

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

AT HEADTABLE:

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

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□ REPRESENTATIVE ASSEMBLY 9-18-08

1 Dearborn, Michigan

2 Thursday, September 18, 2008

3 9:10 a.m.

4 R E C O R D

5 CHAIRPERSON GARDELLA: If everyone could be

6 seated.

7 Ladies and gentlemen, my name is Bob

8 Gardella. I am the Chair of the State Bar of Michigan

9 Representative Assembly, the final policy-making body

10 of the State Bar of Michigan, and I hereby call this

11 meeting to order.

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

14 CLERK JOHNSON: Thank you, Mr. Chairperson.  
15 Mr. Chairperson and members of the Assembly, I am  
16 pleased to announce that we have a quorum with over 50  
17 members present.

18 CHAIRPERSON GARDELLA: Thank you,  
19 Clerk Johnson.

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

23 MR. WOLFSON: Yes, Mr. Chairman, Scott  
24 Wolfson from the 3rd circuit. I move that we adopt  
25 the proposed calendar that's been circulated this

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1 morning by the Rules and Calendar Committee.

2 CHAIRPERSON GARDELLA: Thank you. Is there  
3 support?

4 VOICE: Support.

5 CHAIRPERSON GARDELLA: Any discussion?

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

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

18 number 10 and 11.

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

21 MR. ABEL: Correct.

22 CHAIRPERSON GARDELLA: Is there support?

23 VOICE: Support.

24 CHAIRPERSON GARDELLA: Any discussion?

25 Hearing no discussion, those in favor of the

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1 amendment, which is to move item 15 up in front of  
2 item 11, that that be approved, and those in favor  
3 please say aye.

4 Those opposed nay.

5 Any abstentions say yes.

6 Hearing none, the motion carries.

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

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

11 CHAIRPERSON GARDELLA: The agenda as amended,  
12 yes.

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

15 CHAIRPERSON GARDELLA: Support?

16 VOICE: Support.

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

19 Those opposed nay.

20 Any abstentions yes.

21 Hearing none, the motion passes.

22 Next is, I understand that there is a motion  
23 from the 2nd circuit.

24 MS. CULLITAN: Colleen Cullitan, 2nd circuit.  
25 Mr. Chairman, I move that the Assembly adopt and

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1 approve the summary proceedings from the April 12,  
2 2008, meeting as presented in the packet.

3 CHAIRPERSON GARDELLA: Thank you. Is there  
4 support?

5 VOICE: Support.

6 CHAIRPERSON GARDELLA: Is there any  
7 discussion?

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

10 Those opposed nay.

11 Any abstentions yes.

12 The ayes have it, and the motion is approved.

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

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

25 Congressman Conyers represents Michigan's

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1 14th congressional district, which includes all of  
2 Highland Park and Hamtramck, as well as parts of  
3 Detroit and Dearborn. In fact the hotel we are in  
4 today is within Congressman Conyers' district.

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

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

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

22 In terms of Congressman Conyers' background,  
23 after graduating from Northwestern High School in  
24 Detroit, he served in the Michigan National Guard from  
25 1948 to 1950. He also served in the U.S. Army from

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1 1950 to '54 and the U.S. Army Reserves from 1954 to  
2 '57. He also served for a year in Korea and as an  
3 officer in the U.S. Army Corps of Engineers and was  
4 awarded the Combat and Merit Citations.

5 Congressman Conyers grew up in Detroit and

6 received both his B. A. and J. D. degrees from Wayne  
7 State University, and he also is a former assistant to  
8 Representative John Dingell prior to his election to  
9 Congress.

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

13 (Applause.)

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

16 Officers, ladies and gentlemen, members of  
17 the Leaders of the Michigan Bar, I am honored to be  
18 here. I am one of those who urge every young person  
19 who, like me, have been like I was when I went to  
20 Wayne University, I wasn't sure of what I wanted to  
21 do, and I was so glad I got out of engineering and  
22 went into law. Although the combat engineers, the  
23 1279th combat engineering battalion didn't do me much  
24 justice, as I ended up on a tour of Korea, and how you  
25 build and fight at the same time was something I never

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1 even figured out to this day.

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

10 I frequently argue that the committees in the  
11 Congress are very important, but I have always took

12 the position that the House Judiciary Committee is the  
13 most important one of all, not because I am the chair  
14 of it, but because it is the guardian of the  
15 Constitution and the 27 amendments, because it has  
16 jurisdiction over the Department of Justice, because  
17 it promulgates the Federal Criminal Code, the  
18 immigration law, the International Treaties,  
19 intellectual property laws. And so I have approached  
20 this position which I began my career on, and I have  
21 now become its chairman. And what an awesome  
22 position, what an exciting position.

23 What I wanted to do for just a few minutes  
24 today is share with you some views and invite you to  
25 share with me some afterward. I am one of those that

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1 still like to talk with and back to the people that  
2 talk to me. I get frequent advice on the importance  
3 of impeachment from some of my best friends  
4 incidentally, and so I love to pick up the phone in my  
5 own office and they are giving the person that  
6 answered the phone what it is they are supposed to  
7 tell this chairman when they see him, and I say, This  
8 is John Conyers. I love to do that, so please, any of  
9 you that want to try me out, if I am in the office, I  
10 will do that. It's a way of keeping in touch.

11 And so we are confronted with so many  
12 incredible challenges. We are at a crossroads, not  
13 just in American history, but in world history as  
14 well, and it's my position that members of the Bar,  
15 lawyers, those who look to help make this planet of  
16 6.6 billion people, 232 nations, how are we going to  
17 make this a better place, what is it we can do while

18 we are here for this brief moment on earth, how can we  
19 make it better? What can we do?

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

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

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

16 And so we are in a unique place and time and  
17 profession in which we can make things happen. I  
18 happen to subscribe to the belief that everything that  
19 you do and say, every act that you do or don't do has  
20 an effect, everything. As a matter of fact, what was  
21 that song, Everything is Everything. I thought that  
22 was, at one time I thought it was silly, then another  
23 time I thought it profound, then another time I have

24 realized I didn't know what it really meant, but  
25 whatever interpretation you may choose to put on it, I

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1 believe that just coming here this morning for ten  
2 minutes -- is my time up? No, you don't ever say that  
3 to a congressman. As long as you want?

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

14 I remember Professor Schuman (sp) in  
15 Conflicts as a senior in Wayne State University Law  
16 School, and the study of conflicts of laws at that  
17 time was an examination of why nothing in  
18 international law worked. There was no successes,  
19 nothing worked. And we went through a few cases. But  
20 it was the billions of Franklin Roosevelt and Winston  
21 Churchill to begin to conceive the idea of a united  
22 nations and of all nations coming together and that  
23 there be under it certain rules of conduct and certain  
24 acts that were outside these rules of conduct and that  
25 by that we could get a harness on the historic

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1 inclination toward might making right, which even  
2 today is controlling. Martin Luther King, oh,  
3 wonderful. Yes, John, jobs, justice and peace, a  
4 brotherhood, but, look, Mr. Chairman, when you get  
5 down to it you either got the power or you haven't.

6 We still believe that, even though it may  
7 crowd up against the notions that there is some  
8 imperative among many of us, probably most of us, to  
9 create a more peaceful world, a world that,  
10 notwithstanding the incredible technology we have to  
11 destroy each other and the planet, and this is the  
12 tension that arises and must be resolved by people who  
13 study and practice the law, and so it's in that sense  
14 that I am so honored to join you today.

15 I know how much time Bar activities can take  
16 up and other professional duties that go outside the  
17 scope of your practice or your profession, and so I am  
18 honored to bring these greetings to you, and I am  
19 hoping that we can devise more ways in which not just  
20 the House Judiciary Committee but the Senate Judiciary  
21 Committee, the Energy and Commerce Committee, the  
22 Finance Committees, the Banking Committees, because  
23 this nation is in a financial crisis now that there is  
24 no comparison for, and for all of those with whom I  
25 have debated in the Congress about whether we should

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1 deregulate, whether we should privatize, we now are  
2 reexamining the notion of American capitalism in a  
3 completely new way, a completely new way, because  
4 there is evidence coming out even before the hearing  
5 that we are holding next Friday about bankruptcy and

6 mergers, which is a part of our jurisdiction.

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

19 (Applause.)

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

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1 CONGRESSMAN CONYERS: Pick up the phone and  
2 call me.

3 CHAIRPERSON GARDELLA: We will.

4 Moving on in the agenda, the next part of the  
5 agenda has to do with the awards, and this is the  
6 happy time of the meeting here where we look back on  
7 the year and the people that have made substantial  
8 contributions to the Bar and the legal profession over  
9 their lifetimes, and our recognition of the great  
10 service that they have had to our profession and to  
11 their respective communities in the state of Michigan.

12           The first award that we will present is the  
13 Michael Franck Award, and many of you know Michael  
14 Franck was the former long-time executive director of  
15 the State Bar of Michigan, and our Bar building in  
16 Lansing is named after Michael Franck. In fact, years  
17 ago when I worked in the State Legislature Michael  
18 Franck was a regular over at the Capitol carrying the  
19 mission of the Bar to the state legislators, and he  
20 has had a lasting effect in Lansing.

21           The criteria for the Michael Franck Award is  
22 the award is presented to a lawyer who has made an  
23 outstanding contribution to the improvement of the  
24 profession. And to present that award and make the  
25 introduction to our recipient is Larry Nolan, who is

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1           one of our Assembly members, and he is from the 56th  
2 circuit. So, Larry, if you could approach.

3           MR. NOLAN: Good morning. Thank you,  
4 Mr. Chairperson, and good morning fellow colleagues of  
5 the Representative Assembly.

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

14           In the late summer of 1971 and 1972 Tom  
15 formulated an idea and a concept that a law school  
16 would give more people a legal education or the  
17 ability to obtain a legal education and that it was

18 needed. Probably would be worse off as a society with  
19 a better educated society with more people with law  
20 degrees.

21 I was a direct recipient of that. I had  
22 applied to Michigan, I had applied to North Carolina,  
23 was rejected, had been wait listed at Notre Dame, and  
24 I read that there was a law school forming in Lansing,  
25 Michigan, to which I applied. This was my life's

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1 dream, not unlike what Martin Luther King told us to  
2 dream about, was to go to law school.

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

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

17 I went to the Supreme Court after I was  
18 admitted in December of 1972, introduced myself. I  
19 remember sitting out -- never been in a courtroom,  
20 never been in the Supreme Court. Sat outside next to  
21 his secretary, Marianne Farhat. If any of you knew  
22 Marianne Farhat, she said nothing, she had a glaze  
23 that went through you, and you didn't do anything

24 without asking her permission.

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

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

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

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

25 So he quickly got Mike involved, and Mike was

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1 on the Board. Tom was on the Board, and they decided,  
 2 I don't know if I missed a meeting, but I was elected  
 3 president.

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

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

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

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

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1 am sure, a little more.

2 Tom, I cannot think of anyone that made a  
 3 more lifetime achievement contribution to my life and  
 4 my family's life and where I am at and what I have  
 5 been able to achieve through the legal education I

6 obtained, and he has done it for thousands of  
7 individuals, many of which are sitting in this  
8 courtroom have been direct beneficiaries.

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

17 One of the greatest things before my dad  
18 passed away, my dad always fancied himself as being  
19 able to go golfing. Tom invited my dad when he found  
20 out that he was in town to go golfing with him and Jim  
21 Ryan. So you can imagine my dad in a foursome with  
22 his son and two Supreme Court justices, never  
23 imagining that he would ever have that opportunity.  
24 Little did he know that Tom in his discussions with  
25 Jim said, Tom, or Jim said to Tom, did you know Knob

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1 Nose Nolan was Larry's uncle?

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

9 Tom told me another story about my uncle that  
10 he was talking to someone. When he turned around my  
11 uncle hit him across the nose with a ruler bloodying

12 his nose. I said, What did you do at that point, Tom?  
13 He said, I just let it drip all over my chemistry book  
14 just to spite him. In those days you didn't go back  
15 and tell your parents that you had been disciplined by  
16 a priest or a nun, and Tom certainly didn't tell his  
17 parents.

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

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

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1 myself getting a legal education than Tom Brennan.

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

11 (Applause.)

12 MR. NOLAN: She was the one filling out the  
13 applications, doing the secretarial work, getting the  
14 school fiscally responsible back then, to which Tom  
15 gives her full credit. They had six children along  
16 the way. Bill, Mary Beth, Peggy, and Ellen are not  
17 able to be here today, but they send their best wishes

18 and congratulations to their father. Judge Thomas E.  
19 Brennan, Jr., is here, Thomas, with his mother and  
20 father and Professor John Brennan.

21 (Applause.)

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

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1 and congratulations on this award.

2 (Applause.)

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

15 Second, because this award was named for and  
16 commemorates the work and the accomplishments of a man  
17 with whom I worked both as a justice of the  
18 Supreme Court and as a member of the Board of  
19 Commissioners of the State Bar. The legendary  
20 champion of lawyer ethics and professional  
21 responsibility, Mike Franck. Mike was a good friend.  
22 Polly and I cherish the many delightful times we spent  
23 with Mike and Carol over the years.

24 And third, because I was introduced this  
25 morning by Lawrence Patrick Nolan, another graduate of

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1 the Thomas M. Cooley Law School, a graduate as a  
2 matter of fact of the very first class, as he told  
3 you, who has been like a son to me for more than 30  
4 years and whose loquacious Irish charm never fails to  
5 light up a room whenever he shows up.

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

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

22 The words that are spoken at funerals, says  
23 Jackie in his galic lilt, are spoken too late for the  
24 man who is dead. What a wonderful thing it would be  
25 to sit at your own funeral and sit in the front and

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1 hear what's said, maybe say a few words yourself.

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

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

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

25 I was trying at that time to support a

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1 growing family, and looking back, it seems that I was  
2 either running for public office or Polly was  
3 pregnant. I may be the only man in America who was  
4 told to get out of politics by his wife's  
5 gynecologist.

6           It has been my experience that nothing I ever  
7 accomplished came easy or got done without help from  
8 other people. My instinct has always been to blunder  
9 forward ready or not. I am the poster boy for rushing  
10 in where angels and sensible people fear to tread. I  
11 confess to you this morning in all candor that the  
12 secret to my success has been to undertake great  
13 enterprises with vigor, passion, unjustified optimism,  
14 and such obvious ineptitude as to invoke the sympathy  
15 and invite the assistance of competent colleagues.

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

24           They have all combined to push me along the  
25 road of life. Sometimes that road has been a six lane

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1 interstate, and sometimes it has been just two tire  
2 tracks meandering through the forest. But I have been  
3 blessed to make this journey in the company of an  
4 exceptional human being who long ago consented to be  
5 my wife and soul mate, and so with the faith we have  
6 shared we have never really been lost along the way.

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

11           (Applause.)

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

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

25 MS. OEMKE: Thank you, Bob. I first heard of

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1 Sue Spagnuolo when I was being sworn in to the Bar  
2 some 28 years ago. At the swearing in it was  
3 announced that Ms. Spagnuolo had her tenth baby. She  
4 was a graduate of U of D Law School. She was a former  
5 teacher, and she had begun her practice in Howell.

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

14 She also had a home in Fowlerville, which is  
15 a quaint country atmosphere at that time, some 30  
16 years ago, and not known for its affluence, but she  
17 gained her clientele from the countryside of

18 Livingston County.

19 Sue was well versed in legal aid type of law.  
20 She was trying to make a practice, but with the heart  
21 that she had she was not making a lot of money. There  
22 became an opening in the legal aid office, and Sue got  
23 the job. Sue had continued to represent indigent  
24 people. Her hallmark is to call it like she sees it.  
25 She is very honest with her clients, very honest with

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1 opponents, and she looks out for children.

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

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

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

22 She knows people, she understands what they  
23 need to have, and tries to deliver that from the legal

24 perspective. She is a true example of lady justice.  
25 She is blind to whether they have means or not and she

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1 delivers that justice. And I am very proud to have  
2 nominated her for the Unsung Hero Award.

3 (Applause.)

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

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

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

25 I have been most fortunate, as Kathy

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

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

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1 And, outside of saying thank you very much to  
2 everybody involved, I know who some of them are, and I  
3 haven't quite ferreted out yet who all wrote letters  
4 of support for me, but thank you, thank you, thank  
5 you, and to be up with such distinguished people is

6 just something that I never dreamt of. Thank you  
7 very, very much.

8 (Appl ause. )

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

18 The Unsung Hero Award is a more recent award  
19 that the Assembly has started to award to our Bar  
20 members. It was started during Tom Rombach's tenure  
21 as our chairperson of the Assembly, and it's a  
22 highlighted award. There are so many people  
23 throughout our state who are deserving of this award,  
24 people who have not served in various elected  
25 positions or Bar leadership positions but who have

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1 helped their communities, and the criteria for this  
2 award that Sue Spagnuolo Dal has received, our  
3 criteria, presented to a lawyer who has exhibited the  
4 highest standards of practice and commitment for the  
5 benefit of others, and Sue Spagnuolo Dal definitely  
6 deserves this award, and we hope she will keep her  
7 efforts up for many more years to come, and we thank  
8 her for all of her great work over the years.

9 (Appl ause. )

10 CHAIRPERSON GARDELLA: One note we will be  
11 recognizing Sue Spagnuolo Dal and Justice Brennan at

12 our luncheon today. They will be there with their  
13 various friends and family members at the luncheon  
14 that runs from 12 noon to 2:00. So you will get a  
15 chance to say hello to Sue and their respective family  
16 and friends who have joined them. So please remember  
17 that and so you get a chance to shake hands and say  
18 hello to them.

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

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

24 CHAIRPERSON GARDELLA: I would like to call  
25 the meeting back into session here if everyone can

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1 come back into the room and be seated.

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

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

7 CHAIRPERSON GARDELLA: State your name and  
8 circuit.

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

16 The first item of business from my committee  
17 is to present this body with nominees to fill the

18 vacancies of membership pursuant to Rule 6, Section 6  
19 of the Supreme Court rules. The list of nominees is  
20 included in today's materials, and I would ask, as I  
21 read each name, I would like the individuals named to  
22 please stand and be recognized by this body.

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

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

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

12 CHAIRPERSON GARDELLA: Thank you. Is there  
13 support?

14 VOICE: Support.

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

17 Those opposed nay.

18 Any abstentions yes.

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

21 I would also like to thank our Nominating and  
22 Awards Committee chair, Victoria Radke. She has  
23 worked diligently this year to fill vacancies as they

24 come up. Sometimes people will move their office very  
25 abruptly, and we have endeavored over the last five,

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1 six years to make sure that we are at a hundred  
2 percent participation, and I think at this time we are  
3 very close, if not at, the hundred percent and at most  
4 we have one vacancy that just popped up because I  
5 think somebody moved out of their circuit.

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

17 And you have more?

18 MS. RADKE: I do. Mr. Chair, with your  
19 permission I would like to offer my thanks to the  
20 other members of my committee and ask the Assembly to  
21 recognize their hard work in filling these vacancies.  
22 Tom Evans from the 5th circuit, Suzanne Larsen from  
23 25th circuit, Mike Olson from the 44th circuit,  
24 Jeff Nellis from the 51st circuit, Richard Paul from  
25 the 6th circuit, and Jeff Crampton from the 17th

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1 circuit. I want to thank each of these individuals  
2 for their hard work in putting bodies into these seats  
3 so that we can do the business of the Representative  
4 Assembly, but I would like to make a special  
5 recognition and special thanks to you, Bob, for your  
6 assistance to my committee and as well as to  
7 Anne Smith who worked so diligently with me these last  
8 couple months to help me get these seats filled.

9 CHAIRPERSON GARDELLA: Thank you, Victoria.

10 (Applause.)

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

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

25 The first item is more of, I guess, an

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1 encouragement to all of you who are long-time serving  
2 Assembly members and some of our new members.

3 The new people, by the way, if you have been  
4 selected to fill a vacancy, you can be seated in your  
5 circuit right now. So, if you haven't done that

6 already, please find your way to whatever circuit you  
7 have been selected to fill the vacancy for.

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

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

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

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

10           One suggestion that I have is at your monthly  
11 meetings make an effort to get on the agenda. When

12 you would show up at the beginning of the meeting,  
13 remind the chair that you would like to make a quick  
14 presentation regarding what the Assembly has focused  
15 on previously in the year and what you anticipate they  
16 might be addressing later on in the year or address  
17 some of the programs that the Bar is involved in.

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

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

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

16 The other thing that I would suggest is doing  
17 a newsletter article in your Bar association, regular

18 monthly newsletter that comes out or quarterly  
19 newsletter. That's important, summarizing these  
20 things, because many people don't show up at the Local  
21 Bar association meetings, but they will read the  
22 newsletter. Or ask your Local Bar association if you  
23 can be put on their e-mail blast list or if you write  
24 a short article will they send it out for you and  
25 basically do all the work. With all the high tech

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1 things that are out there now, it's easier to send  
2 your column out than waiting for the local print  
3 version of the newsletter to be distributed. So I  
4 would encourage you to do that.

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

18 The other thing that I would like to do is to  
19 thank our Representative Assembly committee chairs.  
20 All of the committee chairs have done a great job this  
21 year. I think we may have a couple of them not here  
22 today, but we have Victoria Radke. I acknowledged her  
23 before. She is our Nominating and Awards Committee

24 chair.

25 Let's see, we have Rob Buchanan. I am not

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1 sure where all the circuits are today. He is our  
2 Drafting Committee chair. Right there, right in  
3 front. He has done a great job. Again, he and his  
4 committee have done excellent work under a tight time  
5 deadline. When those proposals come in, within a  
6 week, they have to get the drafting done in a hurry.  
7 They have gone above and beyond what they were  
8 expected to do this year and did more work and gave us  
9 more suggestions as to how to make these proposals the  
10 best that they can be and the easiest to read and  
11 understand.

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

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

21 The other person who really went into action  
22 early on, one of the first things I did as our chair  
23 when I took over the reins from Ed. John Riser, our  
24 Assembly Review chair, had to do what hasn't been done  
25 in many, many, many years is do a bylaw change to the

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1 Assembly, and John as our Assembly Review Committee  
 2 chair went into action right away. We had numerous  
 3 hearings, and also we approved that bylaw change, and  
 4 then the Board of Commissioners, they took over and  
 5 they went into action and approved it right away  
 6 without any debate. So that has to do with contested  
 7 elections, so thank you, John, for getting things in  
 8 action so quickly.

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

18 Thank you for all of you who have served on  
 19 these committees. You have done a wonderful job. You  
 20 have taken time out of your schedule for sometimes  
 21 very lengthy conference calls, and I ask that you  
 22 continue to serve. You can serve on a number of  
 23 different committees, but you have done a wonderful  
 24 job, and we appreciate your time commitment. It is  
 25 very much appreciated. All of the officers are very

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1 happy with the great work that's been done this year.

2 The other item that I wanted to address --

3 (Applause.)

4 CHAIRPERSON GARDELLA: The other point I  
 5 wanted to make, switching subjects here, is the fact

6 that we have members who can change their offices here  
7 and there periodically. Offices move or you may leave  
8 a firm and go to another firm or change your office  
9 location. We had that come up a few times this year,  
10 and one thing that the Bar staff would like me to  
11 reiterate to you is if you are in a particular circuit  
12 and you are moving out of that circuit to another  
13 circuit, you automatically will lose your position on  
14 the Assembly, and I want to reiterate that to you. So  
15 if you do move, please let Anne Smith at the State Bar  
16 office know that you have moved so that we can fill  
17 the vacancy immediately for that seat.

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

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1 that circuit will consider you to fill that vacancy.

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

10 Also, a follow-up from our 35th anniversary  
11 of the Assembly. Ed Haroutunian had sort of

12 spearheaded something to memorialize the contributions  
13 of the Assembly, and he came up with the idea of a  
14 permanent photo display of the past Assembly chairs,  
15 and that is almost completed. It will be on the first  
16 floor of the State Bar building. As you go down the  
17 hallway to some of the hearing rooms, or the meeting  
18 rooms I should say, it will be on the wall. We  
19 finally received the last one, I think it was our  
20 second chairperson, it was a challenge to try to get a  
21 photograph from one of our past chairs, but we did it,  
22 and it took a lot of effort to do that with a lot of  
23 people searching and trying to find family members to  
24 get the photographs for people who have moved or that  
25 are deceased. So it's finally done, so hopefully by

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1 mid or late October you will be able to see that  
2 permanent display in the State Bar building.

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

10 (Applause.)

11 CHAIRPERSON GARDELLA: The other recognition  
12 I would like to give is to the State Bar staff. They  
13 do so much work behind the scenes that makes this  
14 Assembly run so smoothly. The officers here are very  
15 fortunate to have a great staff they can rely on that  
16 will remind us when we overlook something to keep  
17 things going well.

18 Most of you know the people at the table  
19 here. Anne Smith, she is the administrative or  
20 executive administrator for the State Bar staff that  
21 handles the Assembly activities.

22 (Applause.)

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

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1 (Applause.)

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

13 (Applause.)

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

18 (Applause.)

19 CHAIRPERSON GARDELLA: Greg has done a great  
20 effort in a bad financial market right now to make  
21 sure that the justice initiatives efforts are funded  
22 the best that they can be and has really helped  
23 promote the programs and has done an outstanding job.

24 Dawn Evans, who is the director of the  
25 professional standards office. Dawn was here earlier

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1 and she was out in the hallway. I don't know if she  
2 is here, but she is always a great reference. If you  
3 have any ethics issues, she is a great resource. Her  
4 office, if you have issues in your locality in a what  
5 if or what should I do or what's the position on an  
6 ethical issue, her office is the office to call, and  
7 she has two new staff attorneys who are very, very  
8 talented. And, in fact, one of her staff members is a  
9 former chair of the Representative Assembly, so we are  
10 happy to have her new people in her office be a great  
11 help.

12 The next person, Anne Vrooman. I don't know  
13 if Anne is here. She is the director of research and  
14 development. Is she in the room? Okay.

15 And also Marge Bossenbery. Marge was out in  
16 the hallway and she may still be out there, but Marge  
17 does a lot of work for the Assembly.

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

21 (Applause.)

22 CHAIRPERSON GARDELLA: Cliff went into action  
23 to help us with the bylaw change at the beginning of  
24 this year. He helped us in a short amount of time to  
25 get that done and accomplished, and we thank Cliff for

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1 that, and he helps us on various other issues that  
2 come before the Assembly so that we are running  
3 smoothly.

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

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

18 And Jim Horsch, our financial director. Jim,  
19 I don't know if he is in the room. I don't know if I  
20 have seen him here. He was here yesterday. Jim has,  
21 I think, the challenge of the century right now with  
22 the bad financial condition that we have. Jim has  
23 done an outstanding job keeping the Bar on solid  
24 financial ground with conservative investments that we  
25 have had to redirect our focus to to make sure that we

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1 are on solid ground, and he has accomplished that. We  
2 have an excellent person as our financial director,  
3 and I can tell you, because I serve on the Finance  
4 Committee for the Board of Commissioners, that we are  
5 on solid financial ground, and much of that is thanks

6 to Jim's direction in leadership as the financial  
7 director.

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

10 (Applause.)

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

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

3 (Applause.)

4 CHAIRPERSON GARDELLA: A couple of other  
5 items. There is also, I guess important, we were  
6 talking about pocket book issues before. For those of  
7 you who have to submit mileage reimbursements, the  
8 State Bar staff has asked that you submit your mileage  
9 reimbursement sheets for participation at this meeting  
10 on or before September 30th, because our fiscal year  
11 is going to be ending. We have to get those in before

12 the end of September, so do your best. When you leave  
13 here today, make a mental note to sign the sheet and  
14 pop it in the mail to Anne Smith so she can get her  
15 accounting work done so that she meets with the  
16 various financial deadlines we have.

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

24 The last item that I wanted to address is the  
25 Access to Justice effort. It's been something that

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1 most of you are probably familiar with, but it's  
2 essential that we keep funding this program.

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

10 I encourage you to remember that the Access  
11 to Justice, the legal aid offices, if the rest of the  
12 economy is getting hit hard and the government is  
13 having budget deficits, you know that the legal aid  
14 offices are going to be suffering budget-wise too, and  
15 so I encourage all of you to make an effort this year  
16 before the end of the year or even before the end of  
17 this month if you can to make a contribution to Access

18 to Justice.

19 You can even designate which organization  
20 will receive the money that you wish your funds to be  
21 focused on. There is a large variety, or you can just  
22 say, well, I am giving it, they will do the right  
23 thing in terms of disbursing it to a lot of good,  
24 worthy organizations.

25 So we have a promotion today. In fact, our

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

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

21 So that's all I have. I wanted to end on  
22 that note for my remarks. That is very important, and  
23 it's a priority for us this year.

24 Next, I would like to have our esteemed  
25 president, unfortunately our outgoing president, Ron

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1 Keefe. He has had a wonderful year this year. I  
2 would like him to approach the podium here.

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

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

23 But he got it over the plate and did a  
24 wonderful job on that, and so we wanted to give him, I  
25 guess, some Tigers gear to remember the first pitch,

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1 and also with all that time that he is going to have  
2 not doing all the State Bar activities, and believe me  
3 he has been speaking everywhere in the state, I have  
4 seen him a lot of different places, he is going to  
5 have all this time now to just lay on the beach, think  
6 of that great pitching experience he has had at  
7 Comerica Park in Detroit, so we got him a Detroit  
8 Tigers beach towel so he can lay on the shores of  
9 Lake Superior during the two weeks in the summer that  
10 you can actually go swimming there.

11 (Applause.)

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

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

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

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1 of our Bar association.

2 Let me ask you at this time to join with me  
3 in thanking several people whose work has been  
4 essential to the accomplishments of our association  
5 this year.

6 Chairman Bob Gardella, of course, has been a  
7 full partner with me as an officer of this Assembly  
8 and as a member of the Board of Commissioners and its  
9 Executive Committee. At all times Bob has been a  
10 strong and vocal advocate of the Assembly and has  
11 served you well. Please give Bob the recognition he  
12 deserves.

13 (Applause.)

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

21 (Applause.)

22 PRESIDENT KEEFE: In addition to her service  
23 as clerk of the Assembly, Elizabeth Moehle Johnson  
24 also serves on the Board of Commissioners. In May I  
25 had the opportunity to participate with Liz in her

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1 hometown of Plymouth in the rededication of a legal  
2 milestone known as the Rose of Aberlone, which  
3 recognizes an important principle of contract law, and  
4 I might add it's a fascinating story in its own right,  
5 and it has been brought to life by Professor Otto  
6 Stockmeyer in a recent, I am not sure how recent, but  
7 Law Review article from the Thomas M. Cooley Law  
8 Review, and I would highly recommend this entertaining  
9 piece to you.

10 At that dedication ceremony I had the  
11 opportunity to see firsthand Liz's commitment to our

12 Bar association, and I want to personally thank her  
13 for her year of service.

14 (Applause.)

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

25 I am also reminded that the values of our Bar

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

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

16 The first issue was Access to Justice, which  
17 is the first issue for us. That Access to Justice

18 issue, of course, includes civil gideon, increased  
19 funding, and limiting restrictions on funding. As I  
20 said, ATJ is the top priority of the State Bar of  
21 Michigan, and I think I can safely say that we have  
22 one of the best ATJ programs in the country. Still  
23 many legal, civil legal needs are unmet, as you know,  
24 and much more is to be done in that area.

25 The second issue we agreed on was the

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

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

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

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

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

24 weeks and months.

25 Now let me touch briefly on a few of the

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1 things that our Bar association has been up to this  
2 year. An initiative to explore ways to promote and  
3 support an active senior Bar in Michigan has begun to  
4 take shape. This started in November, and it's just  
5 gone from there to an expanded group, and it  
6 continues. And I am very excited about the  
7 opportunity for senior lawyers to do pro bono and  
8 other volunteer work, start mentoring relationships  
9 with new lawyers and establish programming related to  
10 retirement and cutting back and closing down law  
11 practices.

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

18 On November 14 of last year numerous Michigan  
19 lawyers and others across the United States stood in  
20 silence near local courthouses to show solidarity and  
21 support for our counterparts in Pakistan. But I would  
22 remind you that the rule of law is not just an  
23 overseas issue. Here at home we face the challenge of  
24 how to preserve our liberties while ensuring national  
25 security.

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1           On June 17 the State Bar of Michigan released  
2 an important study from the National Legal Aid and  
3 Defender Association that overwhelmingly concluded the  
4 constitutional right to an attorney in criminal  
5 proceedings in Michigan is not being met in our trial  
6 level courts. Even in tough economic times we cannot  
7 deny our citizens their constitutional rights. We  
8 must respond to this report in a meaningful way that  
9 ensures equal justice for all, not just for some.

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

18           (Applause.)

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

22           Next on the agenda, our Executive Director,  
23 Janet Welch, will give us a presentation and sort of  
24 an update as to what's going on at the State Bar and  
25 in Lansing and all the great programs. Janet has so

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1 many balls in the air, she is like the ultimate  
2 juggler, a hundred things going at one time with a lot  
3 of different projects and activities, and so she is  
4 going to give us the update to let you know what the  
5 latest and greatest is in Lansing.

6 EXECUTIVE DIRECTOR WELCH: Thank you, Bob.  
7 It's a little intimidating to be standing up here this  
8 morning after several giants of the profession have  
9 been standing here, two giants that I have been aware  
10 of my entire adult professional life, one giant who I  
11 just met this morning, an unsung hero, and the  
12 extraordinary leaders of the State Bar. It's also a  
13 little intimidating to be behind schedule and try to  
14 bring you up to date on everything that's happening in  
15 the Bar in two minutes. For that, I want to refer you  
16 to our website. We have a wealth of information about  
17 what's going on at the Bar.

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

23 (Applause.)

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

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

10 I want to thank Bob for recognizing the staff  
11 of the State Bar of Michigan, because the other thing

12 that I have learned from my national experience is  
13 that the State Bar of Michigan is second to none. In  
14 fact, we are way ahead of the game in a lot of  
15 respects.

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

25 (Applause.)

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

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

18 really isn't easy, but they are extraordinary, and  
19 they are the reason that we are in such good shape  
20 financially.

21 An example of that is Bob mentioned Dawn  
22 Evans, who is the director of professional standards.  
23 She was sworn in in August as the president of the  
24 National Organization of Bar Counsel. Just an example  
25 of the quality that we have in our staff. She was out

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1 helping with registration. That's how we are able to  
2 make your dollars go far.

3 Nancy Brown is the dean of Bar journals in  
4 the country. She is our longest serving member of the  
5 State Bar, and here she is doubling as your  
6 reporter/recorder of what's going on.

7 We are committed to delivering value to you.  
8 Right now the dues for the State Bar of Michigan,  
9 which before the dues increase four years ago we were  
10 at about 17th in the country. By our calculation  
11 right now we are now in the bottom half, 26th in the  
12 country, and we are delivering more and more value,  
13 frankly, by working harder and up to this point being  
14 very, very careful and lucky with our investments.

15 I want to make up for time a little bit, and  
16 I don't want to leave the podium without saying  
17 something about the outgoing chair of the  
18 Representative Assembly.

19 This Assembly has developed the habit of  
20 choosing as its leaders people who are really  
21 extraordinary in their passion for the profession, in  
22 their energy, in their enthusiasm, and in their heart,  
23 and in that regard Bob Gardella is no exception at

24 all. I have to say that from the experience of staff,  
25 his energy and enthusiasm has been super human. And

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1 mine is not. So I want to publicly apologize to Bob  
2 right now for the many times when he has been down the  
3 road with his enthusiasm and he has had to wait for me  
4 to catch up.

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

9 (Applause.)

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

16 There is a lot of things that happen behind  
17 the scenes that you don't see that are in the  
18 management of the Assembly throughout the year, and  
19 Janet is always a great source of advice and direction  
20 with her knowledge in Lansing over the years working  
21 at the state senate, working for the Legislative  
22 Service Bureau doing drafting, working at the  
23 Supreme Court as counsel, and then as general counsel  
24 of the Bar and now, fortunately, as our executive  
25 director. She has just a great source of knowledge

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1 and knows Lansing and our government system I think  
2 better than probably anybody else in Lansing. So  
3 thank you for all of your help, Janet.

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

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

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

22 So, first of all, let me reintroduce myself.  
23 I am Matthew Abel from the 3rd judicial circuit, and  
24 just so you know, I am running for Wayne County  
25 prosecuting attorney on the Green party ticket, and I

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1 am not worthy, I am better, and so I hope you will all  
2 support me. Thank you.

3 That's one of the advantages when you  
4 introduce a proposal, they actually put you up here  
5 for a couple of seconds, and Judge Stephens hasn't

6 given me the heave-ho yet.

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

15 So I subpoenaed the videotape, as any good  
16 criminal defense lawyer would do, and took a long time  
17 to get it, a lot of kicking and screaming, dealing  
18 with the law department, the police, the prosecutor,  
19 and eventually we got the videotape. They wouldn't  
20 give me a copy. They would just let me, you know,  
21 they came up with it five minutes before the hearing  
22 started. And so I said, Judge, I think I have a right  
23 to see this tape, and he agreed. And let me go in the  
24 jury room with my client, and as we are watching the  
25 tape, just at the point where the officer approaches

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1 the car and yanks open the door the sound cuts out,  
2 and the whole issue was what the officer said to my  
3 client.

4 He ended up taking a first offender 7411 plea  
5 on that case. If I had had the videotape, I could  
6 have shown that was an illegal search. And for those  
7 of you who think that it doesn't happen that tapes are  
8 missing or destroyed deliberately -- sometimes it does  
9 happen innocently -- either you don't practice  
10 criminal law or you are not paying attention or you  
11 have never been stopped in a traffic stop where you

12 were charged with anything other than a civil  
13 infracti on.

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

21 Right away fire off letters to the police  
22 department saying preserve any videotapes of the  
23 traffic stop, and they say, jeez, we recycle them in  
24 30 days or 60 days or 90 days. Here it is four months  
25 later. I have what would be a good defense. There

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1 was evidence of it that was destroyed.

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

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

17 However, as this goes on, the Attorney

18 General indicates that requiring a defendant to show  
19 bad faith on the part of the police is appropriate.  
20 Look, if there is bad faith on the part of the police,  
21 you can sue them under 42 USC, Section 1983, for  
22 violation of civil rights under color of state law.  
23 There is already something where you can prove bad  
24 faith.

25 It's so rare to prove bad faith. It's just

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1 not going to happen very often. So I don't think  
2 requiring the police to show bad faith is appropriate.  
3 I think we ought to require them to show good faith.

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

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

20 Now, if he is the same guy who is out there  
21 beating up the client, the defendant, is he going to  
22 be putting that tape on evidence? I don't think so.  
23 If he is the guy who did the illegal search, is he

24 going to be putting the tape on evidence? No, not at  
25 all. What gives the police officer the right to

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1 decide what evidence is preserved and what isn't?

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

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

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

24 If and when I am the Wayne County prosecuting  
25 attorney, I think that if you destroy a tape you can

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1 be prosecuted for obstruction of justice. But that's  
2 not happening. And it won't happen, because the  
3 prosecutors cover up for the cops, and the cops cover  
4 up for each other, and what happens is justice is not  
5 served. This is just a little thing to show that a  
6 little more justice gets served. Thank you.

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

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

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

19 VOICE: Support.

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

25 MR. POULSON: Barry Poulson, 1st circuit. I,

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1 by the way, the political aspect, as head of the  
2 camouflage party, do support Prosecutor Abel in his  
3 campaign. He is not worthy, but he is able. We have  
4 had that discussion. He is going to put silly string  
5 in place of the tasers.

6 Police destroy evidence when it serves their  
7 interest. They come on the stand, though, and they  
8 say accidentally, and I have had this happen, and I am  
9 sure you have had if you defend clients, we  
10 accidentally destroyed the evidence. Very difficult  
11 to prove bad faith when you say we accidentally  
12 destroyed the evidence, and that's what they say, and  
13 then that's what they will always say.

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

21 So we very much support that in the 1st  
22 circuit. It's the judge's rule in 1st circuit, for  
23 example, that confessions be recorded, and it is the  
24 assumption that I make as a defense attorney to make  
25 the remark that when the videotape is gone, I make the

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1 remark, and the prosecutor cringes, if it helped the  
2 prosecutor, they'd have shown you the pictures today.  
3 It would be much more effective if the judge would say  
4 exactly the same thing, because it's actually true.

5 CHAIRPERSON GARDELLA: Thank you. Ms. Radke.

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

12 "shoul d" to "may." I am unclear on that.

13 CHAIRPERSON GARDELLA: To answer that,  
14 Mr. Abel, if you could take the microphone and clarify  
15 that.

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

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

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

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

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1 MR. ABEL: Yes.

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

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

6 Any other discussion? Mr. Debiasi.

7 MR. DEBIASI: William Debiasi, 3rd circuit.  
8 I just want to say that I agree with the Attorney  
9 General in terms of the presumption that the proponent  
10 wishes to attach to this particular amendment to the  
11 Court Rule.

12 If you look at the Court Rule and you look at  
13 Sections 1 through 5, there is no such presumption  
14 that's attached or jury instruction that has to be  
15 given if the judge finds that there is any failure to  
16 comply with discovery under Sections 1 through 5. Why  
17 should there be a similar presumption under Section 6?

18 It doesn't make any sense, and it is not consistent  
19 with the ends of justice.

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

25 Anyone who has worked in this particular area

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1 of the law and has seen thousands and thousands of  
2 videotapes can tell you any prosecutor, that 97  
3 percent of the time those videotapes are not  
4 exculpatory. They are either inculpatory or they are  
5 inconclusive.

6 To have a presumption without any evidence of  
7 bad faith, without any evidence that the prosecutor  
8 even knew what was on the videotape -- if you have a  
9 situation where an individual skips out on a warrant  
10 and isn't picked up for two years later and then there  
11 is no videotape because the police right now,  
12 according to law, are entitled to reasonable record  
13 keeping practices, and they have rules for regular  
14 record keeping practices that have been established in  
15 the Court of Appeals, if they have destroyed a  
16 videotape in the course of reasonable record keeping  
17 practices and have no knowledge what's on that tape or  
18 if the attorney hasn't requested it, now you have to  
19 have a presumption that they can go in front of the  
20 jury and say presume that this videotape that nobody  
21 has seen is adverse to -- that it provides adverse  
22 evidence to what the prosecution is saying. That  
23 simply is not consistent with the vast majority of

24 cases. That particular presumption is completely off  
25 the wall and should be stricken.

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

8 JUDGE KENT: Wally Kent, 54th judicial  
9 circuit. Matt and I don't always find ourselves in  
10 agreement, but on this issue I do agree with Mr. Abel.

11 There is a presumption of innocence. It's  
12 important that the people who must prove guilt  
13 preserve the evidence for both sides that they have  
14 under their control.

15 I understand that there may be a storage  
16 problem. There may be a speedy trial problem.  
17 Perhaps a bright line time test of three years,  
18 whatever, would be appropriate to let the prosecution  
19 and the police off the hook, but short of that they  
20 should not be allowed to pick and choose what evidence  
21 they preserve and what evidence they destroy. There  
22 is no hardship in keeping these recordings, these  
23 electronic recordings for a period of time to be sure  
24 that the defendant has an opportunity to examine that  
25 evidence and to determine for himself whether or not

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1 it is exculpatory. So I support the proposal offered  
2 by Mr. Abel.

3 CHAIRPERSON GARDELLA: Thank you, Judge Kent.

4 MR. HAUGABOOK: Terrence Haugabook,  
5 3rd circuit. I oppose this. As Mr. Debi asi said,  
6 many times we look at these videotapes, and I have as  
7 a prosecutor, and there is nothing on them. Let's say  
8 an officer goes through a whole shift and encounters  
9 24 people. Now we have to make 24 copies so that  
10 everybody has a copy of this tape?

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

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

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1 If we have brother counsel's situation, then  
2 you're automatically presumed to have done something  
3 wrong when it was out of your hands, and that is the  
4 part that I think -- what if we live somewhere like in  
5 Louisiana and a Hurricane Katrina or Galveston or

6 something like that and they come around and things  
7 are destroyed. Now when you get ready to go to trial,  
8 they say, oh, you don't have that tape. Ha, here is  
9 the coup de grace. I can say, you know, even though  
10 it was by hurricane, I can say, hey look, they don't  
11 have this tape, therefore, you can presume that what  
12 they had is adverse to their case.

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

16 CHAIRPERSON GARDELLA: Mr. Riser.

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

19 CHAIRPERSON GARDELLA: I think we can hear.

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

24 CHAIRPERSON GARDELLA: Mr. Riser, could you  
25 put it up a little bit.

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1 MR. REISER: Is this better?

2 CHAIRPERSON GARDELLA: Yes.

3 MR. REISER: By adopting this resolution, the  
4 Representative Assembly would in a single sentence  
5 have the Supreme Court modify the state of  
6 constitutional law as it relates to the exclusionary  
7 rule. I think such a drastic overhaul of the  
8 exclusionary rule deserves consideration by a  
9 Legislature or through the Michigan Supreme Court or  
10 the United States Supreme Court in a published  
11 opinion.

12 This is big stuff. The remedy for not  
13 preserving evidence gets litigated, I don't want to  
14 say ad nauseum, but significantly in appellate courts  
15 of our land, and that's where this should be done, or  
16 in the Legislature.

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

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

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

14 As a prosecutor attorney, I know that any  
15 electronic recording in a case could be -- for  
16 instance, if it's a drunk driving with a crash, patrol  
17 videos, radio traffic, 911 calls, ambulance calls and

18 ambulance traffic, the fire departments there, there  
19 could be some interviews on video, there could be some  
20 interviews on tape. There are mug shots. There could  
21 be digital photos. That's what, I don't know, maybe  
22 ten types of electronic evidence that as a prosecuting  
23 attorney I now have to preserve.

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

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

6 CHAIRPERSON GARDELLA: Thank you.

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

19 I am sure of all the prosecutors, most  
20 prosecutors would be against this and say no way, no  
21 how for reasons we have already heard. I am sure most  
22 defense attorneys would say absolutely for reasons we  
23 have already heard. But I think changing those two,

24 making those two friendly amendments would the old  
25 fashioned way, talk to the judge before that court

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1 rule, or I am sorry, before that jury instruction is  
2 provided to the jury, and the judge makes the decision  
3 on the circumstances of whether it was inadvertently  
4 destroyed or adversely destroyed, on purpose, look at  
5 the evidence or lack of evidence and make the  
6 decision.

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

10 MR. ABEL: I accept both of those amendments.

11 MR. KORTERING: That's all I have.

12 CHAIRPERSON GARDELLA: Thank you. Next.

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

19 Although the written document that's before  
20 us today on this matter indicates that there was no  
21 known prior action by the Representative Assembly, I  
22 just want to point out, in fact, we debated this issue  
23 six months ago. There was a lively debate about it.  
24 And at that point it was referred to the Special  
25 Issues Committee, of which I am a member.

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1           That committee, along with -- and this is  
2 described, actually, in a subsequent, the pre-sentence  
3 report document that's in your binder. The Special  
4 Issues Committee, along with members of or delegates  
5 from the Criminal Law Section, Criminal Jurisprudence  
6 and Prisons and Corrections formed an ad hoc committee  
7 that debated this issue ad nauseum on several  
8 occasions.

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

18           VOICE: Support.

19           CHAIRPERSON GARDELLA: It's not debatable.  
20 We have a motion on the floor to table this proposal,  
21 and so at this point we have to take a vote on the  
22 matter. So hearing the responses, all those in favor  
23 of the motion to table say aye.

24           All those opposed to the motion say nay.

25           And any abstentions say yes.

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

3           If our clerk, Elizabeth Moehle Johnson, if  
4 you have people to assist you, if the people who have  
5 raised their hand in support of the motion to table,

6 please raise your hand.

7 VOICE: Mr. Chairman, can we just stand?

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

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

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

14 Those opposed, if you could please stand.

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

25 At this point you can be seated.

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

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

7 Mr. Crampton, I think you were in line.

8 MR. CRAMPTON: Jeff Crampton from the  
9 17th circuit, and I rise in support of this proposal.

10 CHAIRPERSON GARDELLA: Mr. Crampton, if I  
11 could interrupt you for just a minute. We do have the

12 luncheon that's going to start at noon, and we have to  
13 be in there, so at one point -- I am not just picking  
14 on you, but we did debate this at the April meeting, I  
15 refresh everybody's recollection on that. And so if  
16 everyone could be very brief in their comments, we are  
17 going to try to get of everybody, and then we can take  
18 a vote, and then the next item that we have regarding  
19 the consideration of political endorsements, we will  
20 push that, without objection, to after lunch, and then  
21 move along from there. But I would like to get the  
22 discussion finished and get a vote on this before  
23 lunch, and we will hopefully get it done within the  
24 next seven minutes, if we can.

25 MR. CRAMPTON: I will be brief.

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

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

11 VOICE: So moved.

12 VOICE: Second.

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

15 Hearing none, those in favor say aye.

16 Those opposed say nay.

17 Any abstentions say yes.

18 The ayes have it for the modification of the  
19 schedule. The motion is carried.

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

24 (Applause.)

25 MS. VESTRAND: Thank you. Hopefully this

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1 won't be controversial.

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

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

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

20 Consequently, the proposed prohibition would  
21 serve to protect the integrity of the State Bar and  
22 the effectiveness of its public policy program. It  
23 would also serve to protect and insulate our officers

24 from the pressures that befall when approached to  
25 provide such endorsements. In declining the request,

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

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

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

20 CHAIRPERSON GARDELLA: Do I hear support?

21 VOICE: Support.

22 CHAIRPERSON GARDELLA: Discussion?

23 MR. CHADWICK: Hi, Tom Chadwick from the  
24 8th circuit. I rise to oppose this motion. My law  
25 partner is running for judge this year. I intend to

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1 endorse him. I have endorsed him probably. I would  
 2 hate for his opponent to dig up this rule of the  
 3 State Bar Representative Assembly and use it against  
 4 him or me to disparage my character in saying that I  
 5 did something that was discouraged by this body.

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

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

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

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

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1 doesn't seem terribly necessary, but it also seems  
 2 stifling.

3 If you come from a community, especially an  
 4 STP community where the same ten people do everything,  
 5 to say, you know, if you take this position here, you

6 know, as an officer, then you will have to -- no, you  
7 don't have to, but we would really like you to shut  
8 your mouth.

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

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

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

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1 Matt's efforts.

2 CHAIRPERSON GARDELLA: Is there any other  
3 discussion?

4 MS. SADOWSKI: Elizabeth Sadowski from the  
5 6th circuit.

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

12 against this amendment. Thank you.

13 CHAIRPERSON GARDELLA: Any other discussion?

14 VOICE: Call the question.

15 CHAIRPERSON GARDELLA: Mr. Abel.

16 MR. ABEL: Thank you, Matthew Abel from the  
17 3rd circuit. I think this rule doesn't have any teeth  
18 with the word "discourage." Either we should prohibit  
19 it or not. To discourage it means what, you know?  
20 You can still do it but we are going though sneer at  
21 you? And I think if we are going to pass this that we  
22 should add between the words "discourage" and  
23 "officers," we should add the words "judges,"  
24 "magistrates," and "all officers." I mean, how can a  
25 judge endorse somebody but the clerk of the Assembly

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1 can't. That just is inconsistent.

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

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

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

11 Those in favor of the proposal please say  
12 aye.

13 Those opposed please say no.

14 Any abstentions say yes.

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

17 At this point we are at a stage -- thank you,

18 Ms. Vestrand for the presentation, and thank you for  
19 the involvement of the Assembly members on the debate.

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

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

5 (Luncheon break 11:53 a.m. - 2:00 p.m.)

6 CHAIRPERSON GARDELLA: If everybody could  
7 take their seats, we would like to resume the meeting  
8 and go back into our session here.

9 First of all, I am going to ask that we, once  
10 again, adjust our schedule, and to stay on so that our  
11 speaker can be accommodated, David Carroll is set for  
12 2:00. I would like to entertain a motion to keep  
13 David Carroll on line for the 2:00 point, and then  
14 Mr. Abel's proposal would continue on right after  
15 Mr. Carroll is done with his presentation, and in the  
16 same motion I would also like to entertain a motion as  
17 a combination to allow for Mr. Carroll to have  
18 questions presented to him at the end of his  
19 presentation if any members are interested in asking  
20 questions.

21 Mr. Kent, I would recognize you.

22 JUDGE KENT: Mr. Chairman, I so move.

23 CHAIRPERSON GARDELLA: Is there support?

24 VOICE: Support.

25 CHAIRPERSON GARDELLA: Any discussion? Not

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1 hearing any discussion, those in favor please say aye.

2 Those opposed to say no, or nay.

3 And any abstentions say yes.

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

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

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

21 (Applause.)

22 MR. CARROLL: Thank you very much. As you  
23 might be able to tell, I am at the tail end of a cold,  
24 so please be patient while I keep my throat going  
25 here.

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1 As world events unfold daily in far off  
 2 places like Afghanistan and Iraq, the words on the  
 3 screen of U. S. Supreme Court Justice Hugo Black speak  
 4 to the core values that distinguish the United States  
 5 from those countries under the repression of  
 6 dictatorships, theocracies, and despots. We are  
 7 different.

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

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

22 In the case of Gideon V Wainwright the United  
 23 States Supreme Court concluded that reason and  
 24 reflection require us to recognize that in our  
 25 adversarial system of criminal justice any person

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1 hailed into court who is too poor to hire a lawyer  
 2 cannot be assured a fair trial unless counsel is  
 3 provided for. Declaring it an obvious truth that  
 4 lawyers and criminal courts are necessities, not  
 5 luxuries, the court rule that states, not counties or

6 local governments, must provide counsel to indigent  
7 defendants in felony cases. This mandate has been  
8 consistently extended to any case that may result in a  
9 potential loss of liberty, including misdemeanors and  
10 juvenile delinquency proceedings.

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

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

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1 Now, we didn't pick the counties. We wanted  
2 to make sure that we weren't accused of cherry-picking  
3 either the very best or the very worst to skew the  
4 results, so we asked the sponsor of the concurrent  
5 resolution, Senator Alan Cropsy, to put together an  
6 advisory group made up of representatives from the  
7 State Court Administrators, the Prosecuting Attorneys  
8 Association, the State Bar, the State Appellate  
9 Defender Office, and the Criminal Defense Attorneys of  
10 Michigan, plus trial level judges, and we said, You  
11 tell us what counties that people would accept the

12 results as being a representative sample. The ten  
13 counties are listed up on the map.

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

20 Counties are free to establish any form of  
21 right to counsel delivery system they so choose  
22 without regard to meeting nationally recognized  
23 standards of justice, such as those promulgated by the  
24 American Bar Association, related to caseload control,  
25 attorney training, accountability or other quality

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1 assurance standards. In fact, most counties have a  
2 multitude of public defender delivery systems. One  
3 for circuit court, one for district court, third for  
4 juvenile delinquency representation, and in some cases  
5 a different indigent defense delivery model for each  
6 district court and/or judge within those courts.  
7 Without uniform oversight, each of these systems has  
8 become institutionally balkanized over time and are  
9 failing.

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

17 These include judges hand picking defense

18 attorneys, lawyers appointed to cases for which they  
19 are not qualified, defenders meeting clients on the  
20 eve of trial and holding nonconfidential discussions  
21 in public courtrooms, attorneys failing to identify  
22 obvious conflicts of interest, failure of defenders to  
23 properly prepare for trial and sentencings, attorneys  
24 violating their ethical canons to zealously advocate  
25 for clients, inadequate compensation for those

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1 appointed to defend the accused, and a lack of  
2 sufficient time, training, and resources to properly  
3 prepare for a case in the face of the state court  
4 system that values speed over substance.

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

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

21 Counties in Michigan grappling with budget  
22 problems are forced to look for the cheapest possible  
23 option for providing indigent defense. With no

24 statewide oversight or standards to ensure justice is  
25 equal across county lines, financially strained

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1 counties have often chosen low bid, flat fee contracts  
2 in which an attorney is asked to handle every single  
3 case that comes down the pike for a flat fee,  
4 guaranteeing that lawyers will not have good resources  
5 to properly defend the case.

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

14 Collectively, Michigan counties spend about  
15 \$74.5 million a year on indigent defense services.  
16 Now, that may sound like a big amount of money, but  
17 Michigan currently ranks 44th of the 50 states in  
18 public defense funding. By spending only \$7.35 per  
19 capita, which by the way is 38 percent less than the  
20 national average, Michigan ranks lower than such  
21 states as Alabama. Texas is right next to Michigan.  
22 These are not bastions of the Sixth Amendment in our  
23 country.

24 One of the most glaring results of this  
25 failed policy is what passes for justice in Michigan's

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1 district courts. People of insufficient means in  
2 Michigan are routinely processed through the criminal  
3 justice system without ever having spoken to an  
4 attorney, in direct violation of the  
5 U.S. Constitution. The district courts employ a  
6 variety of manners to avoid their constitutional  
7 duties, including uninformed waivers of counsel and,  
8 more importantly, the threat of personal financial  
9 strain through the imposition of unfair cost recovery  
10 measures. Anything to emphasize speed over substance  
11 is the mantra of the district courts.

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

22 And, as bad as the level of justice people of  
23 insufficient means receive in the district courts,  
24 juveniles facing delinquency proceedings are even more  
25 of an afterthought. At risk juveniles in particular

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1 require special attention from public defenders if  
2 there is any hope to change behavior and prevent  
3 escalating behavioral problems that will increase the  
4 risk that they'll eventually be brought back into the  
5 adult criminal justice system in later years.

6                   These are common children who have been  
7 neglected by parents and the range of other support  
8 structures in our society that could channel children  
9 in appropriate constructive directions. When they are  
10 brought into a court and given a public defender who  
11 has no resources and a caseload that dictates that he  
12 dispose of the case as quickly as possible, the  
13 message of neglect and valuelessness continues and the  
14 risk, not only of recidivism but of escalation of  
15 misconduct, increases as you do that process.

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

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

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1                   These include independence of the defense  
2 system from both the judicial and political  
3 governmental systems. Early appointment of counsel so  
4 that you can get and investigate the crime quickly and  
5 figure out what the best resolution is.  
6 Confidentiality, that you shouldn't be discussing  
7 everything in a holding pen in front of other people  
8 who could then use that information to cut their own  
9 deal. Workload control, so that you are not asking  
10 people to carry an unlimited number of cases.

11                   Attorney qualifications, to make sure that

12 that attorney that is getting that case can handle  
13 that case. If you were being asked to be defended on  
14 serious felony cases, I don't think you would want a  
15 real estate attorney. I think you would want a  
16 criminal defense attorney. Continuous representation,  
17 training, and other things that we will talk about  
18 slowly.

19 Now, the very first ABA principle requires  
20 independence of the defense function from the  
21 judiciary, yet Michigan statutes give the authority  
22 for oversight to the judiciary specifically. While  
23 the vast majority of judges do strive to do justice in  
24 all cases, political pressures, administrative  
25 priorities, such as the need to move dockets, or

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1 publicity generated by a particularly notorious crime,  
2 can make it difficult for even the most well-meaning  
3 judge to maintain their neutrality.

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

16 When the public fears that the court process  
17 is unfair, people are less inclined to show up for

18 jury duty or to come forward with critical information  
19 about crimes.

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

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

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

19 In Ottawa and Shiawassee Counties public  
20 defenders do not conduct independent investigations  
21 for their clients. When they think something is  
22 wrong, you know what they do? They ask the police to  
23 reinvestigate. Even though oftentimes, and, again,

24 this isn't painting the police function with a broad  
25 stroke, but when you have already investigated and

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1 come to a conclusion, it's very hard to break out from  
2 those bonds and look at things anew.

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

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

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

23 Now, no one is thinking that there is going  
24 to be one-to-one parity in the sense you are going to  
25 add up all those resources and give it to the defense,

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1 but what can be done is have similar pay, similar work  
2 loads, and other things that can make it a more even  
3 fight. Without such resources, the defense is unable  
4 to play its appropriate role of testing the accuracy  
5 of the prosecution evidence, exposing unreliable  
6 evidence, and serving as a check against prosecutorial  
7 or police overreaching.

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

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

24 Now, I am not an expert in the prosecution  
25 function, but our court observations around your state

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1 make us believe that the presentations made by the  
2 prosecuting attorneys are true. The underfunding of  
3 the prosecution fund in Michigan, though, only serves  
4 to highlight how truly far off the mark the defense  
5 function is.

6                   And though prosecution reform may certainly  
7 be required for public safety reasons in the coming  
8 months and years and though prosecution reform -- we  
9 know that there is no constitutional requirement for  
10 effective prosecution. Perhaps for victims of crimes  
11 there should be some day, but right now there is a  
12 long litany of cases requiring states to create  
13 adequate defense systems.

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

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

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1 often have prosecutors there either.

2                   Well, the court has said unequivocally this  
3 year that that does not count as justice, and again  
4 they quoted this: The right to counsel would be heard  
5 in many cases of little avail if it did not comprehend  
6 the right to be heard by counsel. Even the  
7 intelligent and educated layman has small and  
8 sometimes no skill in the science of law. If charged  
9 with a crime, he is incapable generally of determining  
10 for himself whether the indictment is good or bad. He  
11 is unfamiliar with the rules of evidence, left without

12 the aid of counsel. He may be put on trial without a  
13 proper charge and convicted upon incomplete evidence  
14 or evidence irrelevant to the issue or otherwise  
15 inadmissible. He lacks both the skill and knowledge  
16 of adequately to prepare his defense, even though he  
17 had a perfect one. He requires the guiding hand of  
18 counsel at every step in the proceedings against him.  
19 Without it, though he be not guilty, he faces the  
20 danger of conviction because he does not know how to  
21 establish his innocence.

22 The time is now. The people of Michigan need  
23 to come together and demand that we uphold the  
24 constitution. We did not in our report make  
25 recommendations on how to fix it. We are happy to aid

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1 anyone that is willing to look at it where we can tell  
2 you how other states have approached this and fixed  
3 it, but the bottom line is there is no cookie cutter  
4 answer. You necessarily have to take into account the  
5 uniquenesses all across your state. It may be a  
6 system that looks quite different in the Upper  
7 Peninsula than it does in Wayne County.

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

15 CHAIRPERSON GARDELLA: It is.

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

18 consider?

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

23 MS. SADOWSKI: Elizabeth Sadowski from the  
24 6th circuit. My question is whether there is any  
25 state or locality that has a model which you might

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1 suggest we consider?

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

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

21 Minnesota has what you would probably  
22 recognize as the more typical public defender system  
23 in which there is top down governmental employees that

24 are full time and on staff in each of those.

25 My sense from walking around your state is

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

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

16 This past summer there was a conference that  
17 brought people both from the defense and prosecution  
18 system in Wisconsin to come and talk to public  
19 defenders and prosecutors, and I think there is a lot  
20 of good that comes from that. And I think they also  
21 share a lot of the same sort of uniquenesses as far as  
22 how the state looks as regards to urban areas and  
23 rural areas and stuff. So those are the states I  
24 would start looking at to get some ideas on how to do  
25 it.

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1 MR. HOSCHNER: Robert Hoschner from the 35th  
2 circuit. My question to you is, and I only ask this  
3 because I am from Shiawassee County and I worked in  
4 that system for 36, 37 years, and I ask this question  
5 because I don't know where you got your information,  
6 and I am wondering how you got that information, since  
7 it certainly is not what I experienced in 36 years and  
8 the comment you made about Shiawassee County. I also  
9 have a cold.

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

22 So, for instance, we took the ABA ten  
23 principles, and we set up a very formal protocol and  
24 asked specific questions to find out, you know, the  
25 difference between there is quality lawyers in this

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1 system but there is nothing that guarantees it. It's  
2 only grown up that way or there is certain things  
3 versus having strict rigors to be able to ensure that  
4 each attorney is going to be able to handle those case  
5 loads. So each of the counties, obviously, have

6 different variations on a theme. Some are better than  
7 others.

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

19 MR. HOSCHNER: The reason I say that is  
20 because in the 36 years I practiced law in Shiawassee  
21 County I had many murder cases, rape cases, thousands  
22 of cases I defended. I always had the opportunity to  
23 go before the judge and get additional help as far as  
24 I needed. I never in thousands of cases had to go  
25 back and ask the police to do any further

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1 investigations unless it was with the prosecutor and  
2 the judge because there appeared to be some obvious  
3 reason why, obvious reason why we wanted them to  
4 reinvestigate.

5 I always had the opportunity to have  
6 investigations. I sometimes had to, I sometimes had  
7 to ask the judge, you know, permission at first to  
8 make sure that he knew what I was needing and what  
9 kind of money it was going to cost, but I would get  
10 that information, provide it to him, and he would  
11 always give me the right to do that.

12 I have three people in my office that have  
13 been doing criminal defense work for many years. I  
14 don't know that any one of them ever talked to anybody  
15 from your organization.

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

24 For example, we had a system wherein the  
25 older attorneys, the more experienced attorneys were

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1 the ones who got the felony cases, were the ones who  
2 got the criminal cases that were the severe cases, and  
3 the judges all knew who those attorneys were, and they  
4 were the ones that were put on that list, and maybe  
5 there is only six attorneys out of 50 in that county  
6 that were put on that list, and it was done by a  
7 variety of people, prosecutor being part of it, judge  
8 would be a part of it, the other defense attorneys  
9 would be a part of it.

10 I think there is more to our system in this  
11 state than what it appears from looking at this  
12 particular representation. I only say that because,  
13 you know, I really loved what I did for 36 years, and  
14 I thought I did an excellent job. In fact, I had many  
15 murder cases of which I did far better than I thought  
16 I should for an indigent defendant, and I always felt  
17 that I had the opportunity with my judges to do what I

18 needed to do for that defendant, and I always had the  
19 opportunity to speak to him alone, I always had an  
20 opportunity to let him tell me what he needed to do  
21 and that I could advise him at any given time, and I  
22 always had the time to do that.

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

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

11 MR. CARROLL: Thank you for those comments.

12 (Applause.)

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

23 I think this type of debate is very healthy.

24 I hope it continues as we move forward in this  
25 campaign to do it, but I must comment that you said

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1 several things in that that you went to the judges  
2 every time you needed something. Now, in that  
3 instance it may be someone that wasn't feeling  
4 pressures and there weren't budgetary constraints and  
5 they were able to give you experts or not, but that's  
6 not always the case, and that's why the Supreme Court  
7 again has said that the judiciary must be out of it.

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

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

18 I think I met many, many committed public  
19 defenders and private defense counsel in your state,  
20 and I think they aren't trying to do a bad job. I  
21 think they are doing by their own, what's given to  
22 them, a very good job. The problem is that given the  
23 structure of the system even Superman couldn't be  
24 doing what is expected under the ABA guidelines and  
25 what the U.S. Constitution recommends.

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1 I would say, if people would ask around, how  
2 many counties are now respecting the Rothgery decision  
3 that was handed down two months ago? I would say very  
4 few in your state.

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

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

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

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

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

4 In any event, the problem is with the Board  
5 of Commissioners. They don't want to spend the money,

6 they don't have the money, I suppose. And that I  
7 think should be pinpointed that any system which  
8 relies on appropriations from the Board of  
9 Commissioners is going to have the same flaws that you  
10 have mentioned.

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

21 Our system works fairly well except to the  
22 extent that, one, there is no investigative process  
23 available which isn't the police except the problem  
24 that attorneys are working on volume. They go in  
25 Friday morning with felonies and sit with the

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1 prosecutor, and the prosecutor says, well, I will plea  
2 bargain down to this, take it or leave it, and  
3 generally they take it, because they can't afford to  
4 do much else.

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

8 By the way, I don't agree that the  
9 prosecutors are underpaid. I have been there. I  
10 started with something like \$5,000 a year as an  
11 assistant prosecutor. We got finally in our county a

12 system of a prosecutor's union, so to speak, that  
13 bargained with the Board of Commissioners.

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

24 MR. CARROLL: Think you. I think you said a  
25 couple very important things. One, the ABA, first

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1 principle on independence, I spent a bit of time  
2 talking about independence from the judiciary, but  
3 independence from the political process is there as  
4 well. Most states that's a broad, bipartisan,  
5 statewide commission to oversee indigent defense  
6 insulated from some of these very board questions that  
7 you talk about.

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

15 If these battles are going on on 83 different  
16 counties instead of once at the state level, you are  
17 always going to have issues with a new commissioner

18 comes on and reeducation has to start all over again.

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

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

14 In regards to -- you know, I think, I hear a  
15 lot of people that say things like you did, sir, of I  
16 think we do fairly well, you know, and I would agree  
17 in many instances you are doing okay here or fairly  
18 well, but that's not what the Constitution says. It's  
19 not the right to counsel given whatever the current  
20 economic status is. It's a very definite, this is  
21 what needs to be done, and so I know people are going  
22 to struggle with this. I know I am in for a lot more  
23 people questioning our methodology, questioning how we

24 did that. I want that. Please, let's engage in  
25 debate and get to the bottom of it, because the system

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1 is not working for clients. Thank you, sir.

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

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

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

18 We are doing what any interest group, and our  
19 interest I think is the Constitution, what any  
20 interest group does when it wants to make change. We  
21 are educating legislators, and we are also having  
22 conversations with the Supreme Court, because there is  
23 two parts to this. There is the money and there is  
24 the standards, and if you don't have standards, it  
25 doesn't matter how much money you spend. So we are

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1 engaging in both those areas, and I would say that we  
2 would have no chance of success at all if we didn't  
3 have a most powerful ally possible on our side, and  
4 that is the Constitution. And so I am very hopeful  
5 that all of the forces are coming together right now  
6 to move us forward.

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

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

21 We did a report like this. It led to the  
22 legislature, court, and executive branch forming a  
23 three-branch working group to work through these  
24 issues. They put on hearings. They had all the  
25 people come to say, you know, oh, they overreached on

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1 this report or they underreported on this, gave  
2 everybody, judges, prosecutors, public defenders,  
3 clients, victims the ability to come before them and  
4 hold hearings on this.

5 At the end of the day they realized that they

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

12 Now, Louisiana quadrupled the amount of money  
13 being spent on indigent defense in the years after  
14 Katrina. So if there was ever a dire economic  
15 situation, it was post-Katrina Louisiana, that at the  
16 end of the day when they realized that the  
17 Constitution was being violated on a daily basis, the  
18 Legislature of Louisiana created a complete statewide  
19 indigent defense system with an independent board, all  
20 the money coming from the state instead of from their  
21 counties, they are called parishes, they meet all the  
22 ABA ten principles. They looked to Montana, because  
23 they felt they needed a mixed system too, so they have  
24 staff public defenders in places like Baton Rouge,  
25 New Orleans, and Lake Charles, and then they have

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1 contract and assigned counsel in the suburban and  
2 transitional and rural areas as well.

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

9 Now, we do look and say there is that  
10 Michigan where you rank 44th for cost per capita on  
11 indigent defense. You rank about third or fourth for

12 cost per capita on corrections. My sense is that if  
13 you look at the criminal justice system in whole,  
14 there will be cost savings by investing on the front  
15 end and saving on the back end, but those are  
16 decisions for other people to make.

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

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

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1 defense lawyers, specifically public defense.

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

16 In Wayne County we brought people from, you  
17 know, Massachusetts and California and Texas and other

18 places to come and look at that.

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

21 MS. GRAMZOW: Thank you.

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

24 (Applause.)

25 CHAIRPERSON GARDELLA: It was very

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1 informative, gives us food for thought, especially  
2 when you are out there talking to your various  
3 legislators who represent your various communities in  
4 Lansing.

5 At this point --

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

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

21 Now, back on track for our proposal agenda.  
22 Returning to Matt Abel's proposal, that's item number  
23 15 that was moved up, and that is consideration of

24 MCR 6.201(B) preservation of electronic recordings.

25 Mr. Olson.

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1 MR. OLSON: Mr. Chairman, in light of the  
2 debate that has been held on this in two separate  
3 meetings, I would move to call this question.

4 CHAIRPERSON GARDELLA: Is there support?

5 VOICE: Support.

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

8 Those opposed no.

9 And those abstaining yes.

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

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

17 Those opposed nay.

18 And those abstaining say yes.

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

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

25 Now all those opposed to the motion please

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1 stand. You can all be seated.

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

4 With that, the motion is approved 62 votes to  
5 37 votes.

6 (Applause.)

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

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

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

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

23 MR. ABEL: I am sorry. Thank you. In regard  
24 to that matter, the only comments that were received  
25 that I am aware of were those from the Attorney

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1 General, and it may be that this matter needs more  
2 discussion. I am not sure it does. It seems that the  
3 Attorney General missed the point, which is that the  
4 defendant who is doing the appeal is the one who  
5 should have the copy of the report.

6 CHAIRPERSON GARDELLA: Mr. Abel, this is item  
7 12.

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

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

25 If the body felt that this needs more work,

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1 because there really were no comments on this aside  
2 from -- well, there were no comments -- that if we  
3 were to refer it, I would suggest that we refer it to  
4 the Assembly Review, I am sorry, Special Issues or  
5 Drafting Committee with specific instructions to seek  
6 comments from particular sections that are involved,  
7 basically any section that is involved in litigation  
8 where people are in court would be impacted, and I see  
9 those as criminal law, family law, general practice,  
10 judicial conference, legal administrator, litigation,  
11 negligence, prisons and corrections, public

12 corporation law, Civil Procedure in the Courts  
13 Committee, the Criminal Jurisprudence and Practice  
14 Committee.

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

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

20 CHAIRPERSON GARDELLA: Is there support for  
21 his motion?

22 VOICE: Support.

23 CHAIRPERSON GARDELLA: With the motion to  
24 refer it to the Special Issues Committee with  
25 instructions to refer the proposal to all of the

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1 sections of the Bar so that they can comment or make  
2 proposals to modify the proposal, whatever they  
3 choose, the support does go along with that. I see a  
4 yes on that. So any discussion on that proposal, or  
5 on the motion?

6 Hearing none, all in favor say aye.

7 Those opposed nay.

8 And any abstentions say yes.

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

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

17 MR. ABEL: Thank you. I appreciate it. I

18 may be a little more organized now.

19 This is the proposal in which the Drafting  
20 Committee, when it was referred to them, replied, not  
21 by changing this, but by drafting their own two rules.  
22 As I was beginning to say, I don't have any particular  
23 ownership of this language. I just think it's  
24 important that pre-sentence reports be provided. It's  
25 something that I have run across in my daily practice,

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1 and I support the Drafting Committee's revisions and  
2 proposals regarding 6.425 (B) and, I am sorry,  
3 6.610(F).

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

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

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

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

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

22 JUDGE KENT: Thank you, Bob. Steve Gobbo  
23 could not be here today. He had to be in Cleveland

24 for some meeting on cemetery regulations, and he asked  
25 us to step in.

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

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

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

22 That's the essence of the report that we make  
23 as to that particular rule. We also investigated the  
24 companion rule in district court, which will be spoken  
25 to by our other speaker, and in juvenile court, which

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1 I am familiar, and in juvenile court the Court Rule  
2 makes reference to the statute, which specifically  
3 allows the retention of the presentence, and which  
4 further makes reference to the opportunity for timely  
5 review in advance of sentencing. So we make no  
6 recommendations as to those rules.

7 With that having been said, I will defer.

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

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

21 So the Ad Hoc Committee was invited. People  
22 that signed up were Mark Boonstra, Kim Eddie, Gordon  
23 Gold, John Hammond, C.J. Horkey, Wally Kent, Marty  
24 Krohner, Mike McClory, David Perkins, Paul Ryan, Ron  
25 Foster, Richard Stapleton and Steve Taratuta.

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1 As chair of the Special Issues, I am indebted  
2 to these individuals for taking the time to assist the  
3 committee in its deliberations, though not all the  
4 members were able to participate during the meetings.

5 The Ad Hoc Committee reached consensus about

6 the amendment of 6.201, which we have already dealt  
7 with. The Ad Hoc Committee, first they chose not to  
8 make any recommendations. That's just a footnote for  
9 posterity. The Ad Hoc Committee reached consensus  
10 recording amendment 6.245, the presentence, and did  
11 recommend the amendatory language which you have in  
12 your report. It's also noted that the other two  
13 rules, as Judge Kent talked about.

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

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

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

10 I am going to move that this body adopt the  
11 recommendation of the Special Issues Committee on

12 MCR 6. 610.

13 CHAIRPERSON GARDELLA: Is there support?

14 VOICE: Support.

15 CHAIRPERSON GARDELLA: Any discussion?

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

18 Those opposed say nay.

19 Any abstentions yes.

20 The motion is approved. Thank you,

21 Mr. Krohner.

22 (Applause.)

23 CHAIRPERSON GARDELLA: We have a second  
24 motion.

25 JUDGE KENT: And I will move the adoption of

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

3 CHAIRPERSON GARDELLA: Is there support?

4 VOICE: Support.

5 VOICE: There is no C.

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

8 CHAIRPERSON GARDELLA: Is there support to  
9 that motion?

10 VOICE: Support.

11 CHAIRPERSON GARDELLA: Any discussions?

12 Ms. Radke.

13 MS. RADKE: Thank you, Robert. Victoria  
14 Radke, 47th circuit. The issue that was presented  
15 before court by the good judge has two things, one is  
16 the provision of the presentence report adequately  
17 before sentencing but also a retention after

18 sentencing. The issue of the position that is stated  
19 only says that we are voting on to mandate the  
20 distribution of copies of the presentence report  
21 before sentencing. Are we going to amend that to  
22 include retention afterwards?

23 JUDGE KENT: I have to look at the manner in  
24 which it was set forth, and, yes, it was our intention  
25 that it should do so, and I believe that's included in

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1 our proposed 6.425(B).

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

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

8 MS. RADKE: Thank you.

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

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

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

20 MS. RADKE: Yes, Judge, I want to make sure  
21 that the position that the people are voting on, they  
22 understand that if they vote yes they will be not only  
23 approving that we ask the Supreme Court to mandate

24 distribution of the report prior to sentencing but  
25 also mandate distribution to counsel and the defendant

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1 after.

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

4 MS. RADKE: Thank you.

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

7 MR. HAUGABOOK: Yes, Terrence Haugabook,  
8 3rd circuit. One of my concerns is if you have a  
9 defendant that's being incarcerated, and I deal with a  
10 lot of defendants who sometimes cooperate with the  
11 government, if you distribute their presentence  
12 report, and I have a lot of defendants sometimes when  
13 they sign confidentiality or cooperation agreements  
14 with us, they ask for them to stay with their lawyer  
15 because if they are going into a jail or something  
16 like that, people rifle through their materials.

17 So you get somebody, you give him his  
18 presentence report, somebody down the line of a gang  
19 or an organization wants payback for this guy who  
20 testified and cooperated against him, somebody rifles  
21 through there, through his presentence report, finds  
22 out where his family members are, and then you have  
23 people starting to intimidate and harm family members  
24 of somebody who cooperated.

25 So you got to think in terms of that. What

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1 about the incarcerated defendant. Do you want him  
2 running around with his presentence report with all of  
3 his personal information so that somebody can go in  
4 his cell or whatever and swipe it and annihilate his  
5 family or something as payback. That's something to  
6 think about.

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

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

13 CHAIRPERSON GARDELLA: Thank you. Any other  
14 discussion?

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

17 Those opposed nay.

18 Any abstentions yes.

19 The motion is approved.

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

25 As it relates to the mileage reimbursement,

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

6 have that accomplished if you wish to do that.

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

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

25 (Applause.)

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

8 JUDGE STEPHENS: Thank you.

9 (Applause.)

10 CHAIRPERSON GARDELLA: One other item too,  
11 for our executive director, for all the things that

12 she does for us, a token of our appreciation, the  
13 Representative Assembly officers have given her a  
14 bottle of wine. She may need it after dealing with us  
15 all year long, but we hope that she will enjoy it, and  
16 might be able to use it yet today.

17 (Applause.)

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

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

5 (Applause.)

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

17 VOICE: So moved.

18 CHAIRPERSON GARDELLA: Is there support?  
19 VOICE: Support.  
20 CHAIRPERSON GARDELLA: All in favor say aye.  
21 Those opposed nay.  
22 Any abstentions yes.  
23 The motion is carried, and congratulations,  
24 Victoria.  
25 (Applause.)

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1 CHAIRPERSON GARDELLA: And I must say that  
2 the Bar is in good hands and the Representative  
3 Assembly is in very good hands for next year with your  
4 incoming chair, Kathy Kaki sh, assistant attorney  
5 general. She has done so much over the years, whether  
6 it be the Drafting Committee, helping with other  
7 special projects of the Bar. She will do an excellent  
8 job.

9 Elizabeth Moehle Johnson has done so much,  
10 not only on the Assembly, but the Bar Leadership forum  
11 and many other things.

12 Victoria Radke has done an outstanding job  
13 just helping us get everything together and organized  
14 and filling the vacancies and getting the awards done.  
15 She has been a very energetic member, and so I know  
16 that when I leave the tradition of energy for the  
17 Assembly will continue, and I also encourage you, all  
18 of you to keep your involvement up, because that's  
19 what makes this organization so effective.

20 So congratulations, Victoria.

21 And next I have the pleasure of introducing  
22 Judge Michael Talbot for the swearing in of our new  
23 chairperson.

24 Judge Michael Talbot was appointed to the  
25 Michigan Court of Appeals in 1998. Previously he had

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1 served as a judge in the Wayne County Circuit,  
2 Recorder's Court and the Detroit Common Pleas Court,  
3 and worked as an attorney in private practice. He is  
4 a member of the Judicial Tenure Commission. He  
5 received his bachelor's degree from Georgetown  
6 University and his law degree from the University of  
7 Detroit, and so I would ask Judge Talbot if you could  
8 come on up to the front here.

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

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

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

23 I am not sure how much all of you know about  
24 her background. Some of you know probably quite a  
25 bit, but when she was quite young her dad and mom

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1 decided that it was necessary and for business  
2 opportunities when in early years, at the age of ten,  
3 she left Detroit and went back to Amman, Jordan, and  
4 as an English speaking person in that community she  
5 had to learn a foreign language. She went through  
6 schools there, had to acclimate herself to that  
7 experience and did well, and having done all that,  
8 having moved and learning Arabic and becoming fluent,  
9 she then went to school and completed at the  
10 University of Jordan her bachelor's degree in English  
11 language and literature, and then for seven years was  
12 with Jordan radio and television working as a  
13 newscaster. And also with Radio Jordan's foreign  
14 service in doing interviews, involving herself in  
15 foreign affairs.

16 Always had an interest and a fascination with  
17 law and American jurisprudence, and at some given  
18 point then after her many years of service there had  
19 the courage to literally get up and come on back and  
20 with no money go to Wayne State, get her law degree,  
21 as many of you had to do, struggle, work, and study at  
22 the same time, working for Ford Motor. They hired her  
23 in their legal division editing papers for them and a  
24 journal for them, and then she got a job with the  
25 Arab-American and Chaldean Council, worked for

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1 Channel 50 television. Don't worry. You will be all  
2 right. I can even do this. I can do the balance of  
3 this report.

4 I remember also then, having done all that,  
5 she came to work for the Michigan Court of Appeals,

6 and she worked in our research division for two years  
7 and then clerked for me for a year. She then was  
8 hired by the Attorney General, and you will see in the  
9 back of the room, if you wonder how she has done over  
10 there, well, those who are members of the Attorney  
11 General staff that are here just to share this moment,  
12 please stand. Take a look at that. Isn't that a  
13 great compliment.

14 (Applause.)

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

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

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

4 (Applause.)

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

8 You guys can take a look at what's happening  
9 or watch out there.

10 Kathy, if you will raise your right hand,  
11 please, and repeat after me.

12 I do solemnly swear.  
13 MS. KAKISH: I do solemnly swear.  
14 HON. MICHAEL TALBOT: That I will support the  
15 Constitution of the United States.  
16 MS. KAKISH: That I will support the  
17 Constitution of the United States.  
18 HON. MICHAEL TALBOT: And the Constitution of  
19 this state.  
20 MS. KAKISH: And the Constitution of this  
21 state.  
22 HON. MICHAEL TALBOT: And the Supreme Court  
23 rules.  
24 MS. KAKISH: And the Supreme Court rules.  
25 HON. MICHAEL TALBOT: Concerning the

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1 State Bar of Michigan.  
2 MS. KAKISH: Concerning the State Bar of  
3 Michigan.  
4 HON. MICHAEL TALBOT: That I will faithfully  
5 discharge.  
6 MS. KAKISH: That I will faithfully  
7 discharge.  
8 HON. MICHAEL TALBOT: The duties.  
9 MS. KAKISH: The duties.  
10 HON. MICHAEL TALBOT: As Chair of the  
11 Representative Assembly.  
12 MS. KAKISH: As Chair of the Representative  
13 Assembly.  
14 HON. MICHAEL TALBOT: Of the State Bar of  
15 Michigan.  
16 MS. KAKISH: Of the State Bar of Michigan.  
17 HON. MICHAEL TALBOT: According to the best

18 of my ability.

19 MS. KAKI SH: According to the best of my  
20 ability.

21 HON. MICHAEL TALBOT: Congratulations.

22 MS. KAKI SH: Thank you.

23 (Applause.)

24 PAST CHAIRPERSON GARDELLA: One last comment.  
25 Now she is your new chair, so one point of privilege

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

6 CHAIRPERSON KAKI SH: Thank you very much.

7 (Applause.)

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

16 As now the former president of the State Bar  
17 of Michigan, Ron Keefe, described Bob as being a  
18 strong and vocal advocate for the Representative  
19 Assembly this year, and our Executive Director, Janet  
20 Welch, described Bob as having extraordinary energy.  
21 That's true, he was a very strong and vocal advocate.  
22 He had all this energy that he put in this last year,  
23 but also I would like to add that anybody who knows

24 Bob knows that he has this warm friendliness and sense  
25 of humor, and he did bring it with him into the entire

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

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

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

18 (Applause.)

19 CHAIRPERSON KAKISH: Now the second thing  
20 that is going to be given to Bob comes from  
21 Liz Johnson and me, so if Liz can approach the podium.  
22 As I mentioned, Bob does have a great sense of humor,  
23 and I am sure many of you have heard the bowling alley  
24 incident that Bob had with his six, seven-year-old son  
25 Bobby, seven-year-old son Bobby.

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1 Well, Bobby was bowling, along with Bob, and  
2 he threw his ball down the lane. I am not good at  
3 bowling, so forgive me if I make a mistake here, and  
4 the ball apparently stopped in the middle of the lane.  
5 Well, Bob, being so energetic, couldn't wait for  
6 somebody, the owners of the place to come and pick the  
7 ball from the lane. Well, I am told that the lane has  
8 a lot of wax on it. So Bob went over there, tried to  
9 get the ball, slid, and stayed there because there was  
10 no traction for him to get up at all.

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

19 (Applause.)

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

25 CHAIRPERSON KAKISH: Now we move on to the

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1 next item on your agenda, and that is to recognize the  
2 chairs of the five various committees that are  
3 actually the backbone for their operation of the  
4 Assembly, and when I call your name, the chair of each  
5 committee, please come up, and, Bob, your job is not

6 over. You will be presenting the plaques to these  
7 individuals.

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

11 (Applause.)

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

19 The second committee is Drafting, Robert  
20 Buchanan.

21 (Applause.)

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

24 (Applause.)

25 CHAIRPERSON KAKISH: The next committee is

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1 Nominating and Awards, Victoria Radke.

2 (Applause.)

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

5 (Applause.)

6 CHAIRPERSON KAKISH: Last but not least, and  
7 did I say five committees? Somebody should have  
8 corrected me. I am surprised nobody did. There are  
9 six committees. The sixth committee is Special  
10 Issues, Steve Gobbo. Of course Steve could not be  
11 with us today. He is out of town. He is flying in to

12 town, and he should be at some Bar function later on  
13 this evening, but Steve did a wonderful job on Special  
14 Issues and worked very hard for that. So a round of  
15 applause for Steve.

16 (Applause.)

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

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1 come to the podium here when I call your name.

2 Deborah Blair.

3 (Applause.)

4 CHAIRPERSON KAKISH: Steven Drakos.

5 (Applause.)

6 CHAIRPERSON KAKISH: The Honorable David  
7 Herrington.

8 (Applause.)

9 CHAIRPERSON KAKISH: Alan Kanter.

10 (Applause.)

11 CHAIRPERSON KAKISH: Barbara McQuade.

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

14 CHAIRPERSON KAKISH: Donald Morgan.

15 (Applause.)

16 CHAIRPERSON KAKISH: David Perkins.

17 (Applause.)

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

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1 CHAIRPERSON KAKISH: Vincent Romano.  
2 (Appl ause. )  
3 CHAIRPERSON KAKISH: And Terri Stangl.  
4 (Appl ause. )  
5 CHAIRPERSON KAKISH: Now three very short  
6 items. First of all, a remindance to fill out your  
7 attendance slips and to pick up your mileage and to  
8 submit your mileage before the end of this month.  
9 The second thing is to fill out your forms if  
10 you have not done so for committee assignments and  
11 section liaisons.  
12 And, third, I look forward to seeing you at  
13 the April meeting.  
14 Can I entertain a motion now to adjourn this  
15 meeting?  
16 VOICE: So moved.  
17 CHAIRPERSON KAKISH: Support?  
18 VOICE: Support.  
19 CHAIRPERSON KAKISH: Any discussi on?  
20 Hearing no discussi on, this matter is now  
21 adjourned. Thank you very much.  
22 (Proceedi ngs concluded at 3:37 p.m.)  
23

