

STATE OF MICHIGAN
STATE BAR OF MICHIGAN

MEETING of the REPRESENTATIVE
ASSEMBLY of the STATE BAR OF
MICHIGAN

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

AT HEADTABLE:

KATHLEEN M. ALLEN, Chairperson

VANESSA PETERSON WILLIAMS, Vice-Chairperson

DANIEL D. QUICK, Clerk

JANET WELCH, Executive Director

HON. JOHN CHMURA, Parliamentarian

ANNE SMITH, Staff Member

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1 Grand Rapids, Michigan

2 Thursday, September 18, 2014

3 9:06 a.m.

4 R E C O R D

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

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

14 CLERK QUICK: There is a quorum.

15 CHAIRPERSON ALLEN: Thank you, sir.

16 Our agenda is going to move somewhat fast
17 today, and, as you noticed back in April, I talk fast,
18 and I tend to move kind of quickly, and the reason
19 why, I thought, twofold, that we can have some
20 discussion with regard to our 10:00, it's about 10:15
21 discussion, that gives us some time for this
22 discussion and, secondly, to leave at noon allows
23 everyone to participate in the State Bar meetings and
24 section meetings and the luncheon, and so we have an
25 afternoon of free time to do some things that you have

1 wanted to do and haven't been able to do in the past.

2 So we are going to, we are moving along, and
3 we are going to do the adoption of the proposed
4 calendar.

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

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

17 VOICE: Second.

18 CHAIRPERSON ALLEN: Thank you. Any
19 discussion?

20 All in favor yes.

21 Noes?

22 The motion has passed. Thank you, sir.

23 Next we are going to move for the approval of
24 the April 26, 2014 summary of proceedings. If
25 everybody has had an opportunity to review those

1 proceedings, it was with regard to our meeting back in
2 April. I would entertain a motion for approval of the
3 summary of proceedings.

4 VOICE: So moved.

5 VOICE: So moved.

6 CHAIRPERSON ALLEN: Second.

7 VOICE: Support.

8 CHAIRPERSON ALLEN: Any discussion?

9 All in favor of approving the September 19,
10 2014 -- I am sorry, the April 26, 2014 minutes, please
11 say yes.

12 Opposed?

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

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

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

1 gets them filled for us. Thank you.

2 (Applause.)

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

14 (Applause.)

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

23 (Applause.)

24 JUDGE NELLIS: As for the vacancies, I am
25 pleased to announce we only had one that we had to

1 fill on this time around, and that was the
2 23rd circuit, which, for those of you who don't know,
3 it's right up in this area right here on the east side
4 of the state, above the bay, and we were able to,
5 through our committee, we are going to nominate
6 Ann Victoria Hopcroft of Oscoda. So with that, I
7 would make a motion that we, in fact, seat her as the
8 representative for the 23rd circuit.

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

11 VOICE: Second.

12 VOICE: Support.

13 CHAIRPERSON ALLEN: Any discussion?

14 All in favor say yes.

15 Any noes?

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

19 Today we have one proposal, and before we go
20 to the proposal, I want to do a couple housekeeping
21 matters. In April we had the clickers. Everybody had
22 clickers to use to be able to vote on proposals.
23 Those were borrowed, if you recall, from ICLE, and we
24 do not have those today because someone else from ICLE
25 doing its annual meeting needed to use those, and

1 since we only had one proposal, I didn't think it was
2 fair that we trump ICLE, since it's theirs, and so we
3 just are not using them today, but only one proposal I
4 think will be simpler to be able to just count votes,
5 but we will hopefully have those back again in April,
6 because they were very helpful. They showed the
7 amounts of the votes and the dissenting and the yes
8 votes, and we were able to graph those, so those were
9 nice.

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

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

16 ANNE SMITH: I have parking passes.

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

19 Anything else? No, okay.

20 We are looking, and we are on time, we are
21 looking at consideration of amendment MCR 7.109 record
22 on appeal. We do have the document that was in your
23 book, but there were some minor changes for
24 clarification and tightening up the discussion a bit,
25 and that was e-mailed to you last Friday through an

1 e-mail.

2 We also have in front of you the proposal.
3 It's in purple, so if everybody could pull that out
4 and take a look at it. It doesn't deviate much from
5 the original that was published, so, again, if you
6 have had an opportunity to read that, that's fine.

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

12 Could you please come to the podium.

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

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

25 MS. BROWN: Thank you, Mike, and thank you.

1 Good morning. Thank you for putting this on your
2 agenda, and on behalf of the Committee on Justice
3 Initiatives we are asking the Representative Assembly
4 to support the Amendment MCR 7.109 that would allow
5 indigent appellants from agency appeals an opportunity
6 to move for a waiver of the transcripts.

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

18 And so we are asking that to do that that the
19 proposal rule is really taken from another sort of
20 mirror, another court rule that allows for waiver of
21 transcript, and so the proposed rule is if the court
22 finds the appellant from an agency decision is
23 financially unable to pay for the transcript that the
24 transcript will be provided at the public expense.
25 This is taken exactly pretty much verbatim from

1 MCR 3.927, which is termination of parenting rights
2 rule, which allows that. So hopefully this body would
3 agree with us and support our amendment, proposed
4 amendment. Any questions, I am here.

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

7 VOICE: So moved.

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

10 VOICE: Second.

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

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

22 I remember reading in materials that the
23 proponents indicated that they are getting flack from
24 the agencies when there is a need to prepare these,
25 have these transcripts prepared. At the same time, my

1 read of the Administrative Procedures Act, I think
2 it's MCL 24.304(2), indicates that when an application
3 for review is filed, and the Court Rule indicates that
4 an application for review is equivalent to a claim of
5 appeal in this context, it says that the agency shall
6 transmit a copy of the transcript to the court, and it
7 does not indicate that that transmission needs to be
8 made contingent upon the payment of a fee to have this
9 transcript prepared.

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

25 MS. BROWN: Well, a couple things. One,

1 the particular APA provision you are referring to,
2 24.304, was one that we actually, as legal services
3 attorneys, were relying on as the assumption that the
4 agency provide that, and before the Court Rules sort
5 of changed and got revamped, I think that's what we
6 were relying on.

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

20 So their response was that, and so given that
21 there is now this court rule that clearly expressed
22 that they need to pay, they wanted to respond to that,
23 so that's why we see there is a need now to have an
24 expressed provision in the Court Rules that will allow
25 an opportunity for the indigent appellant to make that

1 motion.

2 MR. FALKENSTEIN: Peter Falkenstein, 22nd
3 circuit. My comment is a little bit more general.
4 It's a question actually of the language that's
5 proposed, this discretion of the court regarding a
6 finding of financial inability to pay, and it doesn't
7 seem to provide for any specific protocol for the
8 court to follow to make that determination. My
9 question is -- and you are tracking the language of
10 the statute dealing with appeals from termination of
11 parental rights -- is there any anecdotal evidence as
12 to how that section has functioned in reality in terms
13 of protecting the, sufficiently protecting the
14 indigents and allowing them to get records on appeal?
15 What is the track record of the courts in general as
16 to how they have interpreted and used their discretion
17 in this regard?

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

22 In terms of the discretion of the financial,
23 the court making that determination, I think that's
24 pretty much standard that courts have always made
25 whatever you are filing for, a fee waiver of the

1 filing fees, that we have to submit an affidavit that
2 the individual, based on the expenses, that the
3 individual can't afford it and expenses and like that.
4 I imagine it would be the same process if you are
5 filing for a fee waiver and filling out the affidavit
6 showing that you are indigent.

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

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

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

23 Second, I think the problem you are raising
24 seems to be very specific to certain types of cases,
25 i.e., public benefits cases. The problem is, amongst

1 others, that the language of the proposed rule really
2 says an appellant from an agency decision. There are
3 hundreds of different types of agency decisions. For
4 example, if somebody has a day care license that they
5 lose before an agency hearing, they can argue, since I
6 no longer am able to procure a living, I am indigent,
7 please provide my transcript on appeal. By the way,
8 it's a ten-day hearing and \$4,000, or what about a
9 veterinary license or a CENA license or any of the
10 other types of licensing. A person could make a
11 credible showing they are indigent. If their license
12 is affected, it affects their means of making a
13 living. That's highly problematic.

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

22 The average benefits case, you are probably
23 talking about maybe a one to two-hour hearing max, but
24 if you are talking different types of cases,
25 particularly licensing cases, I have had them go up to

1 ten-plus days, and the transcripts on appeal were many
2 thousands of dollars. Particularly in cases like
3 that, I think that's unreasonable, regardless of
4 whether the person can demonstrate indigency, that the
5 agency should pay for that.

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

19 MS. BROWN: Just a couple things. I note
20 that APA talks about the recording, but keep in mind
21 that the rule changed, and 7.109 now says that the
22 appellant is responsible for the entire record on
23 appeal and refers you to MCR 7.210(A)(2), which
24 defines what that record on appeal means, which means
25 includes the transcript, includes the pleadings, the

1 filings, testimony and the transcripts, so now an
2 appellant from the agency is talking about a
3 transcript, not just limited to the recording itself.
4 So I sort of beg to differ on that in that sense.

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

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

22 Now, you mentioned in terms of the court
23 saying public expense and who should pay for that, and
24 I also talked to the folks in termination appeals
25 cases and asked them about this particular rule, their

1 particular rule and what's the practice and how is it
2 being implemented through public expense, and it's the
3 court. The court is the one that pays for that.

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

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

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

14 The genesis of the creation of waiver of fees
15 for appeals is grounded in a 1972 case, Douglas versus
16 California. There is also a prior case, Griffin
17 versus Illinois, and one policy concern that was cited
18 was the fact that it's a closed system. The criminal
19 system is closed. Those particular cases, they
20 require the states provide appeal, applicable
21 resources from public funds to pay for appeals and
22 transcripts on appeal. And those line of cases have
23 relied heavily on the fact that public policy called
24 for situations in closed systems where a person is
25 brought through the system that indigents should be

1 given the resources by the government if they are not
2 so, you know, not so already empowered, so they would
3 have an opportunity to defend in a more even basis
4 against the government.

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

15 One thing that has to be addressed also in
16 this is who is going to eventually pay for this? Is
17 it going to be the agency? Is it going to be the
18 Attorney General's Office? Is it going to be the
19 court system? Somebody has to fund this. I think
20 that should be a primary consideration as to how the
21 funds will be allocated, who is going to bear the
22 ultimate burden of this. Is the legislature going to
23 have to pass some act to fund this, fund the mandate
24 if it's passed? I think that's another issue that
25 should be addressed here.

1 MS. BROWN: I agree with your comment in
2 terms of that the reasoning behind it is the indigent
3 appellant is to be able to have access to the court
4 and filing those issues, to be able to continue with
5 their appeal and its meaningful review. And I agree
6 with you. As I said, the issue of who is to pay for
7 it, I think, usually when we are filing these waivers
8 in a termination of parental right cases, it's been
9 factored as a court expense, and it hasn't been
10 identified as DHS would pay for the transcript for
11 termination of parental rights. The court didn't
12 identify that. The Court Rule didn't identify that,
13 as well. So the proposal is to allow it to run its
14 course as it does in the termination of parental
15 rights cases.

16 MR. SMITH: I think the problem is it doesn't
17 say that though. It just says public expense. I
18 think that's something we should give some thought to.
19 I mean, my experience, and I am fortunate enough to
20 practice in most of the circuits outside of metro
21 Detroit, because our Detroit office covers those, and
22 my guess is there could be a lot of judges who look at
23 that and say, public expense. You're a public agency,
24 Attorney General or Department of Human Services or
25 whomever it is. You pay for it. Because I have got

1 to tell you, our court is strapped. We don't have the
2 money to pay for this. So there is going to be a big
3 issue in terms of who pays for it, and I think, as a
4 secondary thing, shouldn't say secondary, second
5 consideration is I think it's highly, highly, highly
6 problematic if you are talking about affording people
7 a transcript based solely on indigency in any case
8 whatsoever.

9 Again, you could have a party who is a
10 medical doctor who is running a pill mill who spent
11 all of his or her money on contesting the licensing
12 charges and is now indigent when their license was, in
13 fact, taken away, and now Dr. Jones or Dr. Smith gets
14 10, \$20,000 worth of transcripts paid for at public
15 expense to go to the circuit court. And I think that
16 is highly, highly problematic.

17 MS. BROWN: The reality is we can all come up
18 with the worst case scenarios and say, wow, this is
19 the worst case scenario, but if we look at the reality
20 of the practice, we are not talking about, you know,
21 legal services attorneys are not representing the
22 doctors running the pill mills. We are talking about
23 the indigent folks population out there who really
24 need access to the court and who is not someone who
25 hired a big law firm to do their defense and

1 administrative hearings and then now they don't have
2 any money. I think we can always come up with a
3 parade of horrors and get the extremes, but I think
4 legislatively you don't want to try to legislate or
5 impact rules based on a parade of horrors, because I
6 think you can always come up with one.

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

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

19 (Applause.)

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

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

25 CHAIRPERSON ALLEN: Thank you, Mr. Abel. I

1 am glad you are awake today.

2 MR. ABEL: I am usually awake.

3 CHAIRPERSON ALLEN: Any other discussion?

4 Any other questions?

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

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

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

23 VOICE: Support.

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

1 twice.

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

4 All those say no.

5 VOICE: Division.

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

9 VOICE: Who said it was close?

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

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

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

16 (Applause.)

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

22 For our first award, it would be doing the
23 presentation of the Unsung Hero Award, and I would
24 like to invite Elizabeth Jolliffe and Bill Winters,
25 III, to please come to the podium.

1 And I would like to thank Ms. Jolliffe for
2 doing the presentation this morning. She is also a
3 member of the RA, and she has been on the Nominating
4 and Awards Committee for quite some time, and I would
5 also like to thank Mr. Winters -- he drove from
6 Detroit, and he is partner of Susan Reed -- and I want
7 to thank him also for coming here today.

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

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

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

25 I nominated Susan, not only for her

1 commitment to her own clients, and she does represent
2 people who are charged with some of the most heinous
3 crimes. She herself will say, and when I first met
4 her this is what really stuck with me -- I met her a
5 handful of years ago -- she said, and she still says
6 to this day, I represent murderers, rapists, and child
7 molesters. She also does some divorces and represents
8 people charged with lesser crimes than those terrible,
9 terrible ones.

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

22 And the thing that I really learned then and
23 that's really stuck with me and is truly the basis of
24 my nomination for her and the reason she is receiving
25 this award is because of the leadership and the

1 tireless energy that Susan has given truly to
2 improving the quality of criminal defense
3 representation in Wayne County. She has been a leader
4 for a number of years. In fact -- well, she has been
5 on the board for, I think, at least seven, for the
6 criminal advocacy program in Wayne County, for which
7 all the criminal defense attorneys have to be in that
8 program, go through those classes. They have to have
9 a mentor assigned. They have to do this annually in
10 order to stay on the court-appointed list.

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

25 She is not concerned just about her own

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

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

10 Just to give you a little context, then I
11 will introduce her colleague, Bill Winters, so you
12 know where Susan comes from, she is a graduate of
13 Mumford High School in Detroit, 1964. She went to the
14 University of Michigan, got a degree in education,
15 became an elementary school teacher in Detroit and
16 taught there for about six or seven years at least,
17 then decided she wanted to go to law school. She was
18 going to law school part time at night when she kept
19 teaching. She loved school so much, she stopped going
20 at night, she went full time, and she, I believe, has
21 been practicing primarily in the criminal defense bar,
22 and I am sure someone will correct me if I am wrong,
23 since 1976. I can't think of anyone else who is more
24 deserving as a recipient of the Unsung Hero Award than
25 Susan Reed.

1 I now introduce her colleague and friend of
2 mine, Bill Winters, who knows Susan very well. He is
3 an active leader and past president of the Wayne
4 County defense bar. Bill.

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

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

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

25 One of the ones that I just posted on

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

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

14 I met Susan Reed a long time ago, but I
15 really got close with her when she was in the middle
16 of a trial with the late, great Tom Trzcinski of the
17 Wayne County Prosecutor's Office. This was in the
18 middle of cop killing case, and if you knew Trzcinski,
19 you knew this guy fought every step of the way. And
20 Ms. Reed at that time, I saw her in the Continuing
21 Legal Education Center up on the 8th floor of
22 Frank Murphy laid out on a sofa. I was getting ready
23 to call 911. I think after that point she somewhat
24 changed her life, nutrition, and exercise patterns,
25 because she lost -- I don't know if she wants me to

1 talk about that -- she lost a lot of weight, got
2 healthy, and for those who handle criminal cases or
3 any kind of high stress activity, you know how
4 difficult it can be on your own body and on your own
5 personal lives.

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

17 Elizabeth just told you a little bit about
18 her background. Started off as Detroit public school
19 teacher. Didn't talk about the incident that Susan
20 has told me about where she is teaching elementary
21 school, eastside, bullets come crashing through the
22 window at one point. Reed goes on with her lesson
23 plan like nothing ever happened. That's the kind of
24 cool, calm customer that I know. Susan Reed,
25 unflappable.

1 Elizabeth talked a little bit about the
2 Bashara case. You can imagine the media, intense
3 scrutiny. Nothing seems to bother Susan Reed.

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

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

17 She started off right after law school, and
18 after going into teaching, she got involved with a
19 lawyer by the name of Steve Fishman, Elizabeth Jacobs,
20 and there was some egghead lawyer by the name of
21 Art Tarnow, who became a federal judge. This is the
22 kind of company that she used to keep, until she got
23 involved with me at least. Judge Tarnow and his
24 long-time secretary, Cathy Pickles, is here as well.
25 Cathy and Susan have been long-time friends for years.

1 But, as Elizabeth just told you, Susan is a
2 real big proponent of an active and organized defense
3 bar. She is active in the National Association of
4 Criminal Defense Lawyers, Wolverine Bar, the
5 Polish-American Bar, Criminal Defense Attorneys
6 Association of Michigan, Women Lawyers Association.
7 The list goes on and on and on. She is everywhere.

8 What she has really managed to do is take our
9 local bar association, the Wayne County Criminal
10 Defense Bar Association, to a new level. Started off
11 with perhaps 80 or so members. We are now up over
12 500.

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

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

1 of person she is.

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

12 (Applause.)

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

17 MS. REED: Thank you.

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

20 First, I would like to thank the
21 Representative Assembly of the State Bar of Michigan
22 for honoring me with this award, but it is not just an
23 honor for me. It is an honor for all attorneys who
24 are working for the benefit of their clients, for all
25 clients and for all attorneys in the state.

1 I did not set out to win this award. I set
2 out to help my clients, to help every client that I
3 could in Wayne County, to help all the attorneys
4 there, the old ones, the new ones, and was totally
5 surprised when I got the call from Judge Nellis saying
6 that he wanted to be the first one to tell me I got
7 this award. And I said, Well, I know there is another
8 Susan Reed in the state. You must have me confused
9 with her, because I think she works with immigration
10 and does all these things, and I am just down here
11 representing murderers, rapists, and child molesters.

12 No one wants to acknowledge defense
13 attorneys, because that's what we do, but we do that
14 for everyone. I tell people that if we don't
15 represent those murderers, rapists, and child
16 molesters, we will lose all of our rights. There is
17 nothing wrong with being a criminal defense attorney,
18 even though a lot of people don't recognize that. And
19 I thank you, by giving this award to me as a criminal
20 defense attorney, have acknowledged to the state that
21 that's an honorable profession. To be a criminal
22 defense attorney, something that is constitutionally
23 mandated is something worthy of honoring. And, again,
24 thank you for giving it to me on behalf of all the
25 criminal defense attorneys in the state.

1 I just would like to acknowledge my son. He
2 is sitting there with his family. He is the one that
3 had to put up with me going to committee meetings and
4 not being there for him all the time, but I think he
5 came out okay. And Cathy Pickles, who has been with
6 me since I first started in private practice almost
7 30-some years ago, and Elizabeth and Bill Winters who
8 came forward and spoke for me today. Again, thank
9 you. I accept this award on behalf of all criminal
10 defense attorneys in the state, because we all work
11 for the benefit of everyone here. Thank you.

12 (Applause.)

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

18 MR. SMITH: Good morning. I feel honored to
19 be here this morning on behalf of our law firm to
20 present the Michael Franck Award to one of our
21 outstanding lawyers and fellow shareholders,
22 Julie Fershtman. I also want to acknowledge the fact
23 that I am proud that approximately ten people, ten
24 members of our firm are here to celebrate with Julie
25 upon receipt of this award.

1 Now today, as I do note that I have a little
2 bit of gray hair, and it causes me to on occasion
3 wonder what the benefits are from growing old, except
4 that it beats the alternative. One benefit, however,
5 is that I can look back on my experience of observing
6 Michael Franck for 24 years that he served as the
7 executive director of the State Bar, from 1970 to
8 1994, and to say that his career was distinguished is
9 an understatement. He did many great things for the
10 State Bar of Michigan. He did many great things for
11 the profession in general, and his reach was not only
12 within the state but in the nation. He cared deeply
13 for the legal profession, and he wanted it to be proud
14 and strong. He led the charge to establish updated
15 ethics rules and accountability and to champion the
16 concept of lawyer responsibility. He set a great
17 example and, above all, he wanted all lawyers to do
18 things the, quote, right way.

19 This award in Mike's name was established in
20 1998 to be given annually to an attorney who has made
21 an outstanding contribution to the improvement of the
22 profession. A review of the names of the prior
23 recipients of this award reads like a virtual who's
24 who in the legal profession. And it's with this
25 history and this backdrop that this year's recipient

1 is to be measured. The judges, you, and your
2 nominating committee have carried out this duty of
3 making sure that this year's award winner lived up to
4 the standards set by Mike.

5 Julie Fershtman is an exceptional lawyer.
6 She is driven and motivated to succeed. She is a
7 consummate professional. She has practiced for nearly
8 28 years. She followed in the footsteps of her father
9 who had a general practice in the Downriver Detroit
10 area. Her areas of expertise include insurance
11 defense, commercial litigation, general litigation,
12 insurance coverage issues, and equine law, to name a
13 few.

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

25 While all of these activities are

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

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

19 As a lawyer, she spent 17 years as either a
20 solo practitioner or in a small firm, and so when she
21 speaks, she has a tremendous amount of credibility.
22 She encourages lawyers to dream big, to strive for
23 excellence, and to aim for a law practice that matches
24 their unique interests. She also encourages bar
25 association involvement as an essential component of

1 being a good lawyer. As a lawyer who actively
2 supports others, she consistently encourages other
3 lawyers to do the same. In her presentations, for
4 example, she advances the clear message that women
5 should support deserving lawyers as a means of
6 bettering the profession.

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

17 After completing her year as State Bar
18 president, she didn't rest on her laurels. She
19 developed a unique, empowering presentation and took
20 it on the road to bar associations throughout the
21 state. She has consistently supported young lawyers
22 and women lawyers through mentoring, and she has been
23 in the leadership role of the State Bar mentoring
24 program, and she has taken it upon herself to mentor
25 ten individuals who came to her through this program.

1 But with all that she has done, it's more
2 important to stop and realize what an exceptional
3 person she is. She is a person of tremendous inner
4 strength. Two weeks into her presidency she was
5 diagnosed with breast cancer. She had a double
6 mastectomy, in addition to radiation and chemotherapy,
7 but she never missed a beat. She kept her condition
8 confidential initially, and she continued to remain
9 active in her travels, writing, speaking, and public
10 appearances with such intensity that few people
11 realized that she had had that problem. She didn't
12 want cancer to interfere with her mission of being an
13 outstanding president representing you and our other
14 fellow members of the Bar.

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

24 Now, I would be remiss if I didn't mention
25 Julie's best cheerleaders, her husband, Robert Bick,

1 and their daughter, Katie. They have been very
2 supportive of her throughout her career and have
3 encouraged her along the way. If Mike Franck was here
4 to present this award, he would thank them for their
5 help. But since he isn't, I will do that for him.

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

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

15 (Applause.)

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

22 MS. FERSHTMAN: Having served on the Assembly
23 for many years, I know at this point you are looking
24 at your watches, you are checking your iphones, and
25 you are realizing we are way off the calendar, and

1 originally, actually I asked a couple of people if I
2 could simply say hello and sit down and was told, Say
3 a few words. People want to hear something from the
4 award recipient. So it's because of that prompting
5 that I am taking a little more time, unfortunately
6 your time, and holding up the agenda, but I promise I
7 will not belabor my remarks all that much.

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

20 Also, as my law partner at Foster, Swift,
21 Collins & Smith and for what he said, I think my bonus
22 is going to disappear, because you are probably
23 seeking compensation for all the time it took for you
24 to be here and then to say all of those words. So my
25 year-end bonus is probably gone and it's going to you

1 for those very kind remarks. As my husband would say,
2 We need that bonus. We have a kid in college now.
3 Please bring it back.

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

15 You may not know this, but I actually met
16 Michael Franck. I met him around 1993 or so when I
17 had just become an officer of the Young Lawyers
18 Section of the State Bar of Michigan. I was a young
19 lawyer. I was just becoming part of the State Bar in
20 a very meaningful way, and he called a meeting of new
21 bar leaders at the State Bar of Michigan in the
22 State Bar building, which now bears his name as the
23 Michael Franck building, in a room which is now known
24 as the Roberts P. Hudson room, and at that meeting he
25 wanted to emphasize to all of the new, upcoming bar

1 leaders the importance of serving the bar, what it
2 meant to be a bar leader and then some other tidbits
3 and pointers that he thought that we should know.

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

21 Many of us know that the bar operates to a
22 large extent on tradition and on protocols that have
23 been established long before people like me got
24 elected to the Young Lawyer leadership. But even
25 though he was fighting a very important personal

1 battle, even though he was fighting for his life at
2 that moment in about 1993, you could tell Michael
3 Franck had a strength about him. He had a strength,
4 he had a wisdom, and he had an unquestionable
5 dedication to the improvement of the bar, and he
6 showed that dedication by meeting with us and spending
7 time with us that day.

8 Now we flash forward about 18 years later,
9 and I was reminded of the intensity and the spirit and
10 strength that Michael Franck brought in bar leadership
11 just a couple of weeks after I was installed as the
12 77th president of the State Bar of Michigan. Just
13 attending a routine doctor appointment, one
14 interesting thing that I almost cancelled but I kept
15 in part because of my mentor, Kim Cahill, remembering
16 her experience and how she didn't know she had cancer
17 duration her bar presidency. I kept that appointment
18 with my doctor only to be told, again two weeks into a
19 State Bar presidency, that I had a lump, later
20 determined just within a week or two to be breast
21 cancer, triple negative breast cancer. And I will
22 never forget my gynecologist telling me, as well as my
23 surgeon, don't Google triple negative breast cancer.
24 Whatever you do, don't Google it. You don't want to
25 know about it. You will be fine. We will take care

1 of you. And the doctors, of course, as Tony shared
2 with you, recommended a very aggressive treatment
3 protocol, all the while I had bar business to do.

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

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

1 difference in the profession.

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

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

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

1 of course, a difference for the public that we serve.

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

23 I would like to thank my law firm, Foster,
24 Swift. We have a robust contingent of lawyers from
25 Foster, Swift and staff. I would like to thank you

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

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

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

24 Everybody, I am very deeply honored. It's a
25 tremendous honor to join you today, especially up here

1 at the podium receiving this award, and I wish you a
2 wonderful meeting. Thank you.

3 (Applause.)

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

24 Right now we have the schedule, and the
25 schedule says we were supposed to have a break from

1 10:00 to 10:15. The schedule is short, so if we want
2 to have a break, we could have a break. There has to
3 be motion to pursue and you go past that break and
4 just continue going through the program. Do we have a
5 motion for that or would you like a break? Motion to
6 continue?

7 VOICE: Motion to continue.

8 CHAIRPERSON ALLEN: Second?

9 VOICE: Second.

10 CHAIRPERSON ALLEN: We will continue.

11 The next program is the inward look of the
12 State Bar, the year in review. This year has been a
13 year of challenges for the Representative Assembly and
14 for the State Bar. This year's challenges began with
15 the introduction of the Senate Bill 743, the proposal
16 that the State Bar be changed to a voluntary bar. In
17 response to the introduction of this legislation,
18 State Bar leadership strongly supported preserving
19 Michigan's mandatory bar. The Michigan Supreme Court
20 then issued Administrative Order 2014-5 creating this
21 task force on the mandatory bar. Then the Board of
22 Commisioners tasked its rules committee to review the
23 State Bar's current structure to identify whether rule
24 changes should be recommended to the bar or the
25 Michigan Supreme Court.

1 While the task force deliberated, the Board
2 of Commissioners' Rules Committee also deliberated and
3 determined not to recommend any changes to the RA or
4 the BOC governance structure. The Representative
5 Assembly has also provided its input to the task force
6 through comments you made at your April 2014 meeting
7 on future changes to the RA and its desire to remain
8 as a final policy-making body. The task force
9 released this report on June 2nd, 2014.

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

17 The Board of Commissioners created a work
18 group that responded to the task force report. Today
19 the State Bar, the Representative Assembly remain in
20 flux as we wait for the Michigan Supreme Court to
21 determine which, if any, of the many proposed rules it
22 will adopt. What is clear though is that there
23 currently is not a bar-wide consensus on how Keller
24 applies to the State Bar actions and policies and how
25 to best protect the First Amendment rights of the

1 public and dissenting members. Today's RA meeting
2 focuses on Keller's proper interpretation and the
3 application of State Bar policy determination, whether
4 made by the Representative Assembly or the Board of
5 Commissioners.

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

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

20 (Applause.)

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

25 Very quickly, and you are going to -- Robert

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

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

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

24 And so the letter that Janet Welch and
25 Bruce Courtade, the president, my predecessor, wrote

1 to Ruth Johnson and said, Listen, the law has changed,
2 so you need to -- Citizens United came down and
3 clearly says that this magic word test doesn't exist.
4 There really should be disclosure, and we are not
5 talking about disclosure in gubernatorial races and
6 legislative races, just in judicial races.

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

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

1 to try to fight that off.

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

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

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

25 (Applause.)

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

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

1 those two people, two of those people were also on the
2 task force.

3 So we have, the RA has support from the Board
4 of Commissioners. They have support from me. They
5 have support from Janet. And so I am hopeful that
6 once the Court has an opportunity to review the
7 comments that came from the Bar and from 65
8 individuals or groups -- I mean, if you add them up,
9 if you include all the sections and you add the people
10 in the sections, you could argue, you could say 20 or
11 30,000 people responded, at least in a collective way,
12 to what the Court said and opposed a lot of the things
13 that are in the task force, and 25 former bar
14 presidents also signed on for basically saying that
15 this is wrong. So let's hope that that's what the
16 Court agrees to, because I think we need to continue
17 to be able to advocate. That's what we are about.

18 The bar does a lot of things. There are a
19 lot of programs. A small part of what we do is
20 advocacy, but when we get around to it, the public has
21 a duty to know -- when you are talking about free
22 speech, you are talking about people being able to say
23 what they want to say and also not saying anything if
24 that's what they choose. But when you do a balancing
25 test, when you are doing, and this is one of the

1 things that Professor Sedler is going to be talking
2 about, when you do this balancing test, the public has
3 a right to know stuff in order to be able to make
4 their determinations as to what to do, and who better,
5 when you are dealing with judicial campaigns, when you
6 are dealing with issues of justice, when you are
7 dealing with the administration of justice, who better
8 to do it than us lawyers? We know about it, we are in
9 it, we are the ones that can advise them, so hopefully
10 we can continue to do that in the future. So thank
11 you.

12 (Applause.)

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

15 (Video interview being played.)

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

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

25 So, Bob, how are you?

1 PROFESSOR SEDLER: Fine. Thank you.

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

6 PROFESSOR SEDLER: Get used to it after a
7 while.

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

11 PROFESSOR SEDLER: Constitutional law,
12 correct.

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

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

1 but the First Amendment protects all speech.

2 PRESIDENT EINHORN: So political correctness?

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

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

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

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

21 But today we want to talk about Keller versus
22 California. We want to talk about, if you will,
23 somewhat the attack that came on the bar for the
24 position the bar took on campaign finance in judicial
25 elections and have you just give the group a general

1 understanding of what the issue is sort of about.

2 PROFESSOR SEDLER: We start off with really
3 two points, that the primary purpose of the First
4 Amendment is for the benefit of the public. We want
5 the public to have all of the information so that they
6 can make ultimate decisions. That's really more
7 important than the right of the speaker to speak is
8 the right of the public to know. So any restriction
9 on the ability of the State Bar to take a position on
10 matters relating to the administration of justice, the
11 core function of the Bar, the courts, lawyers, the
12 operation of the administration of justice deprives
13 the public of very valuable insights that would be
14 relevant to their own decision making. That's one
15 part of the equation, but the other part of the
16 equation is that the First Amendment protects the
17 right to be silent, and that is not to be compelled to
18 be associated with particular ideas. Because the bar
19 is an integrated bar collecting dues from all of its
20 members, the dues support the bar, those funds cannot
21 be used to take positions on public issues that are
22 unrelated to the administration of justice. Let's say
23 gun control or abortion, anything like that. The
24 focus has to be on the bar's commenting on issues that
25 are germane to the administration of justice.

1 PRESIDENT EINHORN: Let me break it down.
2 When we talk about -- we are an integrated bar, which
3 means all 43,000 plus of us have to pay bar dues
4 whether we want to or not. Some have said that this
5 is a violation of the rights of lawyers upright.

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

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

19 PROFESSOR SEDLER: The answer is that the
20 governing body, Representative Assembly, has been
21 elected through a democratic process. They take the
22 positions, they set forth by their own vote the
23 position for the bar. Your right as a dissenting
24 member is protected by the fact that the issues on
25 which the bar takes the position have to be germane to

1 the administration of justice, and, as I understand,
2 the bar plans to allow dissenting members to express
3 their views on the website, which is good, because it
4 gives the public more information. But as long as the
5 matter relates to the administration of justice, the
6 bar can take the position upon it, and its taking a
7 position does not violate the right of the Assembly
8 members not to be associated with ideas with which
9 they disagree. That is the holding of Keller.

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

13 PROFESSOR SEDLER: Right, that's long
14 settled.

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

22 PROFESSOR SEDLER: The example of campaign
23 financing is a good one. If the bar were to take the
24 position that there should be all kinds of
25 restrictions on contributions and expenses --

1 PRESIDENT EINHORN: It we took a position on
2 Citizens United.

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

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

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

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

23 PROFESSOR SEDLER: But, again, there are many
24 strands to the First Amendment, and Keller involves
25 another strand which is the right not to be associated

1 with ideas with which we disagree, to not have your
2 money used to promote ideas with which you disagree.
3 So, yes, we are very concerned about the right of the
4 public to know, but we also have to protect the right
5 not to be associated with particular ideas. And we do
6 so in this context by limiting the bar to taking
7 positions only on matters that are germane to their
8 core function, namely, the administration of justice.
9 Now, there are a number of matters that are going to
10 be germane to the administration of justice, but the
11 focus has to be on germane.

12 CHAIRPERSON ALLEN: I have a quick question.

13 PROFESSOR SEDLER: Sure.

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

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

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

1 PROFESSOR SEDLER: That's a core function.

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

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

8 PRESIDENT EINHORN: Justice initiative
9 programs?

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

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

15 PROFESSOR SEDLER: Yes.

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

21 PROFESSOR SEDLER: Yes.

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

24 PROFESSOR SEDLER: It's not a matter of broad
25 interpretation of Keller or a narrow interpretation of

1 Keller. It is a correct interpretation of Keller, and
2 the correct interpretation of Keller is that the bar's
3 positions on public issues must be related to the
4 administration of justice. That's how we protect the
5 rights of the sitting members.

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

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

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

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

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

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

21 PRESIDENT EINHORN: Let's talk about tort
22 reform or medical malpractice reform. Lawyers have
23 criticized the bar sometimes because we haven't taken
24 a position on tort reform, because we haven't taken a
25 position on some of the suggestions regarding medical

1 malpractice reform or drug reform, which some people
2 say has something to do with access to justice.

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

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

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

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

24 PROFESSOR SEDLER: We have gone beyond the
25 administration of justice, and that's improper, yes.

1 Keep the focus on germaneness and the administration
2 of justice.

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

8 PROFESSOR SEDLER: Correct.

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

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

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

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

24 PROFESSOR SEDLER: That's the problem with
25 the sales tax. In theory it's collected by the

1 lawyer, but it must be paid by the consumer. I think
2 the bar could take the position that a sales tax on
3 legal services would discourage people from using
4 legal services and, therefore, adversely affect the
5 administration of justice. That's very different from
6 putting a tax on lawyers, but the fact that it is a
7 tax on legal services that could affect people's
8 access to lawyers in the administration of justice
9 makes it a core function.

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

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

25 PRESIDENT EINHORN: And do we serve the

1 public as well by taking positions, advocating our
2 positions on our core functions?

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

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

17 PROFESSOR SEDLER: Again, as in any
18 governmental body, should the governmental body that
19 elected its leaders, you are in the minority on this
20 issue. The democratically elected leaders will take
21 the position. Your rights are protected in the sense
22 that the issue has to be germane to the administration
23 of justice. And I think it helps that, as I
24 understand it, the bar will provide for the dissenting
25 views to be presented on the website. That is very

1 good, because it gives the public even more
2 information.

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

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

9 PRESIDENT EINHORN: And that serves the
10 public?

11 PROFESSOR SEDLER: That serves the public.

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

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

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

24 PROFESSOR SEDLER: Well, the present system
25 where the bar can take a position and then dissenting

1 members can ask for a refund is insufficient. It's
2 constitutionally insufficient. The members' money
3 cannot be used for something that is not germane. The
4 injury of the First Amendment rights is when the money
5 is used, and so, clearly, that has, that has to
6 change. And again, again, again, the bar can only
7 take positions on matters that are germane.

8 PRESIDENT EINHORN: We keep repeating --

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

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

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

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

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

25 PRESIDENT EINHORN: Right to lawyers.

1 PROFESSOR SEDLER: Again, that, I think we
2 all recognize that that's an important issue.

3 PRESIDENT EINHORN: Kathleen, do you have
4 anything?

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

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

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

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

23 CHAIRPERSON ALLEN: Would a policy and can
24 State Bar actions on presented administration also
25 involve policy issues that are affected by Keller?

1 PROFESSOR SEDLER: Well, these are all
2 policies.

3 CHAIRPERSON ALLEN: And so that's pretty
4 broad?

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

24 PRESIDENT EINHORN: To sort of conclude this,
25 if you are giving advice, free advice, because you are

1 doing this for free.

2 PROFESSOR SEDLER: Right.

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

8 PROFESSOR SEDLER: Germane to the
9 administration of justice.

10 PRESIDENT EINHORN: Germane to the
11 administration of justice.

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

17 PRESIDENT EINHORN: Kathleen, anything?

18 CHAIRPERSON ALLEN: I think that's it.

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

21 CHAIRPERSON ALLEN: Thank you very much for
22 being here.

23 (Conclusion of video interview.)

24 (Applause.)

25 CHAIRPERSON ALLEN: Janet Welch. As you can

1 see, this has been a concept that's been consuming the
2 State Bar this past year, and it's important that the
3 Representative Assembly participate in this and
4 understand the different variables associated with the
5 Keller position, and Janet Welch, executive director
6 of the State Bar, is now going to provide us with a
7 national perspective and other interpretations as
8 well.

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

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

22 So when I found out from her a few days ago
23 that my presentation was going to be paired up with a
24 professional video featuring the legendary Bob Sedler,
25 I knew immediately I had to up my game. So I turned

1 to an upworthy generator. Do any of you know what
2 upworthy is? You know when you are on Facebook or
3 Yahoo and there is something that says something like,
4 there is a picture of a woman who could be your next
5 door neighbor only slightly more attractive that says,
6 This single mom got mobbed at a train station. What
7 she did next was genius, and you just have to click on
8 it. So that's sort of the format I felt I had to go
9 to to keep your attention at this stage of the
10 proceedings on this topic. So here is my attempt to
11 make a very serious subject at least a little
12 entertaining. With Kari's help.

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

18 So what we are getting ready to do is go
19 through actually the history of the mandatory bar and
20 the first challenges, where Michigan fit into that
21 picture, and I am not going to go through a great
22 detail about the fact that certain elements of the
23 regulation of the mandatory bar in Keller are in flux.
24 There was a case, for example, that challenged the
25 ways in which mandatory bars -- I don't have an

1 alternative to my clever PowerPoint, but there was a
2 case that challenged the way in which mandatory bars
3 can collect dues and rebate money to challengers
4 implicitly. That was before the U.S. Supreme Court,
5 and all mandatory bars who used that mechanism as a
6 mechanism of protecting the rights of dissenting
7 members were just holding their breath thinking that
8 if the case were broad enough -- thank you.

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

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

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

22 EXECUTIVE DIRECTOR WELCH: North Dakota, and
23 I put a slide of a saloon, because I figured the
24 number of lawyers in North Dakota in 1921 could fit in
25 a saloon. May even still be the case.

1 So there were six jurisdictions that unified
2 in the '20s, 15 in the '30s, three in the '50s, three
3 in the '60s, and three in the '70s. Michigan was the
4 19th mandatory state in 1935. Let's hold it there for
5 a minute.

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

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

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

24 What they said was, We don't have enough on
25 the record to declare that this mandatory bar is

1 violating the constitution. Basically that's what
2 they said.

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

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

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

1 seven years. Next slide.

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

13 What is the relevance of Falk today when we
14 have Keller that settled the question, as
15 Professor Sedler kept saying, it settled the question
16 of whether mandatory bars can exist and engage in some
17 kind of ideological activity? So the answer is --
18 next slide -- that, and I believe President Einhorn
19 pointed this out, that the order establishing the task
20 force on the role of the State Bar began by citing
21 Falk, and with this quotation from Justice Ryan, who
22 commanded three votes in both Falk I and Falk II, and
23 in Falk II one of those votes, incidentally, was
24 Justice Cavanagh, the only member of the Falk II court
25 who is still on the court.

1 So beyond that, the order establishing the
2 task force on the State Bar also referenced Falk when
3 they said the task force is charged with determining
4 whether the State Bar's duties and functions can be
5 accomplished by means less intrusive upon the First
6 Amendment rights of objecting attorneys, citing Falk.
7 That is a Falk quotation, not a Keller quotation,
8 under the First Amendment principles articulated in
9 Keller and in Falk. So the Michigan Supreme Court is
10 telling us that Falk is still relevant, but they are
11 also citing Keller.

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

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

1 states have that same definition.

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

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

17 Compulsory dues may not be expended to
18 endorse or advance a gun control or nuclear weapons
19 freeze initiative. We know that. At the other end of
20 the spectrum, petitioners have no valid constitutional
21 objection to their compulsory dues being spent for
22 activities connected with disciplining members of the
23 bar or proposing ethical codes for the profession.
24 There is a lot between those two poles, right? Not
25 particularly helpful.

1 Keller itself -- next slide -- acknowledges
2 that that is not very helpful guidance. Precisely
3 where the line falls between those State Bar
4 activities in which the officials and members of the
5 bar are acting essentially as professional advisors to
6 those ultimately charged with the regulation of the
7 legal profession, on the one hand, and those
8 activities having political or ideological coloration
9 which are not reasonably related to the advancement of
10 such goals, on the other, will not always be easy to
11 discern. No kidding. Next slide.

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

23 The super majority. So while
24 Professor Sedler did say that the democracy inherent
25 in our State Bar overcomes the objections of

1 dissenting members as long as we stay within whatever
2 the guidelines of Keller are. The super majority
3 requirement is something that is the most common
4 element, and actually Michigan adopted it prior to
5 Keller in 1984 at the recommendation of that special
6 committee. So special votes and processes on issues
7 that impact ideological activity. Next.

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

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

20 Virginia, West Virginia, and North Carolina
21 are all mandatory bar states on this list, and you
22 will also find them on a voluntary State Bar list.
23 They have a voluntary and a mandatory bar, and only
24 the voluntary bar does the activities that might be
25 questionable.

1 California is always an interesting state, is
2 in the process of converting to a fully regulatory
3 state bar model with a separate conference of
4 voluntary state bars taking on the lobbying advocacy
5 roles.

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

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

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

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

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

24 The Nebraska Supreme Court, finally, sent
25 shock waves across the mandatory state bar world last

1 December in response to a challenge to the state bar's
2 mandatory status that had been brought by a state
3 senator who was a member of the bar and who was
4 unhappy with the bar's advocacy concerning measures on
5 father's rights. The Nebraska Supreme Court retained
6 the mandatory state bar status but slashed the
7 state bar's funding and its responsibilities, and they
8 created a kind of hybrid that I have heard described
9 by both the supporters and the opponents of a
10 mandatory bar, both from Nebraska and throughout the
11 country, as the worst of both possible worlds.

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

19 What's going to happen? We are, of course,
20 holding our breath to see what the Michigan
21 Supreme Court will do, but which way is the wind
22 blowing for mandatory bars in general? In terms of
23 how to apply the settled law, the devil, as they say,
24 is in the details or in the safeguards or lack
25 thereof.

1 The State Bar of Michigan has always taken
2 the need to act without ideological or partisan bias
3 very seriously, and this year has provided us an
4 opportunity to examine with great care whether there
5 is more that we can do to ensure that our process
6 works, particularly in an environment in which the
7 substantive law concerning advocacy of unions and
8 compulsory dues is questioned.

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

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

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

25 So let me conclude with this thought, the

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

20 (Applause.)

21 CHAIRPERSON ALLEN: I just want to say a
22 quick note. I want everybody to take a look at this
23 document that Janet provided once more. Why is this
24 discussion relevant? This discussion is relevant
25 because we are the final policy-making body. What is

1 before you all the time, policies and issues. So we
2 could have skipped this discussion, but for the future
3 you have to know what is dealing with regard to the
4 drafting and the calendars committee when your
5 proposals come to the leadership, and they look at
6 these proposals so everybody understands at the
7 beginning when you go to your sections and you get
8 information, you want to do a proposal, that everybody
9 understands these are the issues that are going to be
10 brought up and that we are going to have to vet these
11 issues before they come before this body for a vote,
12 and this is a great guideline, and I want to show you
13 that this is what we are moving towards so that
14 proposals that come before the Board, before the RA
15 are going to have something very similar to this, and
16 it's important you understand the dynamics of where it
17 came from and the history of it.

18 Is there any discussion? Anybody have any
19 comments or any thoughts? You may come up to the
20 microphones. If not, I would just like to introduce
21 Tom Rombach, who is going to be our president within
22 45 minutes, because we are running a bit late, but if
23 there aren't any questions, I would just like him to
24 say a few words.

25 MR. ROMBACH: Thanks, Kathleen. It's

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

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

22 Through my discussions with a lot of the
23 members of the Representative Assembly and, in fact,
24 State Bar members around the state, really three goals
25 have become increasingly clear. The first, that

1 people here, and in fact in our discussion in July it
2 was very clear that people want to remain a mandatory
3 bar. Secondly, that we want to maintain our public
4 policy advocacy and, thirdly, that we want to preserve
5 our governing structure, and the importance of that
6 being that here in the RA, being the final
7 policy-making body, that's both something that the RA,
8 of course, share, as do the Board of Commissioners and
9 their work group that Mr. Einhorn appointed and
10 submitted their comments to the Supreme Court for
11 their inspiration.

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

24 My emphasis this year, if we steer past this
25 and while we are waiting for the next year to drop, is

1 going to be on addressing the needs of the 21st
2 century lawyers and their clients. I am going to go
3 more into that at lunch, and if we have a few moments,
4 I would prefer if anyone had some questions, we will
5 try to reignite one of these lively Assembly debates
6 to get our juices flowing for lunch. Will you let me
7 take a question or two, Kathleen?

8 CHAIRPERSON ALLEN: Sure.

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

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

23 (Applause.)

24 CHAIRPERSON ALLEN: As we are trying to move
25 this along kind of quickly, because the goal was to

1 get it done before noon. Next, we are going to move
2 for the nomination of the clerk. We have one
3 individual who is asking to be nominated from the
4 floor. His name is Fred Herrmann.

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

12 VOICE: Support.

13 CHAIRPERSON ALLEN: Second?

14 VOICE: Second.

15 MR. ABEL: It's got to come from a different
16 circuit.

17 VOICE: Support.

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

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

24 Thank you, Fred. You can join us.

25 (Applause.)

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

12 The next is a presentation and recognition of
13 Assembly members who are leaving their terms and
14 service. I would like to thank those members, and
15 after that I would like to thank the committee chairs.

16 We have a few members that are, this is their
17 last, very, very, very last meeting. You are more
18 than welcome to join us again after you sit out a
19 year, but we appreciate and thank the time you have
20 committed to us. We have certificates that you can
21 come up, and Dan Quick, who is our clerk, will present
22 you your certificates.

23 In appreciation, William Josh Ard. Mr. Ard
24 was also participating in our Assembly Review, and I
25 thank him for his time.

1 Shayla Blankenship. Shayla has also
2 participated and helped a great deal, and she was a
3 chair also. Thank you, Shayla, for your time.

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

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

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

17 And Mark Teicher. And the Honorable Margaret
18 VanHouten, which was -- Judge VanHouten was not a
19 judge when she started on the RA. During her term of
20 the RA she was appointed for the judgeship.
21 Erane Washington and Christine Yancey.

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

25 The second thing, I would like to thank the

1 committee chairs. The committee chairs have spent a
2 lot of time this year returning my phone calls,
3 setting up conference calls, and just taking time out
4 of their practice to do things and to help out with
5 the RA and to keep the RA breathing, in existence.

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

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

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

19 The Nominating and Awards Committee, which
20 was the Honorable Jeffrey Nellis. He has been
21 instrumental in making sure that we have all of our
22 vacancies and keeping our vacancies empty so that they
23 are filled. And we have our awards also. If the
24 awards are given properly, we usually have our
25 conference calls to get our recipients for the Unsung

1 Hero Awards and Michael Franck. Thank you, Judge.
2 Thank you for everything you have done. You have been
3 a member of the Assembly for quite a number of years.
4 Thank you for coming back and volunteering your time.
5 I know it's busy being on the bench. Thank you.

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

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

24 Before I get into the introduction of
25 Judge Stephens, I just want to say thank you. I know

1 everybody doesn't like speeches, but I want to say
2 thank you for all of your kindness and support you
3 have shown me, not this year, but during my entire
4 tenure as a member of this important body.

5 At the beginning of the year I sought to
6 accomplish and address many things that would help
7 facilitate the RA's participation in state governance
8 and the changes to bring it basically to the
9 20th century, and you saw how I handled this when we
10 set up a website. We set up a quick website.
11 Ken Morgan of the 6th circuit, he spent a lot of time
12 helping me out. He used his resources to allow us to
13 have a little website called Yammer to have some
14 discussion and flow of information. We had 50
15 participants. We didn't have a lot of discussions,
16 but it was new and it was fast and a lot of people
17 didn't understand that we actually had this and we
18 were doing this. This was something that we need to
19 do in the future.

20 We weren't able to do everything we wanted to
21 do. We wanted to look at the rules and make things
22 faster with regard to possibly voting on the process
23 in terms of proposals to allow us to be faster, more
24 nimble and to work within the confines of some new
25 policies coming out. But due to the fact that we had

1 some unexpected issues, such as the task force and the
2 senate bill, I was unable to accomplish those things.
3 But we were able to at least look at the RA, have a
4 blueprint of what we need to do for the future and
5 understand what our needs are more. And I want to
6 thank you for being there and for helping.

7 I have also a couple other people I want to
8 thank. Robert LaBre, he was very helpful. He is the
9 43rd district. He helped and responded when we needed
10 some help. We wanted some smaller input from some
11 smaller districts. He helped Krista Haroutunian with
12 the Special Committee with regard to the RA in
13 evaluating our needs. I want to thank them. I
14 thanked Ken Morgan already.

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

24 Janet, I think she left. Oh, there she is.
25 Janet is very helpful. She tolerated me also, and I

1 thank her for doing that, and Janet tolerated me with
2 a smile on her face, and I am amazed at that, so she
3 must be a mother. I thank you very much, Janet. I
4 appreciate your time.

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

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

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

25 So that's done with my speeches, and I know

1 people don't like speeches. We have had enough of
2 them today.

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

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

22 Judge Stephens has been active in bar work,
23 including 16 years as a commissioner of the State Bar
24 of Michigan. She chaired the Justice Initiative
25 Committee, Communications Committee, and the

1 Children's Task Force. Judge Stephens is a former
2 chair of the Association of Black Judges in Michigan,
3 a former member of the executive board in the National
4 Bar Association and Judicial Council. She has been
5 honored by many civic and religious organizations, so
6 many that I can't add them all up.

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

11 JUDGE STEPHENS: I think that's enough.

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

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

25 Let me just do this. Let me, on behalf of my

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

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

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

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

23 MS. WILLIAMS: I do solemnly swear --

24 JUDGE STEPHENS: -- that I will support the
25 Constitution of the United States --

1 MS. WILLIAMS: -- that I will support the
2 Constitution of the United States --

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

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

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

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

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

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

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

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

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

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

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

25 MS. WILLIAMS: -- and with the help of my

1 colleagues and my family.

2 JUDGE STEPHENS: Congratulations.

3 (Applause.)

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

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

14 Thank you to my husband of almost 18 years,
15 Renard, for always supporting my activities and
16 especially thanks to the lovely Mackenzie, who
17 sacrificed a day of 6th grade to come and be with us.
18 I would like to thank my son, Reuben, who is a
19 14-year-old freshman at Brother Rice. He couldn't be
20 here with us today, he is in school, but he sacrificed
21 having me in attendance at probably every first spring
22 soccer game. Since I started being on the
23 Representative Assembly, the April meeting always
24 conflicts with the games, and my kids are always very
25 understanding and supportive of that.

1 At this time I do want to present thanks to
2 Kathleen. We have had a long, incredible year.

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

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

23 At this time I would like to present Kathleen
24 with her recognition from the State Bar, and it reads:
25 The State Bar of Michigan honors Kathleen M. Allen,

1 Representative Assembly Chairperson 2013-2014, Vice
2 Chairperson 2012-2013, Clerk 2011-2012, in
3 appreciation for distinguished service to the
4 Assembly, the State Bar, and all Michigan lawyers.

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

10 (Applause.)

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

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

1 this body has given me.

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

18 They helped a great deal. In fact, they have
19 listened to me. Richard Barron, gave me great advice,
20 yelled at me. Great guy. Michael Blau, Michael Blau
21 gave me his home cell phone number, and I called him
22 right in the middle of the night one night, well not
23 in the middle of the night. Nine o'clock you
24 shouldn't be calling lawyers. They are still working,
25 but not when you are with your family.

1 Kim Breitmeyer, she could be the typist and
2 take down notes faster than anyone. She must have
3 grown up with a typewriter in her hand. Or computer,
4 excuse me. I am showing my age.

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

9 Fred Herrmann we talked about.

10 Marty Hillard. Martin Hillard is from my
11 17th circuit. I appreciate Martin. You take my phone
12 calls. Martin works for Judge Sawyer, and even when
13 the judge is here, he took my phone calls. I
14 appreciate that. Thank you, Martin.

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

22 Scott Garrison is a hard man to get a hold
23 of. I got a hold of him though, and he made sure that
24 he was available for a conference call, and I thank
25 him for doing that.

1 Michael Thomsen, also very helpful. Thank
2 you very much, because I needed to have these
3 individuals for our confirmation in passing the
4 proposal in April.

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

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

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

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

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

19 Alan Sullivan, thank you very much.

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

23 David Korterling, thank you very much.

24 Judge Nellis' team was Shenique Moss. Thank
25 you very much, Shenique, for taking your phone calls

1 and showing up even with your cell phone and being
2 just out of court.

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

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

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

13 Kathy Kakish. Kathy isn't here today. Kathy
14 is not feeling well, and I am going to say Kathy has
15 pneumonia, walking pneumonia and the flu so bad, and
16 she called me on Tuesday and said that she wasn't
17 going to be here. I suggested that she could wear a
18 face mask and still be here, but she didn't think that
19 was very funny and said no. Kathy has been
20 instrumental in making sure that she gives the
21 proposals and provided everybody to get together in
22 order to pass these proposals. What people don't know
23 is it has to go through the Rules and Calendar
24 Committee and the Drafting Committee, so all these
25 people I am naming have to be on conference calls in

1 order to get proposals passed, and it's in a short
2 period of time, like a week, and that is very, very,
3 very difficult.

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

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

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

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

19 Jessica Fox. Jessica also helped and
20 provided great information.

21 Ellsworth Stay, he is new to the Assembly.
22 He is from Newaygo, and he is administrator in
23 Newaygo, and I begged him to be on the committee
24 because he had great insight. I want to thank you for
25 hanging in there.

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Thank you, everyone, for listening. I made my time, and I appreciate you being here.

(Applause.)

PAST CHAIRPERSON ALLEN: Meeting is adjourned. Thank you.

(Proceedings concluded at 11:50 a.m.)

1 STATE OF MICHIGAN)
2 COUNTY OF CLINTON)

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

7
8 October 10, 2014

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

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