: There is a motion to refer on the floor?

CHAIRPERSON JOHNSON: I am saying was that a motion?

MR. BARTON: No, it is not. I am suggesting the motion be voted up or down.

CHAIRPERSON JOHNSON: Thank you.

Mr. Courtade.

MR. COURTADE: Bruce Courtade, 17th circuit. I move that we refer this to Drafting.

VOICE: Support.

CHAIRPERSON JOHNSON: There is a motion on the floor and a support to have this matter referred to the Drafting Committee. Is there any discussion on that motion?

Hearing none, all those in favor of having this matter referred to Drafting, please signify by saying aye.

Recognize the gentleman at the microphone.

MR. KOENIG: Alan Koenig from the 9th circuit in Kalamazoo. I don't think this needs to go to the Drafting Committee. I think this is pretty simple. I
agree with Mr. Reiser that I think this is a, and with the proponents, this is a very important matter that's been ignored, and I would suggest, I was going to suggest before the motion, and I will just put this out there and not move at this time, that Mr. Blau again retract his motion, and I would suggest -- I think this is form over substance. I think if we can incorporate the language of the proposal in the middle of the page --

CHAIRPERSON JOHNSON: Sir, the discussion can only be on the current motion, which is should it be referred to Drafting?

MR. KOENIG: Thank you, Madam Chair. I would oppose that for reasons I have started to articulate.

CHAIRPERSON JOHNSON: Thank you very much. There is a motion on the floor and support for this matter to be referred to the Drafting Committee.

All those in favor please signify by saying aye.

All those opposed say no.

I believe we are going to need to take a vote on that. Please, when you do stand, stand until you are told not to any further.

All those in favor of referring the matter to the Drafting Committee, please stand at this time.
(Votes being counted.)

CHAIRPERSON JOHNSON: Thank you very much.

You may sit down.

All of those opposed to sending the matter to the Drafting Committee, please stand at this time.

(Votes being counted.)

CHAIRPERSON JOHNSON: Thank you. You may sit down. The motion carries 66 to 34 that the proposal will be sent to Drafting. Thank you very much, Mr. Blau, Mr. Thornburg. Thank you very much.

The next item is number 20. The record will reflect that there is a typographical error in this proposal, item number 20. You all should have received an e-mail blast or a written notice that the matter should be consideration of proposed resolution requiring disclosure prior to a judicial election. The word "judicial" should be inserted. Without objection, I will direct the clerk and our court reporter properly note that insertion of the word "judicial."

This is number 20, consideration of proposed resolution requiring disclosure prior to a judicial election of the source of the funding for all expenditures for electioneering communications, and the proponent on this matter is John P. Mayer.
MR. MAYER: Thank you, Madam Chair. I am John Mayer, member from the 3rd circuit.

By way of full disclosure, I have been a member of the Board of Directors of the Michigan Campaign Finance Network, MCFN, for the past five years, serving as secretary of the Board for the past two years. MCFN is a nonpartisan, nonprofit coalition of organizations, foremost of which is the League of Women Voters of Michigan, and individuals concerned about the influence of money in politics and the need for campaign finance reform in Michigan. You can see the whole range of MCFN activities and publications on the internet at MCFN.org.

Disclosure of sources of funding for expenditures for electioneering communications in judicial elections serves two essential purposes. Before the election it allows voters to evaluate the sources of funding for all electioneering communications in deciding how to vote on judicial candidates, and, for as long as the elected judge may serve, it allows litigants and attorneys to determine whether a request for a motion for recusal of an elected judge is well founded.

The situation is particularly timely in light of two very recent U.S. Supreme Court decisions,
Caperton against Massey Coal Company and Citizens United against the Federal Election Commission. Caperton involved an expenditure of $3 million by Massey to elect the state Supreme Court justice who promptly cast the deciding vote reversing a $50 million verdict against Massey. The court, the Supreme Court, quoted language from a prior decision requiring recusal where, quote, the probability of actual bias on the part of the judge is too high to be constitutionally tolerable, closed quote. The court went on to say that the risk that the contribution engendered actual bias, actual bias, was sufficiently substantial that it, quote, must be forbidden if the guarantee of due process is to be adequately implemented, closed quote.

The extraordinary spending in Caperton involved independent expenditures, not a contribution directly to the judge's campaign committee; therefore, the constitutional holding in Caperton requires an elected judge to disqualify himself or herself in a case involving an extraordinary campaign financial supporter is relevant to spending in all of its many forms, to campaign spending in all of its many forms, not just to contributions directly to the judge's campaign committee.
The Michigan Campaign Finance Act at MCL 169.201 has a huge hole in it, because it does not require disclosure of the source of funding for third party issue advertisements. Only advertisements by candidate committees or political parties are required to be identified in any way that is comprehensible to voters in a timely way so that the bias of the advertiser can be evaluated prior to the voter casting the vote. Information which might compel recusal of a judge sitting on a case involving a substantial campaign contributor is not only not available in a timely way before the election, it may never be revealed.

In Citizens United the court held the court has an interest in providing the electorate with information about the sources of spending for election-related communications so that citizens can make informed decisions in the political marketplace. Plaintiff Citizens United claimed that the disclosure requirements should apply only to the functional equivalent of expressed advocacy, vote for, vote against. The court emphatically disagreed. Justice Kennedy writing for himself and seven other justices said, quote, the first amendment protects political speech, and disclosure permits citizens and
shareholders to react to the speech of corporate entities in a proper way. This transparency enables the electorate to make informed decisions and give proper weight to different speakers and different messages.

The Citizens United case, by invalidating state laws prohibiting substantial contributions by corporations of labor unions, is already increasing the flow of big money into campaigns in general and judicial campaigns in particular. Michigan voters, and especially Michigan litigants, are entitled to know which individuals, companies, or unions are contributing to which electioneering communications and how much they are contributing. In order for the disclosure to be effective, it must be made sufficiently before an election to be publicized and scrutinized by all interested parties, especially voters and litigants.

I urge you to support the resolution as it appears on the board. Thank you. I will take questions.

I move that the State Bar of Michigan adopt the following resolution calling for an amendment to the Judicial Campaign Finance Act, sorry, the Michigan Campaign Finance Act, requiring disclosure prior to a
judicial election of the sources of funding for all expenditures for electioneering communications, and the language follows "resolved" there.

VOICE: Support.

MR. COURTADE: Point of order. The amendment which the chair made earlier, did that include the language here not only to the title but the language in the bottom paragraph?

CHAIRPERSON JOHNSON: Yes, thank you, Mr. Courtade. Any time it says "election", the word preceding that should be "judicial". This only relates to judicial elections. Thank you.

Is there support?

VOICE: Yes.

CHAIRPERSON JOHNSON: There is a motion that the State Bar should adopt the following resolution calling for an amendment to the Michigan Campaign Finance Act requiring disclosure prior to a judicial election of the sources of funding for all expenditures for electioneering communications.

Resolved, that in order to implement recent United States Supreme Court decisions in Caperton versus Massey Coal Company and Citizens United versus Federal Election Commission, the Michigan Campaign Finance Act and related statutes should be amended to
require disclosure prior to an election of the
sources -- excuse me, a judicial election -- of the
sources of funding for all expenditures for
electioneering communications. Is there any
discussion? The microphone here, Mr. Haroutunian.

MS. HAROUTUNIAN: Madam Chair, Ed Haroutunian
from the 6th judicial circuit. I have a question. Is
this proposal one in which the Representative Assembly
can take a position based upon Administrative Order
2004-01 from the Michigan Supreme Court? There is a
reference here to the five items, and the one that
might be applicable seems to be the improvement of the
functioning of the courts, and if that's the issue, I
think that there is a serious question with regard to
how that's been defined, and I would think that this
particular proposal is one that crosses the line, but
that's my opinion.

CHAIRPERSON JOHNSON: Thank you very much,
Mr. Haroutunian. I believe, and I don't see Cliff
Flood here at the moment, that he reviewed that
section so that it was, he deemed that suitable for
this body to review and that it was Keller
permissible, but thank you for that question,
Mr. Haroutunian.

At the microphone over here, Mr. Buchanan.
MR. BUCHANAN: Robert Buchanan from the 17th circuit. I have a couple questions to the proponent, and this is just for clarification. I guess I am unclear as to what advance notice you are requiring or seeking. In other words, is this practical, because you are asking that expenditures for electioneering communications be disclosed prior to the election, and the question is in a realistic election we see ads until the very day of the election, so is this, from a practical standpoint, feasible?

And then the second thing is I guess I am a little unclear as to the motivation. Is the concern that you want to disclose who the supporters were so that if there is litigation we know who they are and we can object because of bias, or is the motivation otherwise, we are trying to inform the voters of who it is that's actually funding this campaign message so that they can weigh that in their vote.

So those are my questions as far as motivation and clarification and timing of the disclosure.

CHAIRPERSON JOHNSON: Thank you, Mr. Buchanan.

MR. MAYER: I would say that the answer to your second question is both, that the possible -- I
referred to it in my remarks -- but the possible
motion for recusal in the future, the disclosed
information would be relevant to that issue, and the
voters need to know it also. As to your first
question, there is at least one state, I believe it's
Wisconsin, that has in their law covering very similar
material a realtime reporting requirement after ten
days before the election, that the party required to
report would have to go online, I suppose it would be
the Secretary of State's website in our case, and say
we just gave $50,000 to so-and-so's campaign, or in
the case of a third party, which that's one of the
main things this legislation is about, the third party
as defined in the amended act would have to do the
same thing. They would have to say we have just, in
compliance with the law, we are reporting that we have
just made such a contribution.

CHAIRPERSON JOHNSON: Microphone over here.

MS. SADOWSKI: Elizabeth Sadowski, 6th
circuit. I would suggest that it's important to adopt
a proposal requiring heightened disclosure of campaign
financing in judicial campaigns so the public can at
least have some better assurance that they are going
to be heard and judged by honest brokers and not
perhaps pawns of special interests or even the
perception of having somebody who is a pawn of a
special interest in opposition to their position
judging them, so I would certainly support this
motion.

But that said, all the campaign financial
disclosures and transparencies in the world are not
going to be worth the paper they are written on if the
voting public does not pay attention to that
information about judicial candidates. If lawyers, of
course, were the only ones to vote for judges, we
would certainly have a well-informed voting pool.
Unfortunately, the general public is not so well
informed. It's as if we all had to vote for the
hospital staff, the operating staff of a local
hospital. Everyone would be elected with the last
names of Jordan or Casey or something, because that's
something that happens not infrequently in judicial
campaigns now. People are elected on the basis of
gender or ethnicity instead of their capacity and
abilities.

I would suggest that this lack of knowledge
about the characters and capabilities of our judicial
candidates is the fault of lawyers. In fact, we do
the public an injustice by denying them our knowledge,
our unique knowledge, of the abilities of judicial
candidates, thus I would suggest an offer, a friendly amendment. The amendment would say, Be it resolved that attorneys be urged to affirmatively communicate to clients and the general public notice of a judicial election and information as to the judicial candidate's qualifications.

CHAIRPERSON JOHNSON: I am sorry, Ms. Sadowski, unfortunately that is more than four words, and we cannot accept that at this time. It must be in writing, but we will note your comments.

MS. SADOWSKI: Thank you.

CHAIRPERSON JOHNSON: You are very welcome.

At the microphone over here.

JUDGE KENT: Wally Kent, 54th circuit.

Unaccustomed as I am to public speaking, I rise in support of this as well. I agree with almost all of Ms. Sadowski's comments. And it may be clumsy to have realtime reporting, but it's still very important. We witnessed some very difficult campaign things coming out of third parties two years ago for the Supreme Court, and as a practical matter I suspect that it is the Appellate Courts and the Supreme Court which will be impacted most heavily by this resolution.

I don't care which of the candidates you
might have supported, that kind of campaigning cuts both ways, and it could cut against your candidate next time. It would be a tragedy if we continue to allow third parties or others to hide behind anonymity by making last minute contributions which could have a tremendous impact on an election. For that reason, even though there may be practical issues to be overcome in order to achieve realtime disclosure, it is very important to make the effort that is being supported by this resolution. I urge its adoption.

CHAIRPERSON JOHNSON: Thank you very much. Next the gentlemen on the microphone.

MR. CHADWICK: Tom Chadwick from the 8th circuit. I want to rise also in support of adoption of this proposal. I believe that it is carefully circumscribed to solve the problem at hand, that is the litigant who goes to court and does not know the source of judicial funding at the time he is in front of that judge. I don't know that this problem that's also been identified of timely information for voters can be solved. That is a practical problem. I would respectfully disagree with the proponent that it would be solved, that it can be solved by the proposal that's here.

But I believe the proposal that's in front of
us, as I have read it carefully, and it seems to me
only applying to that situation where a litigant is in
front of a judge and has the information of the source
of funding for that judge's campaign, and because of
that wording I would support the proposal.

CHAIRPERSON JOHNSON: Thank you very much.

Any further discussion?

Hearing none, all those in favor of the
motion that the State Bar of Michigan adopt the
following resolution calling for an amendment to the
Michigan Campaign Finance Act requiring disclosure
prior to a judicial election of the sources of funding
for all expenditures for electioneering
communications. Resolved, that in order to implement
recent United States Supreme Court decisions in
Caperton versus Massey Coal Company and Citizens
United versus Federal Elections Commission, the
Michigan Campaign Finance Act and related statute
should be amended to require disclosure prior to a
judicial election of the sources of funding for all
expenditures for electioneering communications.

All those in favor of the motion, please
signify by saying aye.

All those opposed say no.

Any abstentions.
Thank you. The motion, and for practical reasons, I will not repeat that motion again, the motion carries. Thank you very much. Thank you, Mr. Mayer.

The next item is number 21. At this time, in accordance with Assembly Rule 8.3, I would ask that the chairman of the Nominations and Awards Committee, Mr. Jeffrey Nellis, to make his report.

MR. NELLIS: Good afternoon again. We are here next to consider essentially the nomination or the next Representative Assembly clerk. Our committee has received one letter of interest. That was from Dana Warnez who is from Center Line, the 16th circuit. Her information is located under tab 21. So at this time I would like to open up the floor for formal nominations.

MR. CHIOINI: My name is Carl Chioini, and I am from the 16th judicial circuit, and I am pleased to nominate Dana Warnez for the Representative Assembly.

All of you might have known Dana, who is seated right here. As part of the Assembly, I have known Dana since she was an attorney for over 14 years. One of the things that -- all of you can see what's in the resume, but I want to recall what Janet Welch said this morning about someone who is
going to be in charge or lead the Assembly, someone who is truly dedicated to the profession, dedicated to the Bar, and dedicated to the Assembly.

She is going to work tirelessly. She has worked tirelessly for all of us on the Assembly. She has worked tirelessly on the local level. She has this devout professionalism that we all like to see in the Assembly, so I would like to nominate Dana Warnez.

CHAIRPERSON JOHNSON: Thank you very much, Mr. Chioini. At this time all those in favor of -- I am sorry, are there any nominations from the floor? There was support?

VOICE: Support.

CHAIRPERSON JOHNSON: Thank you. Are there any nominations from the floor? Hearing none, all those in favor of Dana Warnez for the clerk of the Representative Assembly please signify by saying aye.

Those opposed, say no.

Any abstentions?

Hearing none, the motion passes for Dana Warnez to be the new clerk of the Assembly.

Congratulations.

(Applause.)

CHAIRPERSON JOHNSON: Now to item number 22, which is a very special matter today, and I would ask
that Chief Justice Kelly come forward for the swearing in of Victoria Radke as the clerk of our Assembly. I am sorry. No, chairperson of the Assembly. Thank you. You can do the clerk too.

Chief Justice Kelly, as you know, has been a great supporter of the Assembly. Just last year I was so privileged to have her swear me in as the chairperson of the Assembly, and I am so very grateful that she has agreed to come today and swear in a wonderful leader of the Bar, somebody who has given already many years of service to this Assembly, and we are very honored to have the Chief Justice swear in Victoria Radke.

CHIEF JUSTICE KELLY: Thank you so much. Before you get up, I just want to say a word. I know it's been a long day. I am a former member, as you know, of the Representative Assembly, and partly because of that I have a high regard for this group and for the role it plays in the State Bar and in the greater judicial and legal community.

Today Victoria Radke takes the helm, and I am very happy to administer the oath of office to her. Being chair of the Representative Assembly is a tremendously important role. The Assembly is, of course, where the Bar promotes and decides its policy,
an important charge indeed. Moreover, being chair
calls for, well, the tact of a diplomat and the
unshakeable tranquility of a Dalai Lama, and the
toughness of a Big Ten football coach. The term
herding cats comes to mind. No offense intended, mind
you. This is simply to say that it's no easy task to
keep 150 lawyers on task and focused.

   But I am confident that Victoria is well
prepared for this challenge. She is a veteran of the
Assembly, as you know, having been elected in 2002 to
represent the 47th circuit. She served two terms as
president of the Delta County Bar Association and many
State Bar committees have been beneficiaries of her
time and talents, including the Bar Leadership Forum,
the Upper Michigan Legal Institute, and the Domestic
Violence Committee. Her community has also been the
richer for her involvement, and she has, among other
things, served for seven years as the coach for the
local Youth in Government High School Mock Trial Team,
and as an attorney with experience in both the public
and the private sectors, she knows the challenges our
membership faces.

   So I would be pleased now to administer the
oath, Victoria, and ask you to come forward. Please
raise your right hand.
I do solemnly swear --

VICE CHAIR RADKE: I do solemnly swear --

CHIEF JUSTICE KELLY: -- to support the

Constitution of the United States --

VICE CHAIR RADKE: -- to support the

Constitution of the United States --

CHIEF JUSTICE KELLY: -- and the Constitution

of this state --

VICE CHAIR RADKE: -- and the Constitution of

this state --

CHIEF JUSTICE KELLY: -- and the Michigan

Supreme Court Rules relative to the State Bar of

Michigan --

VICE CHAIR RADKE: -- and the Supreme Court

Rules relative to the State Bar of Michigan --

CHIEF JUSTICE KELLY: -- and that I will

faithfully discharge the duties --

VICE CHAIR RADKE: -- and that I will

faithfully discharge the duties --

CHIEF JUSTICE KELLY: -- of Chair of the

Representative Assembly of the State Bar of

Michigan --

VICE CHAIR RADKE: -- as Chair of the

Representative Assembly of the State Bar of

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

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

CHIEF JUSTICE KELLY: Congratulations.

VICE CHAIR RADKE: Thank you.

(Applause.)

VICE CHAIR RADKE: I want to thank everybody for this great opportunity, and I would like to follow in the footsteps of Charles Toy in saying I look forward to being a servant of this body and leading you for the next year. Thank you so much.

(Applause.)

CHAIRPERSON JOHNSON: Congratulations, Victoria. At this time we would like to take an opportunity to acknowledge some of our long-time Representative Assembly members who are unfortunately going to be leaving us from the Assembly as they are term limited right now. As I call your name, if you would come up so that you may receive your certificate. Kent Bieberich, Michael Boucher, Winnifred Boylan, Don Hiltunen, John Hubbard, Dawn Klida, Timothy Laitur, Suzanne Larsen, Richard Paul, Gregory Stremers, Charles Trickey, III, Victoria Valentine.
And then a few special thank you's to the following people. Robert Buchanan, who unfortunately is going to be leaving the Assembly because he was elected to the Board of Commissioners, and, as I have already told him, the Assembly has lost a good worker. Tom Evans. Judge Gregg Iddings, Vince Romano, and Marcia Ross.

And, again, I would like to say a special thanks to the committee chairs who have worked so hard this year, and if the five of you will please stand to be recognized for all the hard work that you have done this year, Jeff and Krista and Marty, Mike.

I would like to now call up to the podium Krista Licata Haroutunian. This plaque is to Krista Licata Haroutunian with appreciation for service to the Representative Assembly as the 2009-2010 chairperson of the Special Issues Committee. Congratulations.

(Applause.)

CHAIRPERSON JOHNSON: John Reiser, if you would like to come up to the podium, please. I would like to present this plaque, which says, To John W. Reiser, with appreciation for service to the Representative Assembly as the 2009-2010 chairperson of the Assembly Review Committee. Congratulations.
(Applause.)

CHAIRPERSON JOHNSON: Rob Buchanan.

MR. BUCHANAN: We do this in the 17th circuit. Bruce, I follow in your lead.

CHAIRPERSON JOHNSON: It's a new art form.

This plaque says, To Robert J. Buchanan, with appreciation for service to the Representative Assembly as the 2009-2010 chairperson of the Drafting Committee, and I would like to personally say we are so proud of you to be on the Board of Commissioners. We know that you will serve the Representative Assembly well on the Board, so congratulations.

(Applause.)

CHAIRPERSON JOHNSON: Marty Krohner. The plaque reads, Martin P. Krohner, with appreciation for service to the Representative Assembly as the 2009-2010 chairperson of the Hearings Committee.

Thank you very much, Marty.

(Applause.)

CHAIRPERSON JOHNSON: Mike Blau. The plaque reads, Michael J. Blau, with appreciation for service to the Representative Assembly as the 2009-2010 chairperson of the Rules and Calendar Committee.

Mike, thank you very much for all of your hard work.

(Applause.)
CHAIRPERSON JOHNSON: Jeff Nellis. The plaque reads, Jeffrey C. Nellis, with appreciation for service to the Representative Assembly as the 2009-2010 chairperson of the Nominating and Awards Committee, and I would just like to say, Jeff, you and your committee did a great job, again 100 percent participation, so thank you for your hard work.

MR. NELLIS: Thank you.

(Appause.)

CHAIRPERSON JOHNSON: I have also been asked by Anne to remind you that you need to be filling out your attendance slips. Make sure that you do not forget to fill those out when she passes them out to you, because if you are here you want to be counted.

VICE CHAIR RADKE: I hope you will all get a chance to see this up close. It's absolutely gorgeous. State Bar of Michigan honors Elizabeth M. Johnson, Representative Assembly Chairperson 2009-2010, Vice Chairperson 2008-2009, Clerk 2007-2008, in appreciation for distinguished service to the Assembly, the State Bar, and to all Michigan lawyers, September 30th, 2010. We are so honored to give this to you. Thank you for your service, Elizabeth.

(Appause.)
CHAIRPERSON JOHNSON: Thank you very much, Chairperson Victoria Radke, and thank you very much to all of you. It has been a great privilege serving as your chairperson of the Representative Assembly this year. I have learned so much from all of you with your dedication and passion to our profession and for this Representative Assembly. To you, my dear friends and colleagues, I thank you for everything. It has been a honor to serve, and I thank you from the bottom of my heart. Thank you very much.

(Applause.)

CHAIRPERSON JOHNSON: Seeing as there is no further business to come before this body, I would entertain a motion to adjourn.

VOICE: So moved.

CHAIRPERSON JOHNSON: Is there support?

VOICE: Support.

CHAIRPERSON JOHNSON: Hearing none, all those in favor of the adjournment, please signify by saying aye.

Opposed no.

Hearing none, this meeting is adjourned.

(Meeting adjourned at 3:57 p.m.)
STATE OF MICHIGAN  
COUNTY OF CLINTON  

I certify that this transcript, consisting of 152 pages, is a complete, true, and correct transcript of the proceedings had by the Representative Assembly on Thursday, September 30, 2010.

October 18, 2010

Connie S. Coon, CSR-2709
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Lansing, Michigan  48906