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OREGON STATE BAR
2005 HOUSE OF DELEGATES MEETING

Salem Conference Center
200 Commercial Street SE
Salem, Oregon

SATURDAY, OCTOBER 1, 2005, 10:00 A.M.

P R O C E E D I N G S

1
2 MS. COOK: I understand we have a quorum. Always
3 good to start off on a positive note.

4 I'm going to call the 2005 Oregon House of
5 Delegates meeting to order.

6 Before we begin, I will ask our parliamentarian,
7 George Riemer, to give us a brief overview of the procedures that
8 we all will follow today.

9 MR. RIEMER: Good morning. This will only take
10 about a half hour.

11 (Laughter.)

12 We would like to have all the delegates in at these
13 three spots, so when we do have to take a vote, that we'll be
14 able to identify the delegates.

15 All delegates should have a placard, so that's
16 basically how we're going to keep track of votes. As you come up
17 to a pro or con microphone, we would ask that you identify
18 yourself, including that you are a delegate. When we have a main
19 motion that is -- has been presented by the Chair, the mic will
20 alternate normally between pro and con, the speaker will have
21 three minutes. Proposed amendments, we have amendment sheets,
22 little green pads of paper back on the side table, such that if
23 you have an amendment, we would greatly appreciate that you write
24 it out, present it to Susan Grabe or Sylvia Stevens down in
25 front, and they will hand it up to us so we can have the

1 president read it back to you so you clearly understand what is
2 being proposed as an amendment.

3 Nena will go through the process of establishing
4 the final meeting agenda. We do have a handout, the standard
5 parliamentary motions, and I think everybody should have those on
6 their seats.

7 And without further ado, we'll turn it back over to
8 the president.

9 MS. COOK: Thanks, George.

10 We have a full agenda today and the possibility of
11 some late-filed resolutions, so because we have those issues to
12 deal with, I have decided to deliver my president's report in
13 writing at a later time.

14 (Applause.)

15 MS. COOK: You're a something group. I do need to
16 spend just a few minutes to thank my colleagues on the Board of
17 Governors. These folks spend countless hours on your behalf, and
18 they are wonderful people. Most of them are sitting right in
19 front, but I would just like to read their names, and maybe they
20 can step up and identify themselves, and I want to thank them.

21 Frank Hilton, Gerry Gaydos, Jon Hill, Dennis
22 Rawlinson, who is are our president elect and was unable to be
23 here today; Mark Comstock from Salem; Doug Minson, Region 4;
24 Linda Eyerman; Albert Menashe; Marva Fabien, Salem; Dr. Jack
25 Enbom, another public member from Corvallis, and he's unable to

1 | be here today; Tim Gerking from Medford; Carol Skerjanec --
2 | there's Carol, she is from Vale; Rick Yugler; and, Bette
3 | Worcester, public member from Portland. Thank you very much.

4 | (Applause.)

5 | MS. COOK: I do also want to thank our tremendous
6 | staff of the Oregon State Bar. They do so much that none of us
7 | really appreciate, especially Karen Garst, our executive
8 | director, George Riemer, our general counsel, and all our staff
9 | is here today.

10 | Our court reporter from -- is it Teach? Mary Fagan
11 | with the Oregon Judicial Department. Thank you very much for
12 | being here.

13 | (Applause.)

14 | MS. COOK: Everyone should have a copy of the
15 | preliminary agenda; it was mailed out to you, and of course there
16 | are copies for you on your chair. Absent a motion to suspend the
17 | rules, in order to propose an amendment to the agenda, I will --

18 | MR. LANG: Madame President, may I be heard?

19 | MS. COOK: I recognize the speaker at the pro mic,
20 | Mr. Lang.

21 | MR. LANG: Thank you. Danny Lang, president,
22 | Douglas County Bar Association.

23 | Madame President, I move to suspend the rules to
24 | add the following resolution to the draft agenda, and that
25 | resolution is a resolution to amend certain mandatory CLE

1 requirements with regard to the elimination of bias. I would
2 like to have that added, and I'm going to suggest that perhaps
3 that should be consolidated for purposes of discussion with Nos.
4 19 and 20, which are on the same general subject.

5 MS. COOK: Okay. So we have a motion to suspend
6 the rules to add a resolution to amend the mandatory CLE
7 requirements. Is there a second?

8 MR. BROWNING: Second.

9 MS. COOK: The motion has been made and seconded.
10 It's not debatable. But I recognize that the motion is in order,
11 and I believe it's appropriate for me to give the basis of my
12 ruling to the House.

13 I believe the rules that Mr. Lang has asked be
14 suspended are Bylaw 3.3 and House Rule 5.4. Those rules require
15 that any resolutions be submitted 45 days prior to this meeting.

16 The resolution that Mr. Lang is moving to suspend
17 the rules was not filed within those -- before the 45 days. The
18 question is whether those rules, Bylaw 3.3 and House Rule 5.4,
19 can be suspended as mere procedural rules or actually substantive
20 rules which cannot be suspended.

21 My ruling is that they are substantive rules which
22 may be suspended to help us through the regular course of this
23 meeting. If -- excuse me, procedural. If they are substantive,
24 they could not be waived. My ruling is that they are -- they are
25 procedural, can be waived, and absent an appeal, we will then go

1 to whether or not the motion to suspend should be granted.

2 MR. JOHNSON: Madame President, I will appeal the
3 ruling of the Chair. I would like to be heard, if that's
4 possible.

5 MS. COOK: The motion to suspend is not debatable,
6 and therefore the appeal is not debatable. But Mr. Johnson has
7 appealed the decision of the Chair, and I understand his -- the
8 basis upon his appeal is that these rules cannot be suspended.
9 The House -- the House Rule may be, as it's a rule of procedure,
10 but he doesn't believe the bylaw, Bylaw 3.3, can be suspended.

11 Now that this appeal has been made and seconded --
12 excuse me, is there a second to Mr. Johnson's appeal?

13 MR. McLOUGHLIN: Second.

14 MS. COOK: -- seconded, I've again explained the
15 basis for my appeal -- my decision, and I would just say if the
16 decision of the Chair is overruled, then we will have -- we will
17 not entertain any further motions to suspend, and any of these
18 late-filed resolutions will not be heard.

19 I frame the vote on the appeal, the ruling of the
20 Chair as follows: Shall the decision of the Chair to recognize a
21 motion to suspend the rules for purpose of adding Mr. Lang's
22 resolution to the preliminary agenda be sustained? A vote in
23 favor of this motion only allows Mr. Lang's motion to suspend the
24 rules be recognized.

25 Those who believe the filing deadline for

1 resolution submissions should not be suspended should vote "no"
2 on this motion.

3 All in favor of sustaining the decision of the
4 Chair, please raise your placard.

5 (Vote taken.)

6 MS. COOK: All those opposed.

7 (Vote taken.)

8 MS. COOK: Majority -- looks like the decision of
9 the Chair is sustained.

10 We will now move to Mr. Lang's motion to suspend
11 the rules to add that resolution to the agenda.

12 The motion now before the House is simply the
13 motion to suspend the rules. It is not debatable but does
14 require a two-thirds vote to pass. You are not voting on the
15 substance of Mr. Lang's motion, just whether or not to add it to
16 the end of the agenda. It would become agenda item No. 21, and
17 it does require a two-thirds vote to pass.

18 MS. GRUBER: Point of order, Madame Chair. There
19 are five late-filed resolutions.

20 MS. COOK: There are.

21 MS. GRUBER: Are we going to go through this for
22 each of the five, or are we deciding collectively now whether or
23 not to let the five in or five out?

24 MS. COOK: We're taking one at a time. We are
25 going right now -- we are on Mr. Lang's resolution to amend the

1 mandatory CLE requirements. This motion to suspend the rules to
2 allow that motion to be heard at item No. 21 in the agenda, it
3 will require two-thirds of you to vote "yes" in order for that to
4 be heard at the end of the agenda and heard substantively.

5 MR. HUMMELL: Madame Chair.

6 MS. COOK: Please.

7 MR. HUMMELL: Where is the resolution that the
8 proponent is suggesting that we add to the end?

9 MS. COOK: It's in your packet. It's the green
10 page.

11 MR. HUMMELL: Great. Thank you.

12 MS. COOK: Thank you.

13 And a point of clarification, Mr. Lang. I
14 understand that if this gets added to the agenda, you have --
15 would like to amend it to make it into a recommendation as
16 opposed to a directive; is that correct?

17 MR. LANG: That is correct. All of my motions are
18 to encourage and recommend and should be so construed as a
19 preface to each resolution.

20 MS. COOK: Again, the motion is to suspend the
21 rules to add Mr. Lang's motion.

22 MR. BACHOFNER: Point of order. The nondebatable
23 aspect, we can't have any discussion as to the effect of not
24 giving the rest of our constituents any notice of this? There's
25 no discussion about that at all, where the notice that would be

1 provided to other delegates that might come to the judicial --
2 the initiatives that are going to be proposed? There's no
3 discussion about that at all?

4 MS. COOK: No.

5 (Laughter.)

6 MR. BACHOFNER: Thank you.

7 MS. COOK: Again, the motion before the House is
8 Mr. Lang's motion to suspend, add this resolution to the end of
9 the agenda. It does require a two-thirds vote for it to be even
10 recognized in the end.

11 We have one more person at the other.

12 MR. HUMMELL: Madame Chair, John Hummell, Region 1.
13 I hate to be a pest, but I cannot get my hands on a copy of this
14 proposal. Could somebody get me a copy?

15 MS. COOK: Okay. The motion is to suspend the
16 rules, requires a two-thirds vote so that it will be considered
17 at the end of the agenda. All those in favor, please raise your
18 placards.

19 (Vote taken.)

20 MS. COOK: All those opposed.

21 (Vote taken.)

22 MS. COOK: The motion to suspend is not granted.
23 That resolution will not be considered. Absent another motion to
24 suspend the rules, I'll --

25 MR. LANG: Madame President, may I be --

1 MS. COOK: Mr. Lang.

2 MR. LANG: Yes. Thank you. I move to suspend the
3 rules to add the following additional resolutions to the draft
4 agenda, and that resolution will be -- it's on the pink sheet,
5 for those present. It's a resolution that we would recommend
6 relaxing modification of the present UTCR 3.120, which is
7 extremely restrictive with regard to contacting jurors
8 post-trial. It would still have the protections of not to
9 badger, coerce or harass any juror, but I think it would bring us
10 in line with a majority of other State Bars and jurisdictions
11 that certainly do allow the feedback from jurors.

12 MS. COOK: There is a motion pending to suspend the
13 rules. Is there a second?

14 UNIDENTIFIED SPEAKER: Second.

15 MS. COOK: A second having been made, I again
16 recognize that the motion to suspend the rules is in order. That
17 is the ruling of the Chair, and absent an appeal of that ruling,
18 we will move to Mr. Lang's motion to suspend the rules.

19 The motion before the House is not debatable. It's
20 Mr. Lang's motion to suspend the rules to add the resolution
21 that's in your pink sheets to the end of our agenda. It is not a
22 vote on the substance of the motion, just whether or not we
23 should add it to the end of the agenda. In order to add it
24 requires two-thirds vote.

25 All those in favor of adding the resolution on the

1 pink sheets to the end of the agenda, please raise your placard.

2 (Vote taken.)

3 MS. COOK: All those opposed.

4 (Vote taken.)

5 MS. COOK: The motion does not carry. Absent
6 another motion to suspend the rules --

7 MR. LANG: Madame President, I have another motion
8 to suspend the rules to allow the hearing of a proposed
9 resolution that would authorize -- make a recommendation for
10 authorizing certain taking of depositions in criminal cases that
11 would be subject to certain protective orders, restrictions and
12 exemptions, but to utilize the tools we now use in civil
13 discovery to improve criminal justice in Oregon.

14 MS. COOK: That's a motion to suspend the rules.
15 Is there a second?

16 MR. HILTON: Second.

17 MS. COOK: This resolution, as I understand it, is
18 in your packet; it's the tannish color.

19 The motion having been made and seconded, again I
20 recognize that the motion to suspend the rules is in order.
21 Absent appeal of the Chair's ruling, I will entertain Mr. Lang's
22 motion to suspend the rules as to the authorization for taking
23 depositions in criminal cases. This vote is not debatable. It
24 requires two-thirds vote. If two-thirds of the House would like
25 to suspend the rules, it will go to the back of this agenda for

1 consideration at that time.

2 All those in favor of suspending the rules to add
3 the resolution on the brown paper to the end of the agenda,
4 please raise your placard.

5 (Vote taken.)

6 MS. COOK: All those opposed.

7 (Vote taken.)

8 MS. COOK: The motion to suspend does not pass.

9 Absent another motion to suspend --

10 MR. LANG: Madame President, I have one additional
11 motion to suspend the rules to allow for hearing on a resolution
12 that would allow this body, the House of Delegates, recommend to
13 the Board of Governors that we meet twice a year so we wouldn't
14 be up against this problem of late-filed agendas, and we would
15 also have breakout sessions and opportunities, as the one
16 gentleman mentioned, to have more input from our constituents. I
17 think the present -- I think we need this -- that's my motion.

18 MS. COOK: Is there a second?

19 MR. DEGUC: Seconded.

20 MS. COOK: Motion to suspend the rules has been
21 seconded. It is again my decision to recognize that that motion
22 is in order. Absent an appeal, we will vote on that motion to
23 suspend the rules. It requires a two-thirds vote. It's not
24 debatable. If two-thirds of the House want to add this to the
25 end of the agenda, the suspended rules will be added to the end

1 of the agenda.

2 All those in favor of adding the resolution for the
3 House of Delegates to meet semi-annually, please raise your
4 placards.

5 (Vote taken.)

6 MS. COOK: All those opposed.

7 (Vote taken.)

8 MS. COOK: Motion to suspend the rules is not
9 granted. We will not add that resolution to the agenda.

10 Is there another motion to suspend?

11 Mr. Williamson.

12 MR. WILLIAMSON: I would like to suspend the rules
13 for the resolution on the blue sheet.

14 MS. COOK: Is there a second?

15 MR. KRANOVICH: Second.

16 MS. COOK: There's a motion to suspend. It has
17 been seconded. I recognize that the motion to suspend is in
18 order. It's not debatable. Absent an appeal of my ruling, we
19 will move -- we'll take a vote on the motion to suspend. It
20 requires a two-thirds vote to pass. You're not voting on the
21 substance of the resolution, just whether or not we will consider
22 it at the end of our printed agenda.

23 All those in favor of suspending the rules to allow
24 Mr. Williamson's resolution that appears on the blue piece of
25 paper to appear on the resolution, please raise your placards.

1 (Vote taken.)

2 MS. COOK: All those opposed.

3 (Vote taken.)

4 MS. COOK: It requires a two-thirds vote. It's a
5 little too close to call, so I would ask the tellers to come up.

6 The motion before the House is a motion to suspend
7 the rules to add the resolution that appears on your blue pages
8 to be heard at the end of the agenda.

9 So I'll get all of those in favor of suspending the
10 rules, please raise your placards and keep them raised until the
11 teller gets your count.

12 (Vote taken and counted.)

13 MS. COOK: All those opposed to suspending the
14 rules to add this item to the agenda, please raise your placard
15 and keep it raised.

16 (Vote taken and counted.)

17 MS. COOK: The motion does not pass. So we will
18 now proceed with -- I'll entertain a motion to approve the draft
19 agenda as the final agenda for today's meeting.

20 MR. YUGLER: So moved.

21 MR. ANDREWS: Second.

22 MS. COOK: I have heard a motion to approve the
23 draft agenda as the final agenda for today's meeting. Is there a
24 second?

25 MR. ANDREWS: Second.

1 MS. COOK: All those in favor.

2 DELEGATES: Aye.

3 MS. COOK: I'm sorry, raise your placards.

4 (Vote taken.)

5 MS. COOK: Any opposed? Thank you.

6 We will now move to item No. 5 on your agenda. We
7 are honored to have Chief Justice Carson with us today. While
8 the Chief, of course, needs no introduction because we all know
9 him well, I would like to simply say that the Oregon State Bar
10 appreciates his unwavering leadership that he has shown as the
11 Supreme Court Justice since 1982, and as the Chief since 1991.

12 I have personally enjoyed very much working with
13 him during this past year, and I know that when he retires from
14 the bench, the people of the state of Oregon will lose a great
15 friend.

16 So on behalf of the Oregon State Bar, I wish to
17 thank him for his many years of service, and welcome him to share
18 his thoughts and comments with us today. Chief Justice.

19 (Standing ovation.)

20 JUSTICE CARSON: Thank you. Thank you. I wasn't
21 prepared for that, but good morning. Thank you. That's very
22 humbling.

23 I'm pleased to be here, and as I said, I'm pleased
24 to be almost anywhere, but I am pleased to be here.

25 In talking to several of you before, I thought I

1 | would deviate from my remarks for I was asked to speak before my
2 | so-called announcement, one that went into the newspaper, to
3 | explain a little bit how the system I think is going to work and
4 | I only have one vote in that election. The -- my present
5 | intention is to stay on the court through the balance of my term.
6 | When Tony Green of The Oregonian called, he asked some question,
7 | "Are you going to run next year?" and the answer was "No," that
8 | took him by surprise, I think. And then the rest of it followed
9 | from that.

10 | My term is over on January 1 of '07, and my present
11 | intention is to see that through. That means that the seat I --
12 | position No. 6, the one I have, courtesy of the voters, will be
13 | elected in May or November. The position of chief justice,
14 | that's where there's a little more interest perhaps -- well, I
15 | don't -- necessarily in this state, in our constitution, is
16 | elected by the seven members of the court.

17 | You older members might remember there was a
18 | discussion between Bud Lent, who was on the court, and recently
19 | had been in the state senate, and Governor Atiyeh on whether or
20 | not the governor ought to appoint the chief justice, and of
21 | course there's -- a ballot measure will change that -- maybe a
22 | ballot measure will change that. But right now the seven of us
23 | will gather before long, I'm not sure when, and elect my
24 | successor, and the -- you'll be informed. That causes me to
25 | change slightly my remarks, as I told Karen I would be brief. I

1 don't think she believed me. She has good experience at that, so
2 that was a good thought.

3 This might be -- have an ornithological theme and
4 that is related to birds, which are two-legged, southern, egg-
5 laying vertebrates, and the first one is -- is a duck. Because
6 of the announcement in the paper, I have become a duck, or a lame
7 duck I guess would be a more obvious one. I'm enjoying that new
8 status -- no, I'm not, but it's an interesting position. The
9 other is a swan, a swan song. This probably will be the last
10 opportunity I have to address you with my official capacity, so
11 let me start with that.

12 I do appreciate this opportunity. Approximately 15
13 years ago my predecessor in this position, Edwin J. Peterson,
14 spoke to the Bar at -- of course it was a town hall meeting, I
15 think it was at Seaside, and the theme of his remarks was
16 partnership between the bench and bar. And I had thought that he
17 was an excellent chief justice and judge. He stressed the need
18 for this partnership and went into some detail with it.

19 I think that in my opinion, his vision for greater
20 cooperation between the bench and the bar has come to pass, and I
21 cite our joint efforts, especially in improving access to the
22 courts. Task force on racial and ethnic issues in the judicial
23 system with Edwin Peterson as the chair was published in May of
24 '94. That was followed by the report of the implementation
25 committee that was chaired by Paul DeMuniz in January of '96.

1 Then we had a formation of our -- jointly of our committee on
2 Access to Justice for All, which is the oversight committee that
3 has judges and lawyers and lay people sitting on that, and their
4 purpose is to continue to review the reports on access. Then we
5 have the joint bench-bar Task Force on Gender Fairness, the
6 public's report in May of 1998 chaired by Bob Fraser and Susan
7 Graber. Then we've had the cooperative efforts on increasing
8 legal services around the state, a great need. And now we're --
9 we have a joint task force on access to the state courts for
10 persons with disabilities, and Janice Wilson, judge in Multnomah
11 County, is the chair of that group.

12 So we continue to move forward in ensuring our
13 fellow citizens they have access to the courts. That's been a
14 major effort for the court system for some time, and I'm pleased
15 to know the bar has been strongly supportive of it.

16 From my view, the -- much lies ahead and our needs
17 are great. Protecting judicial independence, including
18 increasing judicial salaries, is critically important. As you
19 probably are aware, we got whacked, and although I think the
20 legislature, through a mechanism, they have granted somewhere
21 between 12 and 17 percent increase with their salaries, did not
22 do anything for us. Might be under the category of just
23 desserts, but I don't think so.

24 Also I've had a continuing interest in focusing on
25 access to the courts for the elderly and also for young or for

1 the juvenile. We're having a regeneration, I believe, of
2 interest in juvenile courts, both on delinquency and dependency,
3 and I'm pleased to see that take place.

4 With that, there are a few other areas, but I want
5 to close by offering my thanks to the officers of the -- over a
6 period of time of the Bar, the Board of Governors who served and
7 served very well, the executive director of the Bar and her
8 staff, and you, the House of Delegates, who do a fine job in my
9 view for your continuing support for the court system in the
10 state of Oregon. You have come to our assistance time and time
11 again, and I --

12 (Room darkened.)

13 JUSTICE CARSON: Can't get -- Karen, get away from
14 the light switch.

15 With that, I will conclude and say this has been a
16 wonderful opportunity to serve you on the bench, both on the
17 trial bench and as a trial lawyer, and I looked forward to
18 enjoying my duties in the next few months. Thank you.

19 (Applause.)

20 MS. COOK: We'll proceed in just a moment.

21 Somebody wants to get the budget report in the dark.

22 Okay. I will now recognize Mr. Frank Hilton. He's
23 in his fourth and final year on the board. He is currently chair
24 of the Board of Governors Budget and Finance Committee, and he'll
25 give us the financial report. Mr. Hilton

1 MR. HILTON: Good morning. Let me give sort of a
2 combined financial report and statement in support of the Board
3 of Governors resolution to increase dues of \$50 the coming year,
4 some of the reasons for that, and also first let me thank Rod
5 Wagener. Where is Rod? He better be here.

6 In case I don't have the answers, Rod will have
7 them. He's been a fantastic chief financial officer to work
8 with. I've been on the committee for the past three years, vice-
9 chair last year, and chair this past year. Any time I have a
10 question of Rod, he usually gets back to me within 15 or 20
11 minutes what the answer is. He's amazing how he's got his finger
12 on every detail of our business.

13 First of all, the requested increase -- we have the
14 same -- everything goes up for the Bar and for you. One thing
15 that's sort of surprising, given some of the extra hits we've had
16 in expenses, is that this request amounts to a 2.7 percent
17 increase per year over the last five years compared to the
18 consumer price index of 2.6 percent.

19 The increase is not driven by an increase in
20 staffing at the bar. Karen Garst has done an amazing job in
21 keeping staffing down. It's been static for the last five years
22 except for the increase caused by the Client Assistance Office
23 that was approved by HOD in 2003, and if anything has been
24 excessively successful -- we'll address that in a little more
25 detail later.

1 One of the unanticipated hits we've had is PERS.
2 We're a state agency, and it has been a severe hit on our budget.
3 And to give you some specific numbers, starting July 2005 through
4 June 2007, our PERS assessment is 13.59 percent of our payroll
5 for preexisting employees. Since 2003 it's been 12.94 percent
6 for new employees. Starting July 2007 it goes to 19.03 percent
7 of payroll. These are big numbers in what it costs us to do
8 business.

9 We tried to ameliorate that by having a couple of
10 sentences in the Bar bill that was submitted to the legislature
11 allowing us to opt out of PERS for new hires. We hoped maybe
12 nobody would read it. That wasn't the case; it was read. I'm
13 not sure who did. But it got to the attention of the Governor,
14 and he called up and said, "Unless that sentence comes out, I'm
15 vetoing the whole thing." So we got the message and took it out.

16 Part of this assessment is 4.90 percent is what's
17 called the DAS assessment for, as I understand it, our share of
18 bonding for prior shortfalls. We've not been able to get out of
19 PERS a statement of how much do we owe, when is it going to get
20 paid off, and what's the interest rate? Instead -- frankly, they
21 don't even know what they are doing -- to try to pin down some
22 time limits on that 4.90 assessment, we've written to PERS
23 administration and said, "Answer these questions. What's the
24 principal amount? When is it going to get paid off? What's the
25 interest rate?" And that letter just went out in the last couple

1 of weeks. If we don't get an answer that satisfies us, the
2 Budget and Finance Committee recommends to the board we hire an
3 independent actuary to go to bat for us to try to get -- force
4 PERS to give us some answers. That's not going to give us any
5 immediate assistance over the next five years, but it's part of
6 the underlying unanticipated budget that's -- that we've
7 experienced.

8 The other -- I mentioned the staffing has been
9 static except for the Client Assistance Office. When you
10 approved the CAO you -- the budget was \$11 to cover the cost of
11 CAO, and it was anticipated it would be one lawyer and three
12 assistants. The HOD saw a need and improved this program. It
13 turns out the need was a lot greater than we anticipated or the
14 HOD anticipated because last year the CAO fielded over 3,000
15 inquiries from disgruntled clients. It's been a big success for
16 lawyers and it's been a big service to the public.

17 For lawyers, it's caused a big reduction in cases
18 that otherwise would degenerate into disciplinary cases going to
19 the Disciplinary Counsel's Office for prosecution.

20 The clients, when they had the initial upset, can
21 call the CAO, and many, many scores of cases, the CAO is able to
22 get things worked out and smoothed over, and often it's just a
23 lack of communication from a lawyer or failure to return files
24 promptly, that kind of thing, and get it taken care of before it
25 degenerates into a disciplinary case.

1 But because of the volume of inquiries, instead of
2 one lawyer and two assistants, it's taken three lawyers and three
3 assistants. So your \$11 budgetary item you approved in 2003 is
4 only covering half the cost of the Client Assistance Office, so
5 that's a big factor in meeting this change.

6 Looking at this year's budget, we -- our budget was
7 set hoping for and assuming a shortfall of \$17,000 at the end of
8 the year. That has ballooned. I anticipate the deficit will be
9 over \$200,000 at the end of this year. There's two big factors
10 besides what I've just talked about, the CAO and PERS, two other
11 factors. There's been a substantial fall-off in purchase of
12 books, about a 40 percent shortfall in that revenue; probably in
13 anticipation that everything was going to go online, people were
14 waiting to see what will happen. Maybe it will pick up between
15 now and the end of the year. We hope so. But those are eggs
16 that haven't been hatched yet.

17 And second is an overrun in the expense of outside
18 counsel. Historically we've budgeted \$50,000 a year for outside
19 counsel. We realize that's unrealistically low based on past
20 experience. Going forward we're budgeting \$100,000 a year for
21 outside counsel, it's a more realistic amount. This year is
22 probably going to be pushing \$200,000 for outside counsel.

23 We have -- one thing we're anticipating is maybe
24 filling a need for hiring outside counsel in complex unlawful
25 practice of law cases where we can't get volunteers. We've been

1 extremely fortunate in getting attorneys around the state to
2 volunteer for those injunctive proceedings. And I urge you all
3 to consider volunteering for Unlawful Practice of Law. I think
4 it's one of the greatest services to the public. A lot of people
5 think, hey, it's just policy wonks sitting around who don't
6 understand what UPL does. It's there to protect the public, not
7 to protect the union shop of lawyers, to protect the public from
8 people who call themselves lawyers who aren't lawyers and who
9 don't have malpractice insurance and do permanent damage to
10 people, getting them converted from legal residents to illegal
11 aliens with no way to fix it, that type of case. And I know that
12 committee is requesting an expansion to 21 members this year from
13 16 because of the high volume of cases they have got. That's
14 diverted from the budget to make up -- my pitch to that, I've
15 been board liaison to that committee for the last four years and
16 attended most of its meetings, and it does great work. But these
17 things are driving a more realistic budget of \$100,000 a year for
18 outside counsel.

19 As of August 31st we were \$312,000 behind where we
20 should be at that date, so we're hoping things will pick up
21 between now and the end of the year. But Rod Wagener's initial
22 statement -- just let me read it to you in his report he just
23 provided to us, quote, the financial report in August 31 is one
24 of the bleakest in several years. It has been at least 10 years
25 since there has been a net revenue in August 31 as low as this

1 year's. A negative budget variance also is the highest in
2 several years.

3 So in summary, we urge you to approve the dues
4 increase. There's no fat. There's no new employees except for
5 the Client Assistance Office in our budget. We -- every year we
6 go through this budgeting process. We push staff as hard as we
7 can to find deficiencies and cut costs, and we're at the point
8 where people are going to have to be laid off and I'm not sure
9 who it is. Thank you.

10 Any questions?

11 So I move that the House of Delegates approve the
12 Board of Governors' resolution to increase the membership dues
13 \$50 per year for active members.

14 MS. COOK: Is there a second?

15 MR. LANG: Second.

16 MS. GRUBER: I have one question.

17 MR. HILTON: Yes.

18 MS. GRUBER: So we've had this great success with
19 client -- oh, microphone. Beg your pardon. Since we've had such
20 great success with the Client Assistance Office, doesn't that
21 mean that we're decreasing the costs in the disciplinary
22 department and laying people off?

23 MR. HILTON: We have. It's resulted in two people
24 being laid off from disciplinary counsel's office. But, you
25 know, they are not doing the exact same things that you couldn't

1 do, say, number of layoffs, A; and B, we get a lot of criticism
2 for cases being too slow in the disciplinary process. So this
3 has allowed the disciplinary counsel's office with the smaller
4 staff to catch up and move cases through the pipe line a lot
5 faster. And the amount of work they put into each case is very
6 impressive.

7 I urge you all also to volunteer for the State
8 Professional Responsibilities Board. You can't appreciate how
9 much work is done until you serve on that board.

10 MS. COOK: The motion has been moved and seconded
11 and is now open to debate and discussion.

12 Mr. Christ.

13 MR. CHRIST: I'm Tom Christ, elected delegate from
14 Portland.

15 In deciding how to vote on this resolution, I would
16 be interested to know whether the PLF is planning to increase its
17 assessment next year, if anyone knows that.

18 MS. COOK: The PLF has recommended to the Board of
19 Governors that the assessment will remain the same, and the board
20 approved that recommendation yesterday. So the assessment will
21 not rise.

22 MR. HILTON: And then I think if the numbers
23 continue the way they are, we're cautiously optimistic that will
24 be true next year, too. It's all driven by the number of claims,
25 and the number of claims that have been made are below what they

1 have been budgeting for, not by a heck of a lot, but they are
2 below, so that's why the assessment can stay the same.

3 MS. COOK: Ms. Eyerman.

4 MS. EYERMAN: Linda Eyerman, Board of Governors,
5 and I'm chair of the Access to Justice Committee, and I want
6 everybody to know that there's -- this is kind of a bleak
7 financial picture, but there's actually a terrific plus in this
8 dues increase, which is that if this increase passes, the board
9 has agreed to dedicate \$5 of each member's dues to a loan
10 repayment assistance program for lawyers -- Oregon lawyers, both
11 civil and criminal, who want to go into public interest law but
12 who have significant educational debt.

13 The Access to Justice Committee has studied this
14 problem for the last six months, and we've just been just so
15 impressed with the extent of the problem in Oregon and also with
16 the efforts of the law schools to try to make some inroads for
17 their graduates. But the board has decided that a statewide
18 program needs to be set up, and in order to do that, we need some
19 funding for it.

20 So if this dues increase passes, we will have
21 approximately \$62,000 a year for public interest lawyers to help
22 pay their educational debt, and we've been assured that most of
23 that money will go to grants or loans for the lawyers and not for
24 administration of the program. Obviously there will be some
25 administrative costs, but I think they will be quite low because

1 we're using volunteer time to set up the program.

2 So I would urge you to vote for this because of
3 that very impressive and happy addition to our programming.

4 MS. COOK: Thank you, Ms. Eyerman.

5 Before we continue with the debate, just a
6 reminder, the presenter of each resolution will have five minutes
7 to speak, and then each person who comes up to the mic will have
8 three minutes, and you'll have this light to tell you when it's
9 time to talk, sum up, or you're done.

10 Three minutes for each -- Mr. Paulson.

11 MR. PAULSON: Thank you. Lauren Paulson. I'm not
12 a delegate, but I'm here as a defrocked member of the Board of
13 Governors.

14 Mr. Hilton misspoke just a minute ago. He advised
15 you that he was vice-chair of the Budget Finance Committee last
16 year. That's not so. He was chair of the Budget Finance
17 Committee last year, 2004. The reason I know that is that I was
18 the vice chair of the Budget and Finance Committee last year
19 before I was deposed.

20 I would just like to raise two issues. I'm going
21 to talk about Bar leadership in a few minutes, but I want to
22 focus my comments now on two issues.

23 No. 1, the Oregon State Bar does not have a
24 treasurer. It's unusual for an organization like this to have
25 two vice presidents but no treasurer. So there is no board

1 member that's truly responsible for really looking at the issues
2 that are before you today.

3 Secondly, and lastly, I would just like to talk
4 about the disciplinary committee -- I mean disciplinary counsel
5 department. Mr. Hilton and others have talked about the Consumer
6 Assistance Office and they have added staff. But what about the
7 disciplinary counsel's office? Disciplinary counsel's office has
8 a budget of approximately 1.7 million dollars and they have plus
9 or minus 15 attorneys.

10 So I would recommend that you vote "no," that you
11 ask the Board of Governors, No. 1, form a treasurer, create a
12 treasurer, elected treasurer, someone who is responsible for our
13 finances.

14 And secondly, it was mentioned that there is no
15 fat. Well, I challenge that. I challenge the board to identify
16 where they have looked at whether or not there is, in fact, fat.

17 Lastly, I do not for any purposes want to cast any
18 aspersions on Oregon State Bar staff, and I'm talking about the
19 real hard-working people at the staff level. They are wonderful
20 people, they do work hard, and my comments are in no way intended
21 to indicate they are anything other than a highly professional
22 staff, with a few exceptions. Thank you.

23 MS. COOK: Thank you, Mr. Paulson.

24 The other mic.

25 MR. SIEGEL: Yes. My name is Steve Siegel and I'm

1 a delegate by virtue of being chair of the Computer and Internet
2 Law Section. And just as I was standing here getting ready to
3 speak, I realized the irony of being here by virtue of that,
4 because what I'm going to say is I feel that the Bar could save a
5 lot of money by sending out notices by way of e-mail rather than
6 regular U.S. mail. I'm constantly getting notices for CLEs that
7 I have no interest in taking, far outside of my area of practice.
8 I realize that each one of these must have cost about 50 cents
9 for the Bar to have sent out.

10 I know I talked about this briefly with one of the
11 BOG members, and he said, "Well, gee, you know, a lot of Bar
12 members don't have e-mail addresses or they fail to keep them
13 maintained." And my thought is that there must be some way to
14 make it a requirement of being a member of the Bar, that one
15 maintains an e-mail address, just as one must maintain a U.S.
16 mail address so the Bar can communicate with you.

17 I think it was good progress -- I understand that
18 about 10 years ago the Bar changed from sending out clay tablets
19 through the mail and they modernized to sending out printed
20 materials; that was very admirable. But I think it's time to
21 take the next step and save what I think would be a great deal of
22 money by moving to the next 21st century step and sending out
23 e-mails. Thanks.

24 MS. COOK: The pro microphone.

25 MR. BROWNING: Bob Browning, elected delegate from

1 Forest Grove. I -- when I first saw the proposal to do the
2 increase, my initial reaction was to vote "no," the Bar has got
3 lots and lots of money; let's just find a way to cut it back,
4 follow the method that we've been using in government in recent
5 years, and instead of having a considered and appropriate and
6 well-planned and thought-out way of deciding what we need to do
7 and where savings can be made, we'll just chop it off at the top
8 and then hope that somebody makes the decisions.

9 There are folks here today who will be voting "no"
10 because they believe that there needs to be, as Mr. Paulson just
11 suggested, a good look at the Bar all the way through and not
12 necessarily just a trust of Karen Garst, who I happen to believe
13 is an honorable person, but as Ronald Reagan said, trust but
14 verify. And maybe it is time for a committee, in addition to the
15 BOG's committee, to take a quick look and say, yeah, we've looked
16 at it, this is where we can go, this is where some savings can be
17 made, or we've looked at it and it can't be.

18 But I'm unprepared this year to take a big chop
19 away with the information that's been provided, some excellent
20 financial information in your packets, on your chairs; you've had
21 an opportunity hopefully today to glance at it.

22 I believe that given the direction that it's gone,
23 particularly the implementation of the Client Assistance Office,
24 which has been handled beyond my wildest expectations and
25 desires, and I was part of the Small Firm Practitioners Section

1 | which pushed and supported the efforts of the Bar to create that
2 | as a way to -- I hate to use the word short-circuit the process
3 | of discipline, but to bring some sensibility to the process of
4 | discipline so that the -- I hate to also use "frivolous," but
5 | let's say the less-than-worthy matters are heard first off and
6 | we're stuck with them in our record forever.

7 | I'm going to be voting "yes." I encourage other
8 | people to vote "yes." My hope would be, though, the Bar would
9 | hear what we have to say today and initiate a fairly large,
10 | broad-based group to study the Bar from top to bottom from a
11 | financial standpoint. But I'm not prepared to follow the "cut
12 | off the head and hope the tail follows along" method. Thank you.

13 | MS. COOK: Thank you, Mr. Browning.

14 | At the other mic in the back.

15 | MR. JORDAN: Good morning. I'm James Jordan. I'm
16 | an out-of-state delegate from California, the sister state, and
17 | I've come here today because I want to discuss a topic that
18 | concerns fees.

19 | I know it's a sensitive issue and I think that most
20 | attorneys are working full time and reasonably successful, don't
21 | have a problem paying \$450 or \$500 a year in fees, but there are
22 | other attorneys for which a \$50 increase or even the standard
23 | membership fee is at sometimes painful.

24 | And I want to tell you briefly about what
25 | California does, and I think it's a good system. They have what

1 they call a member fee scaling, and basically if you earn less
2 than -- this was for the last year, so if you had earned less
3 than \$40,000 in 2004 from legal work, you got a 25 percent
4 reduction. If you earned less than \$30,000 from legal work, you
5 got a 50 percent reduction.

6 It seems to me that's better than what Oregon does
7 now by giving a reduction to new attorneys, because it not only
8 benefits the new attorneys, but attorneys in job transition,
9 attorneys who are moving into part-time work before retirement,
10 women on maternity leaves, and attorneys who represent the poor,
11 and as you know, sometimes it can be more than a year before you
12 get an award or actual money in a case.

13 So the way that they do it down there is each year,
14 if you're planning a reduction, you sign a declaration, it's a
15 one-page declaration, and you send it in and they give you a
16 reduction, and you -- they can audit that, of course, so I think
17 that most attorneys are going to be honest about this.

18 So I would like to present an amendment, and the
19 amendment would be something like: Resolved that the Oregon
20 State Bar will consider adopting a membership fee scaling program
21 that reduces the annual fees for members who have less than
22 \$40,000 in earned income from legal work in the previous year.

23 MS. COOK: Is there a second?

24 MR. HUMMELL: Second.

25 MS. COOK: Mr. Jordan, I'm going to have to rule

1 | your motion out of order because the only thing that's currently
2 | before the House is an increase in the dues. Absent an appeal of
3 | the Chair's ruling, we'll continue discussion on the main motion.

4 | Mr. Hennings.

5 | MR. HENNINGS: Jim Hennings, elected delegate from
6 | Multnomah County. I am not convinced that we should vote against
7 | this. I'll say that to begin with, because I know what the
8 | economic needs are. I'm a little concerned there is no Plan B
9 | that we're considering.

10 | The statute is very interesting as to what powers
11 | the House of Delegates has and what powers the board has. The
12 | board must propose budget increases; that can only come from the
13 | board. Only the House, though, can agree that those increases
14 | are going to take place. It's one of two powers that we, as the
15 | House of Delegates, have, is to deny an increase.

16 | Quite frankly, it doesn't settle well with me that
17 | everything is going up, costs are going up, that we haven't cut
18 | any of the staff, because I run a relatively small office with
19 | only 60 attorneys in it and that small office has undergone major
20 | crises over the last six years. We have not gotten increases in
21 | what we are paid for in terms of what's coming from the State,
22 | running a public defender's office, what -- nor have we been able
23 | to maintain all the staff that we did in the past. In fact,
24 | we've had to become more efficient, more effective, we've had to
25 | do more with less, and I understand that that's very, very

1 | difficult to do.

2 | Also, I appreciate the Board of Governors wanting
3 | to provide debt relief for new attorneys who come in. \$62,000 a
4 | year is less than the debt load of any of the attorneys I've
5 | hired in the last five years. That's -- you know, that's a nice
6 | start, but it's not going to get there. There's going to have to
7 | be another source of that particular money if we're going to do
8 | anything.

9 | This increase hurts public defenders who haven't
10 | gotten increases, it hurts legal aid attorneys, it hurts small
11 | practitioners, it hurts people who are just starting out.

12 | I think that we deserve, as the House of Delegates,
13 | a Plan B. We need to know if you don't get the increase, what
14 | are you not going to get?

15 | I would propose that this be sent back to the board
16 | with instructions to return with what the cut package would be,
17 | what is your priority if you don't get the money. Absent that, I
18 | urge everybody to vote "no" on this.

19 | MS. COOK: At the other microphone, please.

20 | MR. HABERLACH: My name is Bill Haberlach and I'm
21 | an elected delegate from Region 3 in Medford.

22 | Before I can make a decision on this, I need to
23 | have maybe some information that Frank can explain to us about
24 | the affirmative action program. I believe that it indicates in
25 | the paperwork that there's \$30 from all of our Bar dues for

1 affirmative action. Is that going to be continuing on, and what
2 is the status of the funds in the affirmative action program?

3 MR. HILTON: First, you know, those funds are spent
4 every year. Second, the program sunsets next year, so the House
5 of Delegates will be considering at your meeting next year
6 whether or not to extend the program and extend the assessment.
7 If you don't extend it, it will go away next year, after 2006.

8 MR. HABERLACH: So in other words the good news,
9 bad news is we can vote for a \$50 raise, but it could be only a
10 \$20 raise after next year.

11 MR. HILTON: Depending on your vote next year.

12 MR. HABERLACH: The other question I have is
13 from -- I think the Board of Governors member who was explaining
14 the LRAP program, and I'm wondering what the definition of public
15 interest jobs would be. Would that include military lawyers,
16 regardless of their sexual preference policy? I've --

17 MS. EYERMAN: May I respond to this?

18 MS. COOK: Ms. Eyerman, please.

19 MS. EYERMAN: The program, we have an okay from the
20 Board of Governors to establish a program, but the definition and
21 the program structure is not yet in place. So I guess I would
22 say everything is on the table.

23 My guess from the discussions that the committee
24 has had is that the definition of public interest lawyer will be
25 similar to the one that the two law schools in Oregon that

1 currently have a program, Lewis and Clark and University of
2 Oregon use, and that is primarily based on organizations
3 qualifying for tax exemption under the IRS sections 501(c)3, 4
4 and 5, for example, legal services programs, public defenders and
5 the like. But, you know, there isn't a definition yet, so I can
6 only tell you my --

7 MR. HABERLACH: So in other words, the Department
8 of Defense isn't a 503(b).

9 MS. EYERMAN: As far as I know, but --

10 MR. HABERLACH: In light of those answers, I would
11 urge everyone to vote for this. I think it's very well
12 justified. And I ask you to consider that a \$50 increase for 365
13 days a year is 13 and seven-tenths cents per day, and the cost of
14 your postage stamp is three times that much. So I don't think
15 that they are asking too much for a \$50 a year increase.

16 MS. COOK: I notice Mr. Paulson is up to speak
17 again. The rules of procedure allow any delegate who is willing
18 or interested in speaking to speak once before we go to round
19 two.

20 Also, I'll recognize the gentleman at the other
21 mic.

22 MR. DEGUC: My name is Vince Deguc, I'm here as
23 delegate and chairman of the Sole and Small Firm Practitioners
24 Section.

25 My question regarding the \$50 increase is what

1 evaluation have you done that -- regarding this increase on
2 whether or not it will encourage members to go inactive status
3 and result in a reduction in revenues?

4 I also preface that by when we get to item No. 15,
5 that's an argument against that issue as well.

6 MR. HILTON: That would be guesswork on our part
7 and we're hoping it's not significant.

8 MR. ANDREWS: I'm Dave Andrews, delegate from
9 Region 2.

10 As a young lawyer, I look at the question, and my
11 observation in the years that I've been active in the Bar, that
12 things have been run very efficiently. I wish every organization
13 with which I had contact was run as efficiently as the Bar.

14 I think that I get a good bargain for my dues. I
15 don't like increases, but I think that it's worthwhile and I
16 support it.

17 MS. COOK: Thank you, Mr. Andrews.

18 Mr. Williamson is at the other mic.

19 MR. WILLIAMSON: Call for the question.

20 MS. COOK: The question has been called. Is there
21 a second?

22 MULTIPLE SPEAKERS: Second.

23 MS. COOK: It's not debatable, but does require a
24 two-thirds vote. All those in favor -- I'm sorry, Mr. Hilton,
25 you have one minute to wrap up.

1 MR. HILTON: I have to get my cards.

2 MS. COOK: All those in favor of terminating the
3 debate, please raise your cards.

4 (Vote taken.)

5 MS. COOK: Any opposed?

6 (Vote taken.)

7 MS. COOK: The debate is terminated and Mr. Hilton
8 has one minute to close.

9 MR. HILTON: I waive my close.

10 MS. COOK: All those in favor of the motion to
11 approve the increase in active membership fees from -- to 50 --
12 excuse me, let me start over. All those in favor of approving
13 the increase in active membership fees of \$50 for 2006, please
14 raise your placards.

15 (Vote taken.)

16 MS. COOK: All those opposed.

17 (Vote taken.)

18 MS. COOK: The motion to increase the fees passes.

19 I now recognize Mr. Lang on agenda item No. 8 as
20 amended, as I understand it.

21 MR. LANG: Good morning again. My name is Danny
22 Lang. I am president of the Douglas County Bar Association.

23 This is really a relatively minor item, but on the
24 other hand, those of us in small bar associations provide a lot
25 of quality CLEs.

1 MS. COOK: Mr. Lang, excuse me. I'm sorry. You
2 just move first --

3 MR. LANG: Thank you. Sorry. Okay. I thought it
4 was -- I move it be recommended by the House of Delegates to the
5 Board of Governors that we accommodate MCLE programs by local bar
6 associations by allowing them to perform their own self-
7 accreditation, and that the fee of \$40, if they register as a
8 sponsor, not be charged by the State Bar to local bar
9 associations.

10 MS. COOK: And we'll take that as a motion as
11 amended to be a recommendation absent an objection.

12 Is there a second?

13 MS. HOHENGARTEN: Second.

14 MS. COOK: Mr. Lang, you have five minutes.

15 MR. LANG: Thank you. I'll start again. I'm
16 sorry.

17 Our small bar association tries to have one
18 credited CLE per month. Our entire budget per year is less than
19 \$2,000, but we spend about 25 percent of that or have in the past
20 submitting the MCLE form for accreditation for our programs, and
21 that's this form (indicating) for a CLE group activity
22 accreditation application.

23 We think we're supporting the State Bar by putting
24 on these programs, and so we've found it a little unusual or
25 peculiar that we have to send them \$40 to get the blessing. Not

1 only that, but the people that are in the best position to judge
2 the way a program should be accredited attend the program.

3 I think over my career in law, which is about 28
4 years, I've gone to programs where on paper they look great, and
5 on the way home I wished I would have gone fishing; on the other
6 hand, the other can be true.

7 So I think that by letting the local bar certify a
8 program, saves the \$40 and puts the responsibility back on the
9 local bar officers, and it keeps that bar money in the local bar
10 so we can actually spend the money, if we do so, to pay a guest
11 speaker -- and we've done that before -- or reimburse expenses
12 for people to come down from Lake Oswego or Portland to come to
13 our bar and present a program. When 25 percent of your treasury
14 or for your annual dues is going back for approval for people who
15 are not there, we just object to that, and we think that this is
16 all part of the -- also recognizing that lesser populated areas,
17 it's harder to get CLEs, you have to travel, so we try to present
18 them in our own backyard.

19 I do not by these remarks wish to discourage
20 anything that the State Bar is doing in the way that they handle
21 it, but I do object to the implication that there be a fiscal
22 impact by this \$40 not going up. As somebody pointed out
23 earlier, the disciplinary counsel has shrunk, that's a lesser
24 expense. So if someone at the State Bar does not need to review
25 our written materials or rubber stamp approval and handle this

1 paperwork back and forth, which doesn't get approved until
2 normally after the program, I think that the State Bar will not
3 be impacted as they can utilize that personnel for some of these
4 other tasks. So why pay for what somebody cares to call fat if
5 we're going to do it ourselves? By self-help we've saved the
6 Oregon State Bar some money. Let us have home rule on this
7 subject. Thank you.

8 MS. COOK: Any further discussion?

9 I'll recognize Mr. Yugler just because you had a
10 farther way to walk.

11 MR. YUGLER: I'm Rick Yugler, member of the Board
12 of Governors, and I'm at the other microphone because this
13 resolution as written raises two separate issues, requires two
14 separate items of consideration.

15 The resolution as written provides in the first
16 sentence of the top of page five that the MCLE regulations be
17 amended, even though it would be a recommendation, to provide for
18 automatic accreditation of any programs sponsored by a local bar.
19 I know that's one point.

20 The second point that the proposed proposal
21 Mr. Lang discussed is two sentences down, which is that there
22 would be no fee made by a local county bar association, that's
23 the second point.

24 I think these are two separate matters, and they
25 need to be separated for this reason. On the Board of Governors

1 we occasionally get requests for MCLE denial of credit or to
2 approve credit, and I can assure you that not every MCLE sponsor,
3 every MCLE program is entitled to credit. This year alone we
4 have had to vote on whether or not to permit credit for
5 motivational speaking, of Tony Robbins type seminar, and whether
6 that was entitled to MCLE credit, and did not meet the MCLE
7 credit guidelines.

8 We also had to concern ourselves this year with
9 MCLE credit for a program that required attendees to make an
10 affirmation of religious faith in order to participate in the
11 program.

12 So I believe that the -- part of this resolution
13 requiring automatic accreditation is improper, and as long as
14 it's cojoined with the \$40 part or the part about the fees, I
15 would have to recommend that we vote against it. If we separate
16 these two items, I would -- I might feel otherwise. But I think
17 it's important that the Bar maintain a handle on accreditation.
18 Thank you.

19 MS. COOK: Thank you.

20 Mr. Haberlach.

21 MR. HABERLACH: Thank you. I'm Bill Haberlach,
22 elected delegate from Region 3, as Governor Goldschmidt used to
23 say, in the middle of nowhere. Of course, we don't quote
24 Governor Goldschmidt anymore, do we.

25 (Laughter.)

1 But I would support this. And I think that sitting
2 down in Jackson County, which is even further than Douglas
3 County, for those of you who haven't looked at your maps lately,
4 but it's the same distance either direction. We do need to have
5 more local kind of control of these things. And just like we
6 would probably resent some of the things that are approved for
7 CLE credits out of Oswego, we trust that you will let us make
8 some decisions in our local areas. So I would be in favor of
9 this.

10 MS. COOK: Mr. Williams -- excuse me,
11 Mr. Williamson at the other mic.

12 MR. WILLIAMSON: I would move to bifurcate the
13 resolution in accordance with Mr. Yugler's comments, to separate
14 the vote on the \$40 from local bars and the automatic
15 accreditation.

16 MS. COOK: Is there a second?

17 MR. OLSEN: Second.

18 MR. RIEMER: Madame Chair, just to clarify,
19 Mr. Lang, as I understand, we're not working off of the printed
20 resolution. I think you read your resolution into the record.
21 It's a very short one, that the House would recommend that the
22 Board would review the rules to determine if there ought to be
23 local option approval and that there would be no fee for local
24 bar association programs; is that correct?

25 MR. LANG: That's correct, Mr. Riemer.

1 MR. RIEMER: So that is really the motion now.

2 Mr. Williamson, were you moving to divide that?

3 MR. WILLIAMSON: Yes.

4 MR. RIEMER: Well, then, oh, I think what we would
5 have to do is have a vote on the division. If the group said we
6 will divide the question, we'll have one vote on the local
7 option, I guess, and the other one on the waiver of the fee.

8 MS. COOK: And I believe Mr. Williamson's motion
9 has been seconded.

10 Any discussion about bifurcating this issue?

11 MR. RIEMER: So if you vote in favor, you're voting
12 to divide the questions so we have separate votes on each one.

13 MS. COOK: All those in favor of dividing this
14 motion, please raise your placards.

15 (Vote taken.)

16 MS. COOK: All those opposed.

17 (Vote taken.)

18 MS. COOK: This is one that requires a majority. I
19 can't tell, so I will ask the counters to help me.

20 Let's try one more time. All those in favor of
21 dividing the resolution into two issues, please raise your
22 placards and keep them up.

23 (Vote taken and counted.)

24 MS. COOK: Okay. Thank you.

25 All those opposed to dividing this resolution,

1 please raise your placards. Majority rule -- will rule on this
2 issue.

3 (Vote taken and counted.)

4 MS. COOK: The motion to bifurcate passes.

5 Any -- go ahead.

6 MR. RIEMER: Madame President, I think then we will
7 take two votes, and the first one, I guess I'll just try to
8 restate it, and Mr. Lang can help me if I'm improperly restating
9 it. Just that the House of Delegates recommends that the Board
10 of Governors revise the MCLE rules to allow local bar
11 associations to accredit their own MCLE programs.

12 MR. LANG: Thank you. That's correct, their own
13 programs.

14 MR. RIEMER: So that would be the motion.

15 MS. COOK: That's the motion. Is there a second?

16 MS. GRUBER: Second.

17 MR. RIEMER: So it's open to debate if anybody
18 wants to debate that, and then we'll have a vote on that
19 particular item.

20 MS. COOK: At the con mic.

21 MR. OLSEN: Arden Olsen, Region 2 delegate.

22 First comment, I commend Mr. Lang in his energy for
23 bringing things to this body. I think one of the things the body
24 has struggled with in the past is having enough energy to come
25 and bring things before us to really be engaged in the practice

1 of what we do here. So my comments about this resolution are not
2 designed to discourage the energy.

3 One of the problems with this resolution is it's a
4 recommendation by this body to the board. We don't really have
5 the authority on this one. I can go either way on whether it's a
6 good idea. I tend to think it might be a good idea. My concern
7 is that the things I would want to think about if it was a good
8 idea aren't really all before us. I'm not really sure what it is
9 that's accomplished by the approval process. I think it's the
10 sort of thing to be committed to the discretion of the committee
11 that's managing this.

12 So I'm recommending a vote against the motion, not
13 because it might not be a good idea, but because I'm not sure
14 this is the body to make it.

15 MS. COOK: Any further discussion?

16 Mr. Lang, would you like to take a minute to wrap
17 up this first motion on automatic --

18 MR. LANG: I'll waive the additional time. Thank
19 you.

20 MS. COOK: The motion before the House is (feedback
21 noise) -- the motion before -- it might be one -- it's probably
22 one of the ambulatory speakers. (Feedback noise.)

23 No idea if we can fix this or not.

24 Okay. We're working on the problem. I'll keep
25 this moving.

1 The motion before the House is to recommend to the
2 Board of Governors to amend the MCLE rules to provide for
3 automatic accreditation of a program sponsored by the local bar.

4 All those in favor, please raise your placards.

5 (Vote taken.)

6 MS. COOK: All those opposed.

7 (Vote taken.)

8 MS. COOK: That resolution fails.

9 The second motion, now that we've bifurcated them,
10 is for there to be a recommendation to the board to amend MCLE
11 rules to allow local county bar associations to not have to pay
12 the fee for their sponsored MCLEs.

13 Any further discussion? Mr. Lang, would you like
14 to -- one minute.

15 MR. LANG: I'll waive the one minute, thank you.

16 MS. COOK: All those in favor of allowing the local
17 counties to not pay the fee, please raise your placard.

18 (Vote taken.)

19 MS. COOK: Any opposed?

20 (Vote taken.)

21 MS. COOK: That motion passes.

22 Thank you, Mr. Lang.

23 MR. LANG: Thank you.

24 MS. COOK: I'll now recognize Diane Henkels to
25 speak on Resolution No. 9. If you would just move your motion

1 and then we'll get a second.

2 MS. HENKELS: I think it --

3 MS. COOK: We turned it off. I don't know if --

4 MS. HENKELS: I'll practice projection.

5 Thank you for coming today to vote in this process,
6 and thank you very much to the Oregon State Bar for providing me
7 financial information for both of these resolutions that I have
8 been presenting on behalf of the Oregon State Bar Environmental
9 Natural Resources Section.

10 MS. COOK: Ms. Henkels, I need to interrupt. If
11 you would just please move the adoption of your motion and we'll
12 get a second, and then you can proceed.

13 MS. HENKELS: I see. Thank you.

14 I move to adopt House of Delegates Resolution
15 No. 2, teleconference access to CLEs.

16 MS. COOK: Is there a second?

17 MS. HENKELS: No. 9.

18 MR. PORRAS: Second.

19 MS. COOK: The motion having been made and
20 seconded, Ms. Henkels has five minutes to present. Thank you.

21 MS. HENKELS: Okay. Try this. Thank you for much
22 for coming this morning to vote. And thank you, OSB, for the
23 information on -- the financial information for this resolution
24 and the other resolution proposed after this.

25 Thank you, Region 3, for the discussions that we

1 had regarding both these resolutions and for your general support
2 on this resolution No. 9 -- excuse me, to be accurate,
3 teleconference access to CLEs, HOD Resolution No. 2.

4 I'll just briefly give you one example that --
5 where this resolution really comes to mind. Last week we held in
6 Portland at Lane Powell a CLE sponsored by the Environmental
7 Natural Resources Section on the wolf coming to Oregon. We had a
8 variety of presenters from agencies ranging from Eastern Oregon,
9 fish and wildlife biologists, etcetera. It was a fascinating
10 CLE. It lasted about an hour and a half, two hours. The chief
11 organizers had various calls from throughout the state asking if
12 there was any access to the CLE other than by being there in
13 person or if we were going to videotape it. We didn't have a
14 video -- we didn't have video capacity. Neither was anyone else
15 able to -- and that meant to attend the CLE, you had to drive
16 there from Eastern Oregon and it was -- it's a topic of interest
17 to people throughout the state.

18 It's a great example. If we had the
19 teleconferencing access, which we had actually -- our section,
20 the executive committee has been working on this for quite some
21 time, asking the Bar to use this particular CLE as a pilot
22 project to try it out, etcetera, and it didn't work. We never-
23 theless did have people attending. But the people who inquired
24 and wanted to attend by some other means were not able to, and we
25 do feel that that diminished the educational value to members

1 generally of the CLE. So it's what we termed the poster-child
2 example for this resolution.

3 Otherwise, I would like to note that the Raindance
4 service, I unfortunately was not able to attend, when they did an
5 example session on Thursday. I would be interested if anyone
6 could summarize how that went. But our experiences with
7 Raindance has actually provided inferior quality service. And we
8 also believe there must be other contractors who can do a much
9 better job out there, and we're not sure how active the Bar is in
10 pursuing this.

11 That's the background statement in addition to what
12 you have in your packets that I would like to provide. And with
13 that, I'll let the vote proceed or discussion.

14 MS. COOK: Thank you, Ms. Henkels.

15 Any discussion?

16 MR. GEORGEFF: Gary Georgeff from Region 3 --

17 MS. COOK: Mr. Georgeff.

18 MR. GEORGEFF: Gary Georgeff, Region 3, and elected
19 delegate.

20 I, like Mr. Habelach -- I'm not as close as him.
21 I'm from Curry County, which is from the edge of nowhere. But
22 because of that, I think this is a good idea. If the technology
23 is here, we should develop it. It's an aspirational goal which
24 she is stating. It wouldn't require anybody to do anything but
25 investigate if the technology is there and how to use it. It

1 | would be a great boon to the people who are in the outlying
2 | areas.

3 | MS. COOK: Thank you. Mr. Hilton is at the other
4 | microphone.

5 | MR. HILTON: I just -- Frank Hilton, Board of
6 | Governors. The board considered this yesterday and has a neutral
7 | position on it.

8 | Personally, I think there's probably going to be
9 | some financial fiscal impact, but it could go either way. It
10 | could be positive. We could pass on a portion of the costs of
11 | the toll call and just a fraction of it and get bigger
12 | participation, so come out okay.

13 | MS. COOK: Thank you. At the con mic.

14 | MR. NEWELL: Bob Newell, elected delegate from
15 | Multnomah County.

16 | I think we ought to face reality that MCLE is a
17 | money-making operation. When this is profitable, it will be
18 | done. It's simple.

19 | MS. COOK: Thank you. Any further discussion?

20 | Ms. Henkels, would you like one minute to close?

21 | MS. HENKELS: We appreciate you really considering
22 | this. This actually, it is -- it's sort of aspirational, but
23 | you'll notice that the resolution does make requirements of the
24 | Bar, percentages of CLEs that will have this capacity by a
25 | certain date. You might also notice that date is not this year,

1 | it's not next year. It gives the Bar some time to develop this
2 | technology, and we've already been discussing and talking about
3 | it being developed anyway. I think that it is something that's
4 | very consistent with what the Bar's philosophy is. And I know we
5 | in the section do hope that you will vote in favor of this today.

6 | MS. COOK: Thank you.

7 | All of those in favor of Resolution No. 9 as
8 | printed in your materials, please raise your placards.

9 | (Vote taken.)

10 | MS. COOK: All those opposed.

11 | (Vote taken.)

12 | MS. COOK: The resolution carries. Thank you.

13 | I'll recognize Ms. Henkels for you to move for the
14 | adoption of item No. 10 on the agenda.

15 | MS. HENKELS: I move for the adoption of item
16 | No. 10 on the agenda, post-consumer recycled paper use.

17 | MS. COOK: Is there a second?

18 | MR. HUMMELL: Second.

19 | MS. COOK: The motion having been moved and
20 | seconded, it's now open for discussion and debate.

21 | Ms. Henkels, five minutes.

22 | MS. HENKELS: Thank you, Madame Chair.

23 | Thank you again also for the financial information
24 | on this. We see that this resolution estimates you add \$66,000
25 | to the additional cost of use. You will note that this

1 resolution and our position is in contrast to the previous
2 resolution. This may be viewed more as an aspirational. It does
3 reflect the UTCRs and some of the sections' practices already.
4 But I would draw your attention to the last line of the
5 background statement where it says OSB should investigate the
6 possibility of lowering costs and eliminating the storage
7 problems if OSB increased its order size to include entire OSB
8 operations.

9 Similar to teleconferencing, the post-consumer
10 recycled paper movement in the -- in the U.S. economy today, as
11 well as worldwide, is increasing, becoming more efficient all the
12 time. And what we are asking is that the OSB, by taking
13 appropriate actions as is stated in the resolution to conserve
14 paper resources, will repeatedly examine competitive pricing for
15 its suppliers of paper and what kind of paper and what use of
16 paper.

17 We know law is a high paper use industry, and we
18 know that if we were a paper producer and OSB knocked on our door
19 and said, "How would you like all of our accounts if you use this
20 kind of paper, what kind of price could you give us," you would
21 have the accountants busy working on that one, I think.

22 So we would ask that the OSB adopt this
23 aspirational statement to give some more substance to these
24 investigatory efforts.

25 And I thank you on behalf of the section. I thank

1 | you very much for your vote in favor.

2 | MS. COOK: Thank you, Ms. Henkels. Any discussion?

3 | Yes, at the other mic -- I'm sorry, Mr. Hilton.

4 | MR. HILTON: At the other mic.

5 | MS. COOK: The "other" other mic.

6 | MR. HILTON: The other-other mic. Again, the Board
7 | of Governors considered this resolution and takes no position on
8 | it. We have some additional concern if it was forcibly
9 | implemented, but that's not the resolution. But implemented too
10 | fast, it could cost us 60 plus thousand a year, which works out
11 | to \$5 per member.

12 | I think we all would share the aspiration and
13 | recycle as much as possible, as evidenced by what we're doing
14 | already is in the report that was a supplemental report.

15 | MS. COOK: Thank you.

16 | Gentleman at the other mic.

17 | MR. SIEGEL: Yes. My name is Tim Siegel again, and
18 | I just wanted to take this opportunity to point out that if we
19 | didn't send out such a heavy volume of paper mail, we wouldn't
20 | have so much paper to worry about to begin with. And the very
21 | fact that paying slightly more for paper is -- is slated to cost
22 | the Bar \$60,000 a year just shows how much money the Bar must
23 | spend for paper to begin with.

24 | And my thought is -- I'm actually for this
25 | proposal, but perhaps it's another instance where we could take a

1 | look at this and say, well, gee, you know, if we sent things out
2 | by e-mail we wouldn't be using so much paper to begin with.

3 | MS. COOK: Thank you. Any additional discussions?

4 | Ms. Henkels, you have a minute if you would like
5 | it.

6 | MS. HENKELS: I think I waive my minute in this
7 | instance, Madame Chair.

8 | MS. COOK: Thank you. All those in favor of
9 | resolution No. 10 as it's printed in your agenda, please raise
10 | your placards.

11 | (Vote taken.)

12 | MS. COOK: All those opposed.

13 | (Vote taken.)

14 | MS. COOK: A majority is going to win this one, but
15 | it's too close to call out, so I'm going to ask the tellers to
16 | count for me, help us out.

17 | Okay. And I'm reminded if you want your vote to be
18 | counted, you have to sit in your section, please.

19 | So all those in favor of Resolution No. 10 as
20 | printed in your agenda, please raise your placards and keep them
21 | raised.

22 | (Vote taken and counted.)

23 | MS. COOK: All those opposed, please raise your
24 | placards.

25 | (Vote taken and counted.)

1 MS. COOK: While the count is going on, just to
2 give you an update on our scheduling, it is a little bit before
3 noon. We are mindful of our rumbling stomachs, so we will
4 continue to work through until about 12:00 or soon thereafter as
5 we can, we'll take a few minute break to return calls or rest
6 room, and then you can go out in the hallway, we'll have box
7 lunches for you, and then I would ask you just to come back into
8 the hall and we'll continue with the next agenda item, unless of
9 course you all want to take an hour for lunch.

10 DELEGATES: No.

11 MS. COOK: Bunch of goodwill.

12 (Laughter.)

13 MS. COOK: Resolution No. 10 passes. Thank you,
14 Ms. Henkels.

15 I now recognize Mr. Lang to present Item No. 11.
16 Please move for the adoption of your resolution and we'll get a
17 second.

18 MR. LANG: Thank you. I move for the adoption of
19 Resolution 11 as amended, would be encourage and recommend. I
20 think it's already in the language there, that certain statutes
21 be addressed at the next legislature by recommending that
22 attorneys have an exemption as a profession similar to those with
23 the --

24 MR. GEORGEFF: I don't think they can hear you.

25 MR. LANG: I'm sorry. Hello.

1 MS. COOK: Mr. Lang, I would just ask you at this
2 point to move for the adoption of the resolution. We'll get you
3 a second.

4 MR. LANG: I'm going to move for adoption of
5 Resolution No. 11.

6 MS. COOK: Thank you. Is there a second?

7 UNIDENTIFIED SPEAKER: Second.

8 MS. COOK: Having heard a second, the motion is
9 open to debate.

10 Mr. Lang, you have five minutes. Thank you.

11 MR. LANG: Thank you. I would like to see members
12 of our profession in the same parity as those people who work for
13 the Construction Contractors Board. The plumber that comes to
14 your house can hire an excavator, a ditch digger, and is exempt
15 from the tests for independent contractor. These tests can have
16 far reaching ramifications as the statutes were originally
17 written. And then there was Senate Bill 323 that modified it and
18 made some improvements, but I don't think went far enough.

19 The statutes I'm referring to are the tests in
20 657.040 and 670.600. 670.600, I have the interpretation that was
21 provided me through one agency alone. There were several
22 agencies along, they are now trying to promulgate the various
23 rules. Just the interpretation is a multipage document.

24 The bad part about this rule is it can turn around
25 and bite anyone of you with a workers' comp claim that was

1 unforeseen, with a liability claim, with a payroll tax claim if
2 you didn't pay unemployment taxes.

3 And the tests in this new statute are still that to
4 be an independent contractor, the person must be free -- free
5 from direction and control. And then it talks about certain
6 other things, independently established business.

7 Well, if an associate firm with joint counsel,
8 co-counsel, or mediator or retired judge is going to handle a
9 matter or handle a settlement conference, are they totally free
10 from direction and control? That's the way this can be
11 interpreted.

12 So you can have someone who you are joint working
13 on a case together, working on one of the projects with the Bar
14 or for your local Bar, or serving as a -- someone you hire as a
15 mediator, it can be an accident or injury, and it can go back and
16 start applying these second-guessing tests.

17 I think that we certainly are capable of making
18 sure ourselves as lawyers -- I can't think of any other group in
19 society that's able to protect itself. Indeed the statute and
20 the interpretations -- and I've studied this -- they all speak of
21 the worker, the worker, so what they are designed to do here is
22 avoid hiring some kid at 10 cents a burger to avoid the minimum
23 wage. That's not us. We do have professional licenses. We're
24 all members of the Bar.

25 So I think that if a plumber or an electrician, all

1 of those trades, are exempted with a very short line, says if you
2 are licensed under chapter 701, you don't need to meet these --
3 all these separate tests. We've got -- people talked today about
4 part-time lawyers, lawyering from home, doing research,
5 teleconferencing. That person you hired to research a federal
6 question for you working out of their home, they get injured and
7 they turn in an unemployment claim, where you may be audited on
8 your payroll, and if you have quite a few of these people, they
9 can say, well, that's subject to payroll tax. If that person
10 gets injured, you may find yourself -- even though you certainly
11 believed he was an independent contractor, you -- you gave -- you
12 just gave them the assignment, you wanted the results. But if
13 you imposed -- if they were not free from direction and control,
14 and I'm emphasizing that word because that's how it's enforced,
15 it's just about impossible to get around that somebody says no to
16 these employment relationships; it becomes presumed.

17 Why can't we have the freedom to contract? We're
18 not going to take advantage of each other, to the extent that
19 we're going to bust minimum wage or anything else. So let's
20 allow ourselves the protectional dignity that the Contractors
21 Board has given to their people and that that industry has done
22 successfully.

23 We have our own licenses. We have our own
24 malpractice insurance. We're not going to be taken advantage of.
25 And you still have other remedies. But this post act or post

1 hiring test, as to was it free from control, can bite everyone in
2 this room and can also impact the PLF and so on.

3 So I would urge you to simply make this
4 recommendation. Obviously there will be further study, and I
5 know there was a new statute, and I think there's some political
6 considerations that one of the Board of Governors is going to
7 mention to you. All I ask is that you take a good look at this
8 and perhaps study it with a recommendation, take a look, let's
9 allows us the freedom to contract that that plumber makes. Thank
10 you very much.

11 MS. COOK: Thank you, Mr. Lang.

12 Any further discussion?

13 MR. JOHNSON: Madame President, Mark Johnson,
14 elected delegate from Region 5, former president.

15 I rise for a point of information. Is the motion
16 simply to recommend that the issue be studied, or is the motion
17 to take a position on legislation?

18 MS. COOK: Mr. Lang, I understand your motion is a
19 recommendation.

20 MR. LANG: Yes.

21 MS. COOK: Is that correct?

22 MR. JOHNSON: A recommendation that the Board study
23 the question?

24 MS. COOK: Correct. Yes.

25 MR. JOHNSON: Thank you very much, Madame

1 President.

2 MR. CHEVALIER: Robert Chevalier, elected delegate,
3 Region 6.

4 Realtors have an exemption from the employment
5 statutes. I think for lawyers, we do want to have a similar type
6 of exemption so that we do have freedom of contract.

7 I know our firm, we have two "of counsel"
8 attorneys. We also hire people who do contract work on occasion.
9 So I think this is something that we ought to certainly look at
10 for ourselves.

11 MS. COOK: Thank you. Mr. Yugler.

12 MR. YUGLER: Good morning. Rick Yugler, member of
13 the Board of Governors, and I speak against this motion on behalf
14 of the board, which considered this resolution yesterday, and
15 authorized an opposition for this reason.

16 Putting aside the substance of the motion, which
17 perhaps should come through our ordinary committee structure
18 where bills or proposed bills, proposed legislation is considered
19 at the committee level and is fed and moved up through the
20 process, there is an enormous political consideration that I
21 think this body needs to keep in mind, and that is, our No. 1
22 legislative priority a few years ago was Senate Bill 323, which
23 was -- which came out of the tax section and passed and it
24 merged -- got in line our state independent contractor exemptions
25 in line more with the federal, and we've lobbied hard for that.

1 We wound up with a definition that was important, that merged
2 guidelines for the Department of Revenue, Employment Division,
3 other divisions. It resulted in a gubernatorial task force with
4 interest groups where there were negotiated changes. This was
5 our No. 1 legislative priority, lobbied hard by our lobbyists,
6 Susan Grabe and David Nebel.

7 I want to tell you this organization will lose
8 political credibility with the legislature if we try to or say we
9 want to exempt ourselves, and that is something that came out of
10 this body as opposed to moved up through a committee structure.

11 We do not spend money on political contributions
12 for representatives and people running for office, unlike other
13 organizations that I'm a member of. We have a great lobbying
14 staff, and they have their lobbying clout by maintaining our
15 political credibility. And the fact that our No. 1 priority was
16 passed vigorously, and now we would, as a body, say we should
17 exempt ourselves from it, we'll lose that valuable commodity that
18 we bring to the legislature.

19 It's for that reason that I urge this body to -- to
20 deny, oppose this, and if -- as an idea, if it percolates up
21 through our ordinary committee structure and rises, then it is
22 something that will be considered by the Public Affairs Committee
23 on whether we would lobby proposed legislation, as all other
24 legislative matters are considered. But to come out of this body
25 will cost us too much politically, if anything.

1 MS. COOK: Thank you, Mr. Yugler.

2 Mr. Jordan, before I recognize you, I'm going to
3 alternate the other mic, Ms. Meadows.

4 MS. MEADOWS: Thank you, Madame Chair. I'm
5 representing the Oregon New Lawyers Division, and I speak as a
6 labor employment lawyer, and I would like to point out as an
7 individual who does represent a number of licensed construction
8 contractors, that if they do not meet the requirements of this
9 statute, it's not a blanket exemption.

10 It's further that the examples which were stated in
11 the motion would all meet, in the normal course of how we use
12 them in our profession, the requirements of the existing statute,
13 which I've litigated a number of times since it's passed, and I
14 believe that there is a common understanding in the employment
15 bar as to the interpretation of the independent contractor
16 statute.

17 MS. COOK: Thank you. Mr. Jordan.

18 MR. JORDAN: James Jordan from California, elected
19 member. Is this mic on?

20 MS. COOK: Yes, it is.

21 MR. JORDAN: Now, if this can be interpreted to say
22 that attorneys who work for law firms are not covered by the
23 employment statutes, that seems to me to be a profound position
24 with potentially great implications. There's developing law
25 about people, employment opportunities in law firms, who is a

1 member, who isn't a member, etcetera. But it seems to me the way
2 this reads is that an attorney who works for a law firm
3 potentially does not get the protection of the various state
4 labor laws, and if so, I think that's not a good idea.

5 MS. COOK: Thank you.

6 Any further discussion? Mr. Paulson.

7 MR. PAULSON: My name is Lauren Paulson. I'm not a
8 delegate.

9 As some of you may have discerned, and it became
10 fairly obvious with Mr. Yugler's presentation, that there's a bit
11 of orchestration about these meetings that occurs beforehand, and
12 those that don't know, the Board of Governors meets the day
13 before. And I attended that meeting yesterday. All of you,
14 particularly you that have resolutions pending before this group,
15 should realize that you can go to those meetings and see how the
16 Board of Governors discusses your resolution before today. So
17 you can find out if there's some plant in the audience or not, or
18 somebody that might have prerehearsed what might happen to your
19 resolution.

20 So I encourage you to go. It's an open meeting.
21 All lawyers can go. And I encourage all of you to attend those
22 meetings. Thank you.

23 MS. COOK: Thank you. I'll just add it's an open
24 meeting to any member of the public and we would welcome your
25 presence.

1 Any further discussion?

2 The motion before the House is printed in your
3 agenda as No. 11. All those in favor of --

4 MR. LANG: Excuse me, I believe I have one minute
5 to close.

6 MS. COOK: Excuse me. Please.

7 MR. LANG: Thank you. This time I didn't waive.

8 I just wanted to address the delegate from
9 California. This is not designed to say that all lawyers are not
10 employees; far from it. It's just that it -- you and anyone else
11 in this body, or anyone else in our licensed fellow member of the
12 Bar wish to enter into an independent contractor relationship,
13 and you hire somebody to research or be co-counsel or you direct
14 them, you say, "Don't use the law library," or "You do use the
15 internet," then they are not free from direction or control.
16 Actually this is a freedom for you to enter into an independent
17 contractor relationship. It's not destroying any of the
18 employment or labor laws.

19 Now, I certainly, as a member of this body, support
20 the Board of Governors and the State Bar. All of my resolutions
21 are designed to improve our system. I can defer to their
22 political judgment. But we're not doing anything other than
23 saying, will you take a look at this from our perspective as
24 members of the Bar for the self-protection.

25 And so I realize the political consideration. I

1 | also think we, as individuals, are impacted. We have to decide
2 | for ourselves and our fellow members of the Bar. We need this
3 | protection. Thank you.

4 | MS. COOK: Thank you, Mr. Lang.

5 | All of those in favor of the Resolution No. 11 as
6 | printed in your agenda, please hold up your placards.

7 | (Vote taken.)

8 | MS. COOK: All those opposed.

9 | (Vote taken.)

10 | MS. COOK: The resolution fails.

11 | And with the indulgence of the House, I would like
12 | to take one more resolution because the sandwiches aren't quite
13 | ready.

14 | I'll recognize Mr. Gerking.

15 | MR. GERKING: Would you all stand for a moment of
16 | silence to honor the members of the Oregon State Bar that passed
17 | since this House of Delegates met last. I propose to read the
18 | names, and they are: The Honorable Robert Abrahms, Jeffrey L.
19 | Adatto, Kenneth E. Anderson, Norman E. Anderson, Alan Baily,
20 | Hollis E. Barnes, Sr., James E. Beard, Joseph A. Berg, George E.
21 | Birnie, Vernon L. Burda, Dennis Dolan Butcher, Nancy R. Carter,
22 | Charles R. Cater, Harry S. Chandler, John M. Copenhaver, Charles
23 | S. Crookham, Deborah J. Dealy-Browning, Thomas P. Deering,
24 | Nickolas J. Dibert, James E. Dicey, Lynn H. Downs, Paul W.
25 | Dudley, H. Philip Eder, James Irwin Flanagan, Williams Ganong,

1 Jay Anthony, Jack Amini, Janis L. Hardman, the Honorable John W.
2 Hitchcock, James D. Horton, Charles W. Kettlewell, William J.
3 Keys, Barry Marks, Joseph J. McCarthy, Richard J. McNerney,
4 Lawrence E. Near, Sr., Christine V. Olsen, John D. Picco, Wayne
5 C. Rapp, Donald S. Richardson, the Honorable Roosevelt Robinson,
6 Martin W. Rohrer, Jacquelyn Romm, the Honorable Kurt C. Rossman,
7 David Slagle, A. Terry Slocum, Douglas A. Swanson, Orval N.
8 Thompson, Robert J. Thorbeck, the Honorable Robert Y. Thornton,
9 Dennis F. Tripp, John C. Veatch, Jay Davis Walker, R. Alan
10 Wright, the Honorable Lyle R. Wolf, David L. Wright and Renee C.
11 Wyser-Pratte.

12 Thank you.

13 MS. COOK: I'll take that as a motion to resolve to
14 honor those individuals.

15 MR. MENASHE: Second.

16 MS. COOK: Mr. Gerking's motion, we've had a
17 second. A hand in the back.

18 UNIDENTIFIED SPEAKER: I want to move to amend that
19 Judge Keys be recognized, the Honorable William J. Keys.

20 MR. GERKING: My apologies.

21 UNIDENTIFIED SPEAKER: And Judge Crookham.

22 MS. COOK: Judge Crookham was named, but not on
23 your handout.

24 Any others?

25 MR. GERKING: No, he was mentioned, it's the

1 Honorable Charles S. Crookham.

2 UNIDENTIFIED SPEAKER: I would like to add Keith
3 Pinkstaff, a friend, an attorney, a friend of mine who died two
4 weeks ago.

5 MR. GERKING: Thank you.

6 MS. COOK: Any further discussion?

7 All those in favor of honoring those individuals,
8 please raise your placards.

9 (Vote taken.)

10 MS. COOK: Any opposed?

11 The motion carries unanimously. We are adjourned
12 for 20 minutes. Thank you all.

13 (Proceedings recessed at 12:05, reconvening at
14 12:25.)

15 MS. COOK: Okay. Let's begin. I would like to
16 recognize Mr. Mark Comstock to move the adoption of this
17 resolution No. 13 on your agenda.

18 MR. COMSTOCK: Madame President, I move the
19 amendment -- well, what's printed as Resolution 13 in your -- the
20 agenda to amend the Rules of Professional Conduct 1.15-1 and
21 1.15-2.

22 MS. COOK: Is there a second?

23 MR. YUGLER: Second.

24 MS. COOK: Motion being made and seconded, it's now
25 open to debate. I now open to Mr. Comstock for five minutes.

1 MR. COMSTOCK: Thank you, Madame President. I'm
2 going to be brief on the proposed discussion because the text of
3 the proposed amendments are set out in the agenda, both of them,
4 at page seven through ten.

5 And briefly, I want to just identify that this
6 amendment or this amendment to the Rules of Professional Conduct
7 deals with essentially trust accounts and IOLTA account rules,
8 that's been brought about by a lack of clarity when the Rules of
9 Professional Conduct were adopted.

10 What this amendment does is to recommend to the
11 Supreme Court to adopt the changes to require that the lawyer's
12 trust account be maintained in the jurisdiction where the
13 lawyer's office is situated and be subject to the rules in that
14 jurisdiction. What this does is clarify the situation where a
15 lawyer who has an office in Oregon cannot maintain a trust
16 account, let's say, in the Isle of Wight, for example, because
17 the bank or an institution in the Isle of Wight may not comply
18 with the IOLTA rules or the rules of the Supreme Court.

19 It also clarifies for dually licensed lawyers
20 that -- the example in the book, a Washington lawyer and -- a
21 lawyer licensed in both Washington and Oregon is subject to both
22 rules. It clarifies that if the lawyer is maintaining the office
23 in Oregon and performing Oregon -- for an Oregon client, the
24 trust account is maintained in Oregon.

25 Really it's a clarification of the Choice of Law

1 rules, that the jurisdiction in which the account is maintained
2 is the one that is -- that governs.

3 It also does put a change in, and that is that
4 there will be annual certification that the trust accounts that
5 the lawyer maintains are maintained in compliance with the rules
6 that -- of the jurisdiction.

7 So with that, I would move that the amendments as
8 printed be adopted. Thank you.

9 MS. COOK: Thank you. Any discussion?

10 UNIDENTIFIED SPEAKER: Second.

11 MS. COOK: Mr. LeChevallier.

12 MR. LECHEVALLIER: Robert LeChevallier, delegate
13 from Region 6. We have lawyers in our firm that are licensed in
14 both Oregon and Washington, and they are required to have trust
15 accounts in both states even though we don't have an office in
16 Washington, and I just -- I guess this is more of a question for
17 the Bar. With reciprocity happening, we have more and more
18 attorneys that are licensed in multiple states, and it would seem
19 like to me this trust account needs to be worked out among the
20 Bars of the various states so we don't have to have the
21 administrative expense of having multiple accounts, you know, for
22 the occasional client that happens in the state of Washington.
23 So I'm not opposed to the resolution, but I just
24 think it's creating more burden on the lawyers and law firms,
25 that we need to try to reduce that burden.

1 MS. COOK: Thank you. Any further discussion?

2 Mr. Georgeff at the con mic.

3 MR. GEORGEFF: Thank you, Madame Chair. Gary
4 Georgeff, Region 3, which is Benton, Coos, Curry, Douglas,
5 Jackson, Josephine, Lincoln and Linn Counties.

6 And I'm a Bar member in Oregon, Washington and
7 California, and I agree with the remarks made before. I'm not
8 sure this proposal really has thought out the multi-state
9 practice implications of the trust accounts. Thank you.

10 MS. COOK: Recognize the gentleman at the other
11 mic.

12 MR. DEGUC: This is Vince Deguc again, Sole and
13 Small Firm Practitioners Section.

14 I actually have two questions. Item No. (m) at
15 page nine talks about "every lawyer shall certify." I thought we
16 were already certifying on an annual basis, had a green sheet
17 that you signed and sent in. Is this in addition?

18 The other part of the question that I have is:
19 Does this now require a lawyer certified in Oregon to maintain an
20 IOLTA account, whether or not they get activity that would
21 require client deposits or not?

22 MR. RIEMER: The annual certification, we're going
23 to try to add this to the Bar -- Bar dues statement so people
24 will do a checkoff. This is standard procedure. I'm a member of
25 the Washington Bar also, and I know a lot of you are. Every year

1 you have to basically say: Do I have a trust account in
2 Washington or am I exempt? And it's the standard process.

3 Actually this helps us because we can keep track of
4 people, whether they do or don't. And obviously the IOLTA
5 requirements are there and people need to comply with them.

6 The other point about multi-jurisdictional
7 practice, we have really thought about this, and yes, other
8 states don't have the same rules that we do, but I think we feel
9 that our Choice of Law rule answers this inasmuch as if you look
10 on page -- page 10, there is a Choice of Law rule, and basically
11 it says unless it's conduct that -- in other words, the rules of
12 the court -- of the jurisdiction in which the court is located
13 applies. But it says, for any other conduct, the rules of the
14 jurisdiction in which the lawyer's conduct occurred, or, if the
15 predominant effect is somewhere else -- there's a test for
16 determining which rules you apply.

17 So if your account happens to be in the state in
18 which you are practicing, I think that's the answer to the
19 question, under our rules.

20 So I hope I've answered the gentleman's questions.

21 MS. COOK: Thank you, Mr. Riemer.

22 Any further discussion?

23 I recognize Mr. Comstock, one minute to close.

24 MR. COMSTOCK: I would waive the one minute.

25 MS. COOK: All those in favor of adopting the

1 resolution No. 13 as printed in your agenda, please hold up your
2 placards.

3 (Vote taken.)

4 MS. COOK: All those opposed.

5 (Vote taken.)

6 MS. COOK: Thank you. The resolution passes.

7 I now recognize Mr. Gerry Gaydos to move for the
8 adoption of agenda item No. 14.

9 MR. GAYDOS: And I move the adoption of agenda item
10 14.

11 MS. COOK: Is there a second?

12 MR. CARTER: Second.

13 MS. COOK: The motion having been made and
14 seconded, it's now open for discussion. I recognize Mr. Gaydos
15 for five minutes.

16 MR. GAYDOS: Thank you. First of all, I truly
17 appreciate the Chief Justice's comments earlier about the
18 partnership between the Bar and the judiciary. For the past two
19 sessions at least we've really, from the public affairs
20 standpoint, been very concerned about the judicial budget and
21 continue to be so. And we're also concerned about judicial
22 salaries, and hope that during this interim we'll be able to work
23 on that as -- in a continuing partnership.

24 Resolution 14 recognizes the contributions of a
25 number of legislators, both lawyers and nonlawyers, to the

1 justice system in general and to law improvement in particular.
2 Those specifically recognized are Bar members who presided over
3 their chamber, their caucus, legislative rulings on appellate
4 procedure, budget subcommittees, who are responsible for
5 enactment of adequate funding for the Judicial Department, the
6 Public Defense Services Commission, and leaders on the Judiciary
7 Committee whose support for some public policy led to the
8 enactment of many measures that would improve the practice of law
9 for years to come.

10 A number of lawyer legislators who served
11 Oregonians well during the session but were not included in the
12 resolution also deserve our thanks. They are not recognized in
13 the resolution because their legislative assignments did not
14 touch the justice system directly. These include Senators Betsy
15 Johnson and Dave Nelson, and Representatives Brad Avakian and
16 Phil Barnhart.

17 On behalf of the Board of Governors, I recommend
18 passage of this Resolution 14.

19 MS. COOK: Any discussion? Mr. Paulson at the
20 other microphone.

21 MR. PAULSON: Lauren Paulson, not a delegate.

22 I'm here at the other microphone mainly because I
23 want to alert the House of Delegates to a strong thread of
24 political correctness that goes through our Bar leadership. And
25 I'm not so sure -- I don't follow the legislature closely well

1 enough to know if this is a good thing or a bad thing, so I'm not
2 taking a position at all on our Oregon legislature. But I do
3 want to point out to the House of Delegates that four of your
4 last five Bar presidents have been from Portland.

5 And I want to point out one other thing. You'll
6 notice that the cutoff for your House of Delegates resolutions
7 was in August, and the regional HOD meetings are in September.
8 Strange coincidence.

9 So my purpose in speaking out now is to alert you
10 to that fact, and also to alert you to --

11 MR. BROWNING: Madame President, point of order.

12 MS. COOK: Yes, Mr. Browning.

13 MR. BROWNING: I don't believe that Mr. Paulson's
14 comments appear to be germane to the matter before the body, and
15 as such would be irrelevant, immaterial, and whatever the heck
16 else it was.

17 MS. COOK: Thank you, Mr. Browning.

18 Mr. Paulson, I'll ask you to wrap up, please.

19 Thank you.

20 MR. PAULSON: Yes, I will. The final thing that I
21 would like to say is that we have a chance to begin anew, and I
22 -- I want to encourage all of us to do that, and to look
23 towards -- looking towards Bar leadership, and to have the person
24 that leads our Bar be a lawyer rather than a nonlawyer.

25 And so I'll end on this note. A bard well known to

1 | some of you, Bob Dylan said, "Those of you that aren't busy being
2 | born are busy dying." I'm afraid that our Bar, in certain
3 | respects, is dying.

4 | MS. COOK: Mr. Paulson, I'm going to interrupt you.
5 | Thank you.

6 | MR. PAULSON: I have one more sentence.

7 | MS. COOK: Let's proceed.

8 | MR. PAULSON: I have one more sentence.

9 | UNIDENTIFIED SPEAKER: Let's get the sergeant at
10 | arms.

11 | MR. PAULSON: I have one more sentence. I am just
12 | challenging you to start --

13 | MS. COOK: Mr. Paulson, you're finished. Thank
14 | you, sir.

15 | Any further discussion?

16 | Mr. Gaydos has one minute to close.

17 | MR. GAYDOS: I just recommend passage.

18 | MS. COOK: Thank you.

19 | All those in favor of passage of item No. 14 on the
20 | agenda, please raise your placards.

21 | (Vote taken.)

22 | All those opposed.

23 | (Vote taken.)

24 | MS. COOK: The motion passes unanimously. Thank
25 | you, Mr. Gaydos.

1 I will now recognize Mr. Yugler for moving to adopt
2 item No. 15 on the agenda.

3 MR. YUGLER: Good morning, Madame Chair. I'm Rick
4 Yugler. I move for adoption of item No. 15 on the agenda.

5 MR. COMSTOCK: Second.

6 MS. COOK: Thank you. The motion having been made
7 and seconded, I now recognize Mr. Yugler for five minutes. Thank
8 you.

9 MR. YUGLER: Thank you. Members of the House of
10 Delegates, you'll recall last year a resolution was presented to
11 propose a mandatory \$70 per member assessment in order to
12 implement an online CLE -- put all of our CLE publications
13 online. That was a very controversial matter and this body
14 voting that the Board of Governors should conduct a survey of
15 members, review the proposal, and report back to this body, and I
16 am delivering that report.

17 The Board's extensively discussed this issue. We
18 have conducted an advisory vote. Frankly, the advisory vote was
19 too low to have any real statistical significance.

20 What we have learned from our discussions with
21 members around the state and from our advisory vote was that this
22 is a very divisive matter, to impose a mandatory \$70 per member
23 assessment for this. In general but not universally, sole
24 practitioners, lawyers in rural communities not surprisingly,
25 those attorneys who responded electronically tend to favor this,

1 and not surprisingly, the larger firms, nonpracticing attorneys,
2 and those who responded by written ballot tended to be not in
3 favor, in fact, were outright hostile.

4 (Laughter.)

5 The Board was concerned about the financial impact
6 of asking you to vote a \$70 assessment per member for our
7 members. Not only did we have a dues increase this year. Next
8 year we'll be considering whether or not the affirmative action
9 assessment will be renewed or sunsetted.

10 We're also concerned about 3600 members who frankly
11 fall into the -- I'll say inactive category, they are active --
12 they are not really in the active practice, that this would have
13 a big financial ripple, in other words, it may be cheaper for
14 some people to go inactive who are really nonpracticing and pay
15 \$110 rather than pay, you know, an additional \$70, and that could
16 have a big impact on the budget.

17 Accordingly, the Board decided that we are --
18 remain very much in favor of trying to put our CLE publications
19 online and accessible to members, and believe that the best way
20 to approach that for our membership is to move forward in the
21 upcoming year with a licensing model and a subscription model
22 that would provide individual users to decide what their
23 particular needs are or are not, whether to subscribe or not to
24 subscribe, whether those subscriptions will be based on the
25 number of seats per license. And this is a concept I'm sure all

1 of you are familiar with if you use programs such as Microsoft
2 Office or other Microsoft products because that's how they price
3 things. We believe that that will best meet the needs of our
4 members and cause the least division among members.

5 Accordingly, we move that this body adopt the
6 resolution authorizing the Board to now move forward with
7 developing a licensing and subscription model instead of a
8 mandatory \$70 per member assessment, and that three members of
9 this body be asked to participate in the development of that
10 model over the upcoming year. Thank you.

11 MS. COOK: Any discussion? At the other mic.

12 MR. HUMMELL: John Hummell, elected delegate from
13 Bend at Region 1.

14 Question for the Chair. It's my understanding that
15 the House of Delegates, when we discussed this issue last year,
16 we directed the Board of Governors to conduct an advisory vote on
17 the issue, and then to come back here and the House of Delegates
18 would vote on the proposal; is that correct?

19 MS. COOK: I'll defer that question to Mr. Yugler.
20 He testified in his presentation, but maybe he'll answer that
21 question.

22 MR. YUGLER: Is this microphone on? All right.

23 Yes, that is correct, and we did conduct an
24 advisory vote. Less than 10 percent of the membership
25 participated. The vote was generally 60 percent in favor, 40

1 percent opposed. And if you want to look at those numbers, you
2 really have about 600 people who voted in favor and about 400
3 people who were opposed. That's a very small sampling and really
4 was not statistically significant.

5 So we looked at that as -- towards a very lukewarm
6 response by the membership in general to having this body return
7 to the issue of a \$70 mandatory assessment per member.

8 MR. HUMMELL: Madame Chair.

9 MS. COOK: Yes.

10 MR. HUMMELL: I was aware that the advisory vote
11 had occurred and that the Board of Governors is concerned about
12 the statistical validity of it. My concern is that this body
13 directed that an advisory vote occur, and the question that we
14 were considering last year we would consider this year, and we
15 could do what we want with the statistical numbers. However, the
16 Board of Governors decided to have the vote and then to come back
17 with a new and different question for this body, thereby not
18 following the directive that this body gave to the Board of
19 Governors. I think that's the height of hubris. This body
20 should vote on the question, vote it up or down, because we know
21 what we directed the Board of Governors to do. So I have some
22 concerns about that.

23 MS. COOK: Thank you.

24 Mr. Yugler, do you want to respond and then --

25 MR. YUGLER: Frankly, I don't think we are

1 exhibiting hubris. I think we're exhibiting prudence because the
2 result of the resolution we have proposed is that this body not
3 adopt the \$70 mandatory assessment, and that is part of the vote
4 and would be implicit, but rather that we move forward with
5 putting publications online but with a different pricing model.
6 So we are directly addressing it.

7 If you vote this down, I suppose then we'll be back
8 with: Do you want to assess yourself \$70 per person. However,
9 we believe that it's divisive, and the best way to move our
10 publications online is with a subscription model.

11 MS. COOK: Mr. Browning at the con microphone.

12 MR. BROWNING: Yes. Bob Browning, elected delegate
13 from Forest Grove.

14 Now is the time for Mr. Paulson to speak because I
15 do perceive a conspiracy from the Board. The last gentleman that
16 spoke, there is absolutely no question as to what the House
17 directed the Board to do. The Board was to have an advisory vote
18 and then bring the question back to us for completion of the
19 discussion. That has not happened. That's a slap in the face.
20 It's inappropriate. It shouldn't have been done.

21 The presentation from the Board that originally
22 came out is the downtown firms were to get a cut in the price,
23 and the House, after a great deal of discussion, voted that
24 proposal down and said, no, we vote after there is an advisory
25 vote to consider having everyone pay \$70 and everyone has an

1 equal opportunity to see the materials.

2 Now, Mr. Yugler, I would ask you, was anyone denied
3 the opportunity to vote?

4 MS. COOK: Excuse me. Please direct all your
5 questions to the Chair.

6 MR. BROWNING: I'm sorry.

7 MS. COOK: If you are finished, we'll go to the
8 next person.

9 MR. BROWNING: Ms. President, was anyone denied the
10 opportunity to vote?

11 MS. COOK: My understanding is that everyone had an
12 opportunity to vote.

13 MR. BROWNING: And the fact that that number of
14 people chose to vote, but that 60 percent of that number of
15 people chose to vote yes indicates to me that is not a lukewarm
16 but a strong sense that those who cared enough, the rest
17 understood the matter.

18 I am going to vote against the proposal as it's
19 put, and as we get a little further along I'm going to move to
20 amend to put in front of us what we had in front of us a year
21 ago, that we're supposed to have in front of us today and don't,
22 and I'm going to support that as I did a year ago. Thank you.

23 MS. COOK: Thank you, Mr. Browning.

24 We're going to go back and find the exact
25 resolution from the House last year so there's no confusion on

1 that issue. I think that's fair to the House, that it knows what
2 it directed the Board to do. So they will notify me when they
3 have found that.

4 As to any additional resolutions, the agenda is
5 closed, so we won't have an opportunity to bring any late-filed
6 resolutions on this topic or any other.

7 Mr. Haberlach at the other microphone, please.

8 MR. HABERLACH: Thank you. I'm Bill Haberlach,
9 elected delegate from Region 3.

10 And just to kind of move along with a more positive
11 note, I'm wondering if Mr. Yugler could give me a clue, if he has
12 any idea as to under the study -- do you have an idea of what it
13 might cost for a subscription if we left it up to the option of
14 each member or comparing them with other subscription services?

15 MS. COOK: Go ahead, Mr. Yugler.

16 MR. YUGLER: Well, that is something that will be
17 developed over the course of the year, which is the resolution,
18 to come up with a pricing model. So there has been a number of
19 opinions expressed, but I'm afraid if I tell you it will be, you
20 know, X dollars --

21 MR. HABERLACH: Oh, come on, Rick.

22 MR. YUGLER: I would like to see frankly coming out
23 of the resolution a number of options for people where, for a
24 particular price, they can subscribe to the whole set for a
25 particular number -- an amount, to part of the CLE publication

1 set for the price of perhaps one or two books and get really, you
2 know, five or eight books online, and that we work out a -- how
3 well we price, whether it would be an annual subscription or
4 subscription over the life of the book and updating. I think
5 those pricing models are something that will have to be developed
6 by the staff. But presumably what we've learned from talking
7 with people is that not all sole practitioners want this because
8 they don't all use the book, and some -- and a lot of people
9 would pay a lot more than \$70 for the service. We've been told
10 by a number of people that they would pay 200, 300 more dollars
11 for an individual subscription to get the service.

12 And so all I can tell you, sir, is that the
13 proposal is to develop that pricing over the course of the year.

14 MR. HABERLACH: Thank you. And I think that this
15 is not the issue that we wish to cross. I think that there are
16 more important issues that would demonstrate the balance of power
17 between the Board of Governors and the House of Delegates. This
18 is not the one we need to force the issue on; there's others
19 coming up, either today or in the future.

20 MS. COOK: Thank you, Mr. Haberlach.

21 I've been informed by staff that we have now found
22 the language of the resolution that this body voted on last year,
23 and I would ask Mr. Yugler to read that to the House.

24 MR. YUGLER: Thank you. Madame Chair, the
25 resolution that passed at the last House of Delegates meeting was

1 as follows. The resolution was amended to read: Resolved that
2 the following proposal be referred to the membership for an
3 advisory vote, quote, should the OSB CLE library be accessible
4 online to all active embers -- it should be members -- for five
5 years, funded by a \$70 membership fee increase beginning January
6 1, 2006, prorated for 2006 admittants, and ending 2010.

7 MS. COOK: Any further discussion?

8 All those -- oh, Mr. Yugler, you have one minute to
9 close should you feel the need.

10 MR. YUGLER: Yes. Members of this body, I think
11 you can already sense how divisive this issue is and was last
12 year. Our recommendation to this body is that we move forward
13 with trying to put our publications online as a service, and that
14 a pricing model be developed that is not mandatory for all
15 members of \$70 per person, and we feel that it's the only way
16 we're going to be able to get our publications online in a way
17 that is not divisive. So thank you.

18 MS. COOK: All those in favor of resolution No. 15
19 as printed in your agenda, please raise your placards.

20 (Vote taken.)

21 Ms. COOK: All those opposed.

22 (Vote taken.)

23 MS. COOK: The motion carries. Thank you,
24 Mr. Yugler.

25 I'll now recognize Mr. Lang to move for the

1 adoption of resolution No. 16 -- I should say agenda item 16.

2 MR. LANG: Thank you. I will move for the adoption
3 of the resolution that's been put forth in agenda item No. 16.

4 MS. COOK: Thank you. Is there a second?

5 MR. HUMMELL: Second.

6 MS. COOK: The resolution having been moved and
7 seconded, it's now open for debate.

8 Mr. Lang, I'll recognize you for five minutes.

9 MR. LANG: Thank you. I don't think I need five
10 minutes on this, hopefully not.

11 My point is now anachronism and I call this the
12 evolution of the white powdered wig rule. I'm not aware in my 28
13 years of practice -- and I am licensed in other jurisdictions and
14 I've participated in other jurisdictions -- that there's this
15 requirement of "true copy" to be stamped on things. I think the
16 most salient remarks began when Board of Governors Member Gaydos
17 hosted, I guess, the Region 2 teleconference on (unintelligible),
18 I attended all five except the out-of-state one, and I didn't
19 hear any objection to this, and I think people in this group
20 remarked that -- often the confusion of just what needs to be
21 "true copied" and what doesn't. You see this all over the place.
22 In terms of I think the disciplinary rules where a lawyer has to
23 do things honestly and ethically more than cover the point, this
24 is superfluous. So just as we no longer have the judges wearing
25 white wigs, why, I don't think we -- I think we can park this

1 with the steam locomotive.

2 Now, having said that -- and I guess when I've
3 gotten a lot of proposed resolutions, I get some interesting
4 correspondence, and I received a courtesy letter from Chief
5 Justice Carson. I don't know if he's still here with us. He and
6 I spoke earlier, and he was so kind. And I'm going to read you
7 the paragraph that he mentioned in here because I certainly, in
8 being a novice at writing these resolutions, consult people. And
9 somebody says, well, you ought to take it to the UTCR. Somebody
10 else says take it here. Somebody else says you've got to take it
11 to Board of Governors.

12 So I'm trying to blend all of this just to say I
13 would like to recommend and encourage the Board of Governors,
14 without directing it to the UTC, because Chief Justice Carson
15 wrote on behalf of the Supreme Court, addressing Rule 5 (sic),
16 states, Encourage the Uniform Trial Court Rules Committee to
17 Eliminate the Certification Requirement of Rule 7A, and refers to
18 ORCP 7A. While we modified the UTCR when necessary to be
19 consistent with the ORCP, the UTCR Committee is not the entity
20 responsible for overseeing the ORCP. That responsibility lies
21 with the Council on Court Procedures. We mention this so the
22 House of Delegates can make this recommendation to the
23 appropriate entity.

24 To that extent, I would simply like my motion to be
25 that we recommend to the Board of Delegates that they consider

1 this and encourage the Council on Court Procedures to consider it
2 further. Thank you.

3 MS. COOK: Mr. Lang, I take that as an amendment to
4 encourage the Board of Governors.

5 MR. LANG: Yes, that's correct.

6 MS. COOK: Thank you. Without objection, that will
7 be amended.

8 Any discussion? At the con mic.

9 MR. HAMLIN: I'm Bruce Hamlin, I'm a delegate from
10 Region 5, and I'm the former chair of the Council on Court
11 Procedures.

12 I generally object to resolutions being voted on by
13 this body which are properly within the jurisdiction of other
14 bodies without there being some showing that the other body has
15 been unwilling to consider it or has been unwilling to consider
16 the groundswell of support for a particular position.

17 I can say as former chair of the Council on Court
18 Procedures, that we never declined to consider a proposal that
19 was made by any lawyer or by any lay person that related to the
20 Oregon Rules of Civil Procedure.

21 So regardless of the merits, I just think this is
22 the wrong place to be considering this issue. Thank you.

23 MS. COOK: Thank you, Mr. Hamlin.

24 Any additional discussion?

25 Mr. Lang, you have one minute to close.

1 MR. LANG: Actually, in deference to the Council on
2 Court Procedures, I would just say it was actually perhaps mis-
3 directed to the UTCR Committee, but we're not really forcing
4 anybody to do anything here. I think what we're just doing is
5 asking the Board of Governors if they would consider perhaps
6 referring it to the Council on Court Procedures for further --
7 for a look-see. Thank you.

8 MS. COOK: All those in favor of agenda item No. 16
9 as amended by Mr. Lang, please raise your placards.

10 (Vote taken.)

11 MS. COOK: All those opposed.

12 (Vote taken.)

13 MS. COOK: I hate to do this. We're going to need
14 our tellers. Sorry. These late filers up here.

15 Okay. All those in favor of agenda item No. 16 as
16 amended by Mr. Lang, please hold up your placards.

17 (Vote taken and counted.)

18 MS. COOK: Thank you. All those opposed to the
19 amended resolution.

20 (Vote taken and counted.)

21 MS. COOK: The resolution as amended fails.

22 I will now recognize Mr. Lang to move for the
23 adoption of item No. 17.

24 MR. LANG: This is my last time, until next year.

25 (Laughter.)

1 No. 17 -- I move to have the resolution No. 17
2 adopted.

3 MS. COOK: Thank you, Mr. Lang. Is there a second?

4 MR. GEORGEFF: I second.

5 MS. COOK: Motion having been made and a second,
6 it's now open for debate. I recognize Mr. Lang for five minutes.

7 MR. LANG: Thank you. First of all, in keeping
8 with the same spirit of the last resolution, this one was
9 directed towards the UTCR Committee and maybe that is the right
10 body, but this -- I went ahead and had run off the last two hours
11 yesterday a quick sample, specimen, and that was placed on your
12 chairs. I consider this primarily an access to justice movement.

13 We get the small case, the \$7500 case, it's -- it's
14 above the \$5500 in ORS 20.080, so we have to sit down and fill
15 out a customer complaint. That's time, money. Sometimes the
16 litigant would be better off just representing himself. Or close
17 to the statute of limitations, they can fill this in.

18 The elements of cause of action or an answer,
19 defenses would be here. There's room for adding the word
20 "other." And of course people can also do attachments.

21 The State of California, about 20 years ago, almost
22 went to making these mandatory. And so there's a groundswell
23 just towards making it mandatory. What I'm suggesting is they
24 simply be optional. This doesn't replace or force anybody to do
25 anything. Just allows access to justice by those people that

1 don't really need to pay when they have six kids, or you saw
2 someone -- they are not in our state, but some of them are here
3 now, the evacuees out of New Orleans, people that couldn't afford
4 to leave a hurricane can't afford to hire a lawyer anymore so.
5 You've got somebody in your office at 3:30, had other
6 appointments, maybe you can file this and file an amended
7 complaint. Again, I liken it as somewhat analogous to sliced
8 bread.

9 Now, having said all of that, maybe I routed this
10 through a little different channel. I mentioned the UTCR
11 Committee. And Chief Justice Carson was kind enough to include a
12 second paragraph in his letter, which doesn't say I went the
13 wrong route, but let me just read this paragraph.

14 Resolution states, Encourage the Uniform Trial
15 Court Rules Committee to Generate Form Pleadings. The UTCR does
16 include some form pleadings that are related to specific rules.
17 We believe, however, that creation of a comprehensive body to
18 form pleadings would be a complex, lengthy project. The UTCR
19 Committee, parentheses, composed of volunteers from the Bench and
20 Bar, end of parentheses, is already quite busy with its current
21 duties, parentheses, annual review of all supplemental local
22 rules and evaluation of numerous proposals which change the UTCR,
23 end of parentheses. The form pleadings project would thwart the
24 UTCR Committee's other work, and unfortunately we do not have the
25 funding for staff that would be necessary for such a project.

1 The task seems better suited to a large group effort, perhaps one
2 undertaken by the OSB and the appropriate OSB committees and
3 sections. We believe this project is not well suited for the
4 UTCR Committee. End of letter.

5 So the way I read Chief Justice's comments would be
6 that perhaps one undertaken by the Oregon State Bar and the
7 appropriate committees.

8 Therefore, Madame President, I'm going to ask that
9 my resolution be deemed instead of referring specifically to the
10 UTCR Committee, that it simply be a recommendation again to the
11 Board of Governors that the OSB consider that, and it could be a
12 gradual program, whatever, but consider implementing optional use
13 of form pleadings. Thank you.

14 MS. COOK: Thank you, Mr. Lang. Absent any
15 objection, I will receive the amendment to Mr. Lang as part of
16 the original motion.

17 Any further discussion on resolution or item No. 17
18 as amended?

19 Yes, at the con mic.

20 MR. DEGUC: First time here. Vincent Deguc from
21 the Sole and Small Practitioners Section.

22 I have a variety of concerns regarding this
23 proposal. No. 1, if an attorney practitioner would use this form
24 that was created by somebody else and, as a result of that, the
25 court determines that it was inadequate for the purpose for which

1 | it was used, that attorney could be charged with malpractice.
2 | Again, provide -- what that means is when you sign a complaint,
3 | you're certifying to certain things, and if a complaint could be
4 | dismissed for failure to state a claim because the form somehow
5 | was inadequate for what you were using, you would run yourself
6 | into a problem. The other thing is that no service would be
7 | offered to the public if it would not be -- could not otherwise
8 | be capable of being effective for what they were trying to do.

9 | The other thing is I have a concern. Those of you
10 | who practice in the federal court know they have standard forms
11 | that just drive you nuts. And if we go down this route, which
12 | California came from the brink, while I'm dealing with these
13 | being mandatory forms rather than optional, you're going to run
14 | into the problem of having court clerks and state courts, just
15 | like you do at federal courts, reject your documents because you
16 | don't have the proper margins, you don't have the proper
17 | language, etcetera.

18 | And so I really think that this matter should be
19 | deferred for a substantial evaluation. I think that unless
20 | there's -- these documents have a safe haven for PLF purposes or
21 | other stuff, that gives me neither the will nor time against it.

22 | MS. COOK: Thank you, Mr. Deguc.

23 | Mr. Tongue, con mic.

24 | MR. TONGUE: Thank you, Madame President. I'm
25 | opposed to a concept of standardized pleading, one size fits all.

1 Representing defendants, we like to know what the case is about.
2 We've been sued.

3 I also want to commend the Bar for all the work it
4 has done in its CLE publications of including forms. Anyone
5 who's looked at the CLE publications would notice there is no end
6 of pleading forms already published, not uniform forms but
7 suggested forms, and I recommend that that be the practice we
8 continue. Thank you.

9 MS. COOK: Thank you, Mr. Tongue.

10 At the other microphone.

11 MS. GUERRICAGOITIA: Thank you. I would actually
12 be the pro microphone, but I'm not sure if it's working.

13 MS. COOK: Thank you. Go ahead.

14 MS. GUERRICAGOITIA: Carmen Guerricagoitia. I'm an
15 elected delegate from out-of-state region.

16 I actually practice in Washington, DC, and I've
17 done a great deal of work over the past several years in pro bono
18 work and clerical in the District of Columbia, and where they
19 do use certain form pleadings for a number of matters, and it
20 really does help those of lesser means to be able to access and
21 really have their voice be heard.

22 So in its current form, which is just a
23 recommendation that this be looked into by the appropriate body,
24 I would support the resolution.

25 MS. COOK: Thank you. Mr. Bachofner at the con

1 microphone.

2 MR. BACHOFNER: Elected delegate from out of state.

3 I oppose this move. I would use some of my time
4 for silence, I guess, in honor of the art form of practicing law.
5 We already -- we already see people using the same forms on
6 computers. We see people that print up a form of a complaint or
7 an answer that was used in 12 other cases, and they forget to
8 even change the names in the pleading. Let's not move down that
9 road any further.

10 I also would add that we're going to encourage
11 unauthorized practice of law by forms companies if we have
12 pleading forms like these. You're going to open the door for
13 forms to be provided to people, and people are just going to be
14 checkmarking them and submitting them, and they are going to
15 think that they are doing it right, and they are going to miss
16 something and it's going to affect their ability to recover.

17 So I would oppose this motion. I urge you to vote
18 it down.

19 MS. COOK: Thank you, Mr. Bachofner.

20 At the pro mic.

21 MR. WILDE: I'm Marty Wilde. I'm an out-of-state
22 delegate.

23 I have a practice through the military in a number
24 of jurisdictions that had forms. My experience with them has
25 been uniformly positive. Not only do they allow people who have

1 no money to hire a lawyer to get their case to court, but they
2 also open up secondary market for providing legal advice without
3 actually entering an appearance in a case, and that's a very
4 valuable service. I was able to do it in other jurisdictions as
5 a military lawyer. I was not authorized to appear on behalf of
6 the client, but I could provide them valuable advice, for
7 instance, about contested divorce and make sure that they had
8 considered all the issues, divided property perfectly, worked out
9 all the custody issues.

10 It is a huge improvement, access to justice, to
11 have forms in a jurisdiction and especially if they are going to
12 be optional. I think it's protectionist of us not to do this.
13 Thank you.

14 MS. COOK: Thank you, Mr. Wilde.

15 I'll recognize the delegate at the other
16 microphone.

17 MS. REYNOLDS: Hi. My name is Dawn Reynolds. I'm
18 from Polk County and (unintelligible), but I guess I'm pro.

19 I come here from Washington state, and we do have a
20 large number of mandatory forms, particularly in the domestic
21 relations area, and they are extremely helpful to practitioners
22 as well as the growing number of pro se litigants who happen to
23 do their own divorces. One of the good things is that you know
24 which sections are going to deal with the care and custody, which
25 sections are going to deal with child support, visitation, so

1 | forth. So there's the uniformity there.

2 | And an old -- some of the older attorneys really
3 | balked against it when they first became mandatory and now
4 | everybody loves them. And we have whole books on this. We're
5 | lucky up in Washington to have a Washington practice series law,
6 | elder law forms. Everything is on CD, they get updated.

7 | We have -- the Bar there -- I guess what I'm
8 | suggesting is the Bar has the committees work on these and then
9 | they are approved with judges sitting on this to make sure that
10 | they really do meet the needs and that they are well done. It's
11 | the type of thing I think we should be moving towards to cut
12 | costs for our clients who can pay, it will help those who cannot
13 | afford to pay for any services, and it will make things easier
14 | for all of us who are trying -- the gentleman who spoke to the
15 | sloppy practice of people not bothering to change the names, the
16 | attorney who does that is just going to be sloppy in his or her
17 | work, but nothing you can do is going to stop that. At least
18 | they probably have fewer misspelled words if anything...

19 | (Laughter.)

20 | MS. COOK: Thank you. The delegate at the con
21 | microphone.

22 | MR. CHENEY: Jim Cheney, elected delegate from
23 | Eugene.

24 | I was in California in the eighties when the form
25 | pleading movement came into being. My experience was that what

1 | it did was it took thought out of pleadings and, if anything, it
2 | encouraged lawyers to leave things until 3:30 on the afternoon
3 | before the statute of limitations was going to run.

4 | In Oregon practice in which I represent both
5 | plaintiffs and defendants in civil litigation, our current
6 | pleading rules encourage you to sit down, marshal your facts,
7 | analyze them, put them in writing, and make sure of what you're
8 | doing before you put it on file. That's from the plaintiff's
9 | perspective.

10 | From the defense perspective, it forces you to go
11 | through what the plaintiff is saying item by item, and figure out
12 | whether you're going to contest that or not, and put good
13 | defenses on file. Form pleading takes that away.

14 | I would disagree strongly at least with what --
15 | initiated documents in civil actions, that we not go down that
16 | route. Forms certainly have their place in the practice of law,
17 | but not here.

18 | MS. COOK: Thank you.

19 | Recognize the delegate at the other con microphone.

20 | MS. VANMETER: Heather VanMeter from Region 5,
21 | elected delegate.

22 | I actually do practice in Oregon and Washington and
23 | occasionally Alaska. Obviously Washington's essentially notice
24 | pleading. Oregon is fact pleading.

25 | There is no cost savings and there certainly isn't

1 any time savings, as my colleagues in Vancouver will attest,
2 because in Washington you deal with interrogatories; that's how
3 they get to the facts of the case. We in Oregon require it to be
4 done in the complaint, which seems a lot quicker, more
5 reasonable, and lets us all know what the case is about.

6 Over in Washington we have to do notice pleading
7 and then try and figure out what the case is about by sending out
8 50, 60 different interrogatories. There's no time savings.
9 There's no cost saving.

10 And, you know, when Oregon considered these issues
11 decades ago when they had the opportunity to adopt notice
12 pleadings, we chose not to then. It's been working fine for us
13 now.

14 MS. COOK: Thanks, Ms. VanMeter.

15 Mr. Siegel at the other microphone.

16 MR. SIEGEL: Well, I just would like to ask the
17 question, if a client can't afford to have an attorney do the art
18 of preparing a complaint from scratch and sitting down and
19 looking deeply into the -- into the various issues in drafting a
20 complaint, should the door to the courthouse be shut to that
21 person?

22 MS. COOK: Thank you.

23 Mr. Newberger.

24 MR. NEWBERGER: Robert Newberger, elected delegate
25 from Portland.

1 I'm a plaintiff's attorney. I represent people
2 without means, most of them who are contingent fee. Without that
3 key to the courthouse, I would not be there.

4 Our pleading practice that we have developed over
5 decades is actually a friend of the plaintiff and the small
6 person because it allows for the quick identification of issues,
7 in some sense allows you to think about what your case is about.
8 It weeds out the cases that perhaps shouldn't be there by a
9 lawyer thinking about them.

10 One of the greatest things that we -- criticisms we
11 hear is about frivolous lawsuits. A pleading practice now
12 requires lawyers to think about that and really is a big help in
13 that area. The unintended consequences of this resolution are
14 awesome. The prior speaker talked about interrogatories. That's
15 the next thing that will happen.

16 The reason we have a Council on Court Procedures is
17 because decades ago lawyers realized that this wholesale adoption
18 of the federal rules was not a good idea, and we take this down a
19 road where we shouldn't go, and this is -- this type of proposal,
20 although it seems innocuous, the next thing we'll have are
21 interrogatories and all kinds of other discovery. We have one of
22 the most least expensive forms of dispute resolution of any of
23 the jurisdictions in this country, and we should be proud of it,
24 and we shouldn't be tampering with it.

25 MS. COOK: Thank you. Any further discussion?

1 Mr. Lang, one minute to close, please.

2 MR. LANG: Thank you. I do think that this is well
3 safeguarded by making sure the elements are there, and wouldn't
4 have to be this brief; we could have a few other things being
5 attached, for example, exhibits. But there just doesn't seem to
6 be access to justice where somebody making the Oregon minimum
7 wage, even if it's at seven fifty an hour, to come see a lawyer,
8 to sit down, have that lawyer dictate in the Dictaphone and
9 dictate all these matters out. This doesn't mean that person
10 later won't see a lawyer to do the trial, some other critical
11 phase. But the person who can't afford at all won't have to put
12 \$300 or \$200 up front, the lawyer to take these (unintelligible).
13 They could be expanded with a little more lion's share, but I
14 just wanted to get the concept across.

15 Again, this resolution is simply that it be studied
16 further because there's the statistics out, there's a tremendous
17 amount of our populace is not -- has no access to justice. So I
18 think it will maybe bring us more business in the long run
19 because people will use these and then they will understand the
20 system better. Better electorate is a better citizenry. And
21 some of those people will hire us to, for example, go to trial,
22 go to a hearing and conduct what needs to be done for --

23 MS. COOK: Thank you, Mr. Lang. Excuse me.

24 MR. LANG: I ask you to pass this one. Thank you.

25 MS. COOK: All those in favor of agenda item No. 17

1 as amended by Mr. Lang, please hold up your placards.

2 (Vote taken.)

3 MS. COOK: All those opposed.

4 (Vote taken.)

5 MS. COOK: The resolution fails.

6 I'll now recognize Mr. Sid Lezak to move the
7 adoption of resolution No. 18.

8 MR. LEZAK: I move the adoption of Resolution --
9 resolution No. 7.

10 MS. COOK: Thank you. Agenda item No. 18. So
11 corrected.

12 Is there a second?

13 MR. GERKING: Second.

14 MS. COOK: The resolution now moved and seconded.
15 It's open for debate. Mr. Lezak has five minutes.

16 MR. LEZAK: This resolution was substantially
17 identical -- is substantially identical to the resolution passed
18 by the House of Delegates -- Board of Governors without the
19 benefit of the House of Delegates in 1996 and in 1999. It was
20 affirmed by the House of Delegates. The description of the
21 resolution that is stated in your materials is very adequate.

22 MS. COOK: Thank you. Any further discussion?

23 Ms. Fabien.

24 MS. FABIEN: Marva Fabien, Board of Governors
25 member, also vice chair of the Access to Justice Committee to the

1 Board.

2 And I want to speak on behalf of the Board of
3 Governors in support of this resolution and mention that it's one
4 of the ongoing missions of the Oregon State Bar, is to provide
5 access to justice for all Oregonians. I would recommend a vote
6 in favor of this.

7 MS. COOK: Any further discussion? Mr. Harnden.

8 MR. HARNDEN: Ed Harnden, elected delegate from
9 Region 5.

10 I think it's important that you not only pass this,
11 but you think about what you're doing when you pass it because it
12 says very specifically that we're looking for one hundred percent
13 of the members of this House to support financially, as well as
14 actively in gaining financial support for the Campaign for Equal
15 Justice, and it's looking for 50 percent participation by the
16 lawyers, and it amazes me that we don't have a hundred percent of
17 all the lawyers. But think about it. Don't just vote for it,
18 but also match what you're doing out there over the next couple
19 of months with what you're voting today.

20 MS. COOK: Thank you, Mr. Harnden. Any further
21 discussion?

22 Mr. Lezak, would you like to -- a minute to close?

23 MR. LEZAK: I know when to waive.

24 MS. COOK: He's waived his one minute.

25 All those in favor of adopting agenda item 19 as

1 printed in your agenda, please raise your --

2 DELEGATES: 18.

3 MS. COOK: 18, excuse me.

4 (Vote taken.)

5 MS. COOK: All those opposed.

6 (Vote taken.)

7 MS. COOK: Agenda item 18 passes. Thank you.

8 I'll now recognize Mr. Georgeff to move the
9 adoption of agenda item 19.

10 MR. HUMMELL: Madame Chair, point of order, if I
11 may.

12 MS. COOK: Please.

13 MR. HUMMELL: John Hummell, elected delegate from
14 Region 1. I suggest the absence of a quorum and object to us
15 continuing this meeting unless and until a quorum is established.

16 MS. COOK: I will ask the tellers -- first of all,
17 have all the delegates please take your seats, and then I will
18 ask the tellers, please, to count our bodies.

19 If you are a delegate, please hold up your cards.
20 We need 107 delegates, so we'll see how many we have.

21 (Count taken.)

22 MS. COOK: Thank you. Point of order. I've been
23 informed that we indeed have a quorum.

24 I would like to recognize Mr. Georgeff to move for
25 the adoption of his item No. 19.

1 MR. GEORGEFF: Thank you, Madame President. One
2 point of order, may I --

3 UNIDENTIFIED SPEAKER: We can't hear you.

4 MR. GEORGEFF: May I use the podium? My point of
5 order is may I use the podium?

6 MS. COOK: Absolutely.

7 MR. GEORGEFF: Thank you, Madame President. And I
8 move my resolution No. 8, which is agenda item No. 19, with an
9 amendment, which you and I have discussed, which would make those
10 resolutions be recommendations to the Board of Governors and not
11 binding on the Board of Governors as we agreed the -- the reason
12 for that is your statement earlier that otherwise those -- that
13 resolution and the one following would be ruled out of order on
14 the grounds that the House of Delegates does not have the
15 authority to pass on that. Therefore, I would make the
16 recommendation -- so I would move as amended.

17 MS. COOK: Thank you, Mr. Georgeff. Is there a
18 second to the motion as amended?

19 Mr. Georgeff is correct, that was -- that was
20 something that we discussed.

21 UNIDENTIFIED SPEAKER: Second.

22 MS. COOK: The amended resolution having been moved
23 and seconded, it's open for discussion.

24 I recognize Mr. Georgeff for five minutes.

25 MR. GEORGEFF: Thank you, President Madame, members

1 of the Board, my fellow delegates: We have here today an
2 opportunity that is historic, and that is to demonstrate that
3 this body will, in fact, act as the voice of the membership in an
4 appropriate case. That was a promise made to the membership when
5 we went away from the town hall form of government a number of
6 years ago.

7 When the minimum continuing legal education rules
8 were changed to require elimination of bias courses or diversity
9 training, that was imposed on the membership without a vote,
10 without any substantial discussion with the membership as a
11 whole, and that was a mistake. It changed the nature of the
12 MCLE, and it required attendance at courses which have nothing to
13 do with the substance of law or legal ethics.

14 Now, there has been one change to the rules, not
15 everybody may be aware of them, and I do just want to point that
16 out. There was a change this year which allows finally to have
17 these courses include substantive law up to a hundred percent.
18 That was a good attempt at addressing a bad problem. Basically
19 you try to make a situation many members find intolerable to be
20 at least tolerable, but it is a panacea to the problem, not a
21 solution.

22 As far as I know, I am the only person who has made
23 any attempt to make an inquiry to any significant percentage of
24 the membership as to whether it wishes this program to continue.
25 I think probably everybody here knows by now, I've taken an

1 e-mail opinion poll of Region 3 membership, and by my records
2 we've reached three-quarters of the membership by e-mail, and we
3 had a robust response; it was 30 percent. You heard what
4 Mr. Yugler said about that other survey. And just look at the
5 percentage that responds to House of Delegates elections, usually
6 below 20 percent.

7 And we have 30 percent respond and 84 percent -- 84
8 percent of the respondents stated that they wished the continuing
9 MCLE requirements to be changed so they would no longer have to
10 take the elimination of bias courses.

11 There are many comments about this. There's no way
12 I can even review them and, of course, they are not all
13 consistent, they come from so many people. Some of the most
14 important ones, I think, for your consideration, are that making
15 these kind of courses mandatory undermines the basic quality of
16 the message which is sought to be achieved.

17 Another is that the OSB, the Oregon State Bar is a
18 licensing body, a nonvoluntary organization for anybody who wants
19 to practice law, should not be used ever as an agenda for
20 articulating a political or social program.

21 And the most common comment probably was it
22 basically has been viewed by many as an indoctrination program,
23 which in fact perpetuates stereotypes, does not enable people to
24 help overcome bias and prejudice.

25 In preparing for this topic, I gave a lot of

1 | thought. I'm going to talk about my own experiences, and I do
2 | want to -- I find that to be a distasteful subject, but in fact
3 | I'm going to do that because inevitably my own frame of reference
4 | is going to be called into question here. I'm going to spend a
5 | moment on that or a minute on that.

6 | I was born in 1954 in Cleveland, Ohio, the son of
7 | an East European immigrant in the wrong ethnic group for that
8 | neighborhood, in a neighborhood that lied close to an African-
9 | American community, and was exposed from birth through young
10 | adulthood to a culture that was ethnocentric to the extreme,
11 | racist, sexist, homophobic, and probably more violent than most
12 | of you can imagine in the poor urban areas. And I liken those
13 | years to having been in a dark tunnel. I emerged from it. I can
14 | say unequivocally I reject discrimination and bias. But I don't
15 | have to be a person of goodwill to believe that this is something
16 | that people should be lectured about, and I feel not, so I'll
17 | address the membership who feels the same way.

18 | I have a little bit longer.

19 | I wanted to read for you a few words from somebody
20 | who is not a white western male but I think sums it up very well,
21 | someone you respect very much, and he said a few things on the
22 | same subject: A number of things about the western way of life
23 | caused me concern. People there have an inclination to think in
24 | terms of black and white and either/or, which ignores the facts
25 | of interdependence and relativity. And he also said the

1 differences in physiology and culture that appear to separate
2 people it seems to me only unify them all the more. The theories
3 of cultural difference and the history the world has seen are
4 observed and pernicious, they lead to nothing but impasses.

5 That was the Dalai Lama, and his point of course is
6 that many of us view the way to get around prejudice is to view
7 our commonality.

8 This program has generally required the western way
9 of classifying, stereotyping people. The membership has found
10 this to be a burden. I ask you to lift this from the backs of
11 the membership. Thank you.

12 MS. COOK: Thank you, Mr. Georgeff.

13 Any discussion? Mr. Lopez at the con microphone.

14 MR. LOPEZ: Yes, thank you. Angel Lopez, Region 5.

15 I was preparing my remarks, reviewing my remarks
16 yesterday. I was driving home from work, and I heard the
17 unfortunate -- about the unfortunate remarks that former
18 Secretary Bennett made with regard to race, the criminal justice
19 system and family planning. That, in and of itself, reinforced
20 my resolve to be here today to speak.

21 The idea behind our program, this program, which I
22 believe is a laudable program, and it has to do with gender
23 discrimination, race discrimination, and (unintelligible) in
24 terms of the commonality in letting us all know about our common
25 goals, our common aims, and ultimately that we're all one in the

1 heart, is that -- it wasn't my idea. This was an idea that was
2 formulated as a result of a task force on racism, racial, ethnic,
3 minority issues, Supreme Court task force that Justice Carson
4 spoke of earlier. And it was a very, very strong recommendation
5 that didn't come from the lawyers; it came from the people of the
6 state of Oregon who we addressed, because the people that we were
7 talking to were the people that felt that they were being shut
8 out of the system, they were being discriminated against because
9 they couldn't get a lawyer, because they couldn't get a fair
10 shake in court, because nobody bothered to understand them.
11 That's why this recommendation was made. And it was only years
12 later when I was fortunate to be on the Board of Governors that
13 it was revisited in terms of all the recommendations, which makes
14 sense, which should be implemented.

15 And again, it was not the power and the will of the
16 Board of Governors only to create this. It was considered very
17 thoroughly and very strongly by the Supreme Court, and it was
18 considered to be an idea whose time had come. With that, I
19 believe we are on the right track today and that we need to
20 progress.

21 I had breakfast with my son today, I told him that
22 I was going to be speaking about it, and I -- I explained the
23 program to him, and I told him that certain members of the Bar
24 wanted it to go away, and he said, "Dad, tell them that I said
25 it's stupid." Thank you.

1 MS. COOK: Thank you, Mr. Lopez.

2 Ms. Gruber at the con mic.

3 MS. GRUBER: Well, thank you for introducing the
4 survey.

5 MS. COOK: I'm sorry, you're the pro mic.

6 MS. GRUBER: I'm Diane Gruber. I'm the elected
7 delegate from Region 6, which is Clackamas, Marion, Polk and
8 Yamhill Counties.

9 And I appreciate Mr. Lopez has been mentioning the
10 survey that I studied extensively. It was wired for a result,
11 and I have some prepared remarks which will address that.

12 Shortly after this special CLE was created, I set
13 out to learn more about it. My investigation was two-pronged. I
14 researched the path that the Bar took to get us to this
15 bastardization of our mandatory continuing legal education
16 program. I was curious to see if diversity CLEs were going to
17 deal with discrimination laws, which would be very useful for
18 every attorney regardless of one's specialty, or if they were
19 going to indoctrinate us with narrow political ideas as the
20 proponents had let me to believe. Therefore, I've attended
21 seven -- seven diversity seminars in the last three years. I
22 missed the one yesterday because I was ill.

23 In the 22 hours spent at these seven CLEs, it would
24 be a big stretch to say that the audience received one hour's
25 legal education. These CLEs were a political indoctrination,

1 nothing more, nothing less.

2 Most of you have probably heard about the survey
3 Mr. Lopez just mentioned that was conducted in 1994, and it
4 proved -- quote unquote, it proved that Oregon attorneys are
5 racist. Well, this -- my research discovered the survey was
6 carefully designed and conducted to produce that result. In
7 short, it was wired. Besides the bias questionnaire itself, the
8 most obvious tip-off was that the designer -- the most obvious
9 tip-off that the designers wanted a certain result was that they
10 carefully chose who to let -- who to pass the survey out to.
11 They carefully chose groups of attorneys that -- and excluded
12 most of the rest of us. Those groups -- well, all together 5,438
13 attorneys. We have, what, 12, 13,000 in Oregon or at least now
14 we do? And these are from groups that are well known for their
15 rather left-wing view of life. Not a political -- very
16 political, obviously learning political indoctrination. It
17 started with a questionnaire and who got to answer this -- the
18 questionnaire.

19 The seven groups of attorneys who received the
20 questionnaire were attorneys in the following groups: Legal Aid,
21 Oregon Minority Lawyers Association, Oregon Association of
22 Defense Attorneys -- Counsel, Oregon Trial Lawyers Association,
23 Oregon Women Lawyers Association. This --

24 MS. COOK: Ms. Gruber, I would ask you to wrap up
25 quickly, please.

1 MS. GRUBER: And Oregon Defense Attorneys
2 Association.

3 Now, did the words "conservative" or "republican"
4 spring to mind when I read off that list?

5 MS. COOK: Thank you, Ms. Gruber.

6 MS. GRUBER: Of course not.

7 MS. COOK: I'll just remind all of our speakers we
8 all feel very passionately about these issues and I appreciate
9 that, but we do need to stay within our timelines. Thank you.

10 Mr. Wilde at the con mic.

11 MR. WILDE: I'm Marty Wilde, out-of-state delegate.

12 You may be surprised I'm at the con mic since I
13 introduced the last resolution that challenged these
14 requirements, and that was not to denigrate all the important
15 work that people had done on these issues, and I think there
16 should be CLEs that address these issues, but whether or not they
17 should be mandatory, that's a different issue. I think we have
18 adequately described -- discussed this issue in earlier settings.
19 I'm setting up at the con mic because I don't think we should
20 approve this one. I think we should approve the next one. I'm
21 concerned, as a representative body, we're out of step with our
22 constituency, and I think that's an important issue for us to
23 address. There are a lot of very well-meaning people with very
24 strong feelings about this issue that have put a lot of work into
25 it, and I think that tends to slant us in a certain direction.

1 If we're out of step with our constituency, we should certainly
2 know about that, and that would give us the information we need,
3 I think, to ultimately decide the issue next year. Thank you.

4 MS. COOK: Thank you, Mr. Wilde.

5 Mr. Yugler at the other con microphone.

6 MR. YUGLER: Thank you, Madame Chair. Rick Yugler.

7 I speak at the moment as just a member of this body and not a
8 representative of the Board.

9 A lot of the discussion has focused in on the
10 mandatory nature of this CLE requirement. I would just like to
11 bring to the attention of this body, of course, a U.S. Supreme
12 Court case, Grutter v. Bollinger from June 2003, which dealt with
13 the issue of whether, I think it was, University of Michigan
14 could have an affirmative action policy for a diverse student
15 body, and in response to that the court wrote that the law school
16 had a compelling interest in attaining a diverse student body.

17 It wrote that the benefits of diversity are not
18 theoretical but real, because as major businesses have made
19 clear, the skills needed in today's increasingly global
20 marketplace can only be developed by exposure to widely diverse
21 people, cultures, ideas and viewpoints.

22 Third, the court wrote that law schools in
23 particular are the training ground for America's leaders.

24 And No. 4, the court concluded, quote, in order to
25 cultivate a sense of leaders' legitimacy in the eyes of the

1 citizenry, it is necessary that the path to leadership be visibly
2 open to talented and qualified individuals with every race and
3 ethnicity. All members of our heritage in our society must have
4 confidence in the openness and integrity of the educational
5 institutions that provide this training.

6 I would submit the same is true for us as licensed
7 members of this profession; that our clients benefit; that for us
8 to maintain legitimacy is necessary; that all of us obtain the
9 benefits of real exposure to every group, and these CLE
10 requirements make that real, not theoretical. And I urge our
11 body to maintain our requirements. Thank you.

12 MS. COOK: Thank you, Mr. Yugler.

13 I'll recognize the delegate at the pro microphone.

14 MS. REYNOLDS: Dawn Reynolds from Polk County.

15 I feel a little awkward doing this. As a child I
16 felt this pain of discrimination because I'm one-eighth Indian
17 and that upset some people in the town that I lived in. I felt
18 this pain of discrimination as a woman because of my age, because
19 of health problems. I've been an ACLU attorney for a long -- as
20 long as I can remember. But I don't think you can mandate this
21 type of sensitivity.

22 What I think that I would prefer to see is I think
23 that everyone should be exposed to this, particularly new
24 attorneys. What's odd is that you have people who have been
25 practicing for a long, long time, that they have to keep going

1 through this. And I agree with substantive law. I question the
2 value of that. It seems the type of training that we all need,
3 but that could be more easily folded into general CLE credits
4 that we take, we could get updates on employment law, and just
5 all sorts of things, general practice, those types of things.
6 But to make it a mandatory requirement within your reporting
7 period just doesn't seem useful to me and -- and it's a little
8 patronizing, but again, necessary.

9 I'm sure that all young attorneys, people who are
10 going to practice law in Oregon, should be exposed to this. I
11 think that's an excellent idea. But to continue to mandate it to
12 professionals seems patronizing and unuseful. Thank you.

13 MS. COOK: Thank you, Ms. Reynolds.

14 Mr. Porras at the con mic.

15 MR. PORRAS: Thank you. Antonio Porras. I stand
16 up here not as a representative of Region 4, which is where I'm
17 from, but as an individual.

18 I am a Board member of the Oregon Minority Lawyers
19 Association referred to earlier, and I'm here in support of
20 keeping -- keeping the requirement as it exists. I will point
21 out to those of you that the Oregon Minority Lawyers Association
22 is a 501(c)3 and our purpose is to promote the fair and just
23 treatment of all people under law, regardless of race or color,
24 through all appropriate means, including advocacy.

25 We further the professional development and

1 advancement of lawyers and law students who are people of color,
2 to offer social opportunities for lawyers, law graduates, law
3 students who are people of color, and to educate its members, the
4 public, and the legal profession about the legal issues affecting
5 people of color.

6 Now, again, if a person does not want to be
7 self-identified or identified as a minority, there's no
8 requirement that they do so.

9 The latest Bar statistics that I have in my hand
10 indicate that there are approximately 12,462 members of our Bar,
11 and the vast majority are not minority, the self-described
12 minority. In fact, our organization has something like 160
13 members.

14 I've been in the Bar since 1992, and when the task
15 force looked at racial issues in '94 and came out with a report,
16 it was very clear that -- that we need to make strides towards
17 making the state more open and welcome to people of color. And
18 speaking as a -- an attorney of color, I'm asking you to keep
19 this in place. It's not perfect. All of us agree that it causes
20 certain tangents between people. I attended a recent CLE and
21 there were -- there were a lot of different opinions. But we
22 should not send the message that racism is over, that we don't
23 need this, because that's not the case.

24 So I'm asking you to just -- it's not perfect, but
25 keep it in place.

1 MS. COOK: Thank you, Mr. Porras.

2 I recognize Mr. Paulson at the other microphone.
3 Three minutes, please, sir.

4 MR. PAULSON: Thank you. There's an old joke that
5 the person, after being tarred and feathered and ridden out of
6 town on a rail, stated to the mob that if it weren't for the
7 honor of the thing, he would just as soon walk.

8 I'm mildly in favor of this -- this proposal for
9 this reason. I'm a plaintiff's civil rights lawyer and I agree
10 with everything that Mr. Lopez said, and I will only leave it at
11 this, that I would just like to see us be kinder and gentler as a
12 Bar, and therefore, I would like to see less have-to's and more
13 want-to's. Thank you.

14 MS. COOK: Ms. Coburn at the pro mic.

15 MS. COBURN: Hello, I'm Catherine Coburn and I'm an
16 elected representative from Region 4, which is (unintelligible)
17 Washington County --

18 REPORTER: Excuse me. I can't hear.

19 UNIDENTIFIED SPEAKER: You have to speak a little
20 louder.

21 MS. COBURN: I'm Catherine Coburn. I'm an elected
22 representative from Region 4, which is west of Portland,
23 Washington County, out to the coast.

24 I'm speaking in favor of this resolution on behalf
25 of the members in my region. I have spoken to probably about

1 three dozen attorneys and they are -- they rest on the wide
2 spectrum of political views, and the thing that has really struck
3 me about these discussions is that they are one hundred percent
4 unanimously in favor of eliminating these mandatory requirements.
5 And in discussions, these attorneys have given me different
6 reasons for their opposition to this mandatory requirement.

7 But I think my main reason for favoring this
8 resolution is that this mandatory requirement is divisive to our
9 organization. It's just very unfortunate to me that this
10 mandatory requirement has become a wedge driven between the
11 House -- the Board of Governors and the general membership of the
12 Bar, and that's unhealthy for our organization. The outpouring
13 of anger and resentment and the alienation that has resulted from
14 this mandatory requirement is just astounding to me.

15 I've been a member of the Bar for 18 years. I've
16 been active in Bar activities, my social circle is
17 (unintelligible) attorneys, and I haven't heard this much buzz
18 about any subject in the legal community since -- remember some
19 years ago we had to discuss the ethical rule about having sex
20 with clients? I mean there was a lot of buzz about that, but
21 that was a lot more fun than this.

22 (Laughter.)

23 This is just purely negative.

24 And the Bar members that I have talked to have
25 many, many different reasons for opposing this mandatory

1 requirement, but the fact is they all oppose it, and they all
2 deeply, deeply resent the Board of Governors for imposing this on
3 us.

4 Now, maybe if it had been handled in a different
5 way from the very beginning, the reception would have been more
6 positive. But the way it's gone, I think we should just count it
7 up as a failed experiment and let it go for the time being.
8 Maybe we can revisit it some other time.

9 But I urge you to adopt this resolution as a path
10 toward reconciliation.

11 MS. COOK: Thank you, Ms. Coburn. I appreciate it.

12 I'll recognize the delegate at the con microphone.

13 MS. FORMAN: Dana Forman from Region 5. I'm an
14 elected member.

15 I have a couple of things to say, the first of
16 which is this talk about the CLEs don't have enough law in them
17 seems very strange to me because knowing the law is only part of
18 being a good lawyer. Being able to effectively advocate on
19 behalf of your client and communicate with your client is at
20 least as important if not more sometimes understanding where your
21 client is coming from. So the fact that these CLEs don't always
22 talk about law to me is just a nonissue.

23 I've been a public defender or worked at indigent
24 defense for more than seven years, so I see all kinds of people
25 at all kinds of situations. I don't think there's a lawyer in

1 | this room who could say with a straight face that they understand
2 | where all of their clients or colleagues are coming from, what
3 | experiences they have had. If you think you know everything
4 | there is to know on issues of bias, please, I would love to meet
5 | you, because I don't think anybody does.

6 | The complaints I hear about this stuff, about these
7 | CLEs, is the content. People feel lectured or people feel like
8 | they are being told that they automatically have a problem or
9 | that they are doing something wrong, instead of educating, to
10 | teach them more about things they could be looking for.

11 | I -- I think we absolutely need to have a mandatory
12 | bias training. I think it's very important. And if you work at
13 | the courthouse every single day the way I am, you see little
14 | things every single day that should bother you.

15 | However, I would like to see -- I would like to see
16 | the Board of Governors look into what of these bias CLEs people
17 | enjoy, what they actually feel like they have learned from, and I
18 | would like to see more regulation of the content of them. But I
19 | think that tossing out the entire idea is a mistake.

20 | And again, it -- it can only help you understand
21 | colleagues and clients and communicate and -- talk about access
22 | to justice, and there are people who don't even feel comfortable
23 | coming to a lawyer's office. They don't trust lawyers. They
24 | don't -- I mean there's all sorts of different ways we can learn
25 | about how to do outreach, about how do you communicate with

1 people, and they are very important things.

2 MS. COOK: Thank you.

3 Mr. Van Atta at the other microphone.

4 MR. VAN ATTA: Thank you, Madame Chair. I'll be
5 real quick. Bill Van Atta from Region 1. I'm here in two
6 capacities, as I hope all of us are.

7 As an individual I've had excellent experience at
8 some of these and a very bad experience in some others. Some I
9 really felt were a big waste of time. And if some of you will be
10 really honest with us, you'll giggle a little bit, when you go
11 out of the room and you go to your notes for the last session and
12 you've page after page and might have two tapes for a day's worth
13 of teaching, and you get to the bias section and I mumble, like,
14 three things in the tape over three hours. I've got a nine-hour
15 drive from Eastern Oregon, and the expense -- the expense out of
16 our office when we leave Eastern Oregon, it's three days; it's
17 the day going, it's the day that -- we try and take Saturday and
18 Sunday for the family, it's the day coming back, or if we travel
19 Sunday we cut expenses. So it's three days, to take three days
20 of your hours, take that time and -- and I just -- I want you to
21 know, is an issue for lawyers in Eastern Oregon, they have to
22 travel.

23 Secondly, as a represent -- but I've had
24 excellent -- learned interpreting, the Hispanic issue, I've
25 gotten in touch with people's feelings, other lifestyles and

1 groups, and I really have appreciated opening my heart and mind
2 to those.

3 Let me close with this thought. The -- the body
4 that I represent is not surprisingly almost uniformly against
5 this as a mandatory requirement, making it optional. Why don't
6 we have every speaker just spend five or 10 minutes on the
7 ethnicity of the subject, on the bias you might encounter, some
8 -- how to attract clients, not what to do not to attract them,
9 you know, how not to abdicate in certain situations.

10 And then I want to toss a rose to each of the
11 speakers, the Board of our Governors, and the Bar for making us
12 realize who we are as lawyers. One lawyer wrote to me and said,
13 you need to tell us how to practice law, not how we think.

14 You know what, sometimes my wife has to slap me and
15 say, "Bill, you're thinking wrong. Open up. Listen a little.
16 Will you just shut up and listen." Lawyers, we love to talk.
17 But you've got to sometimes shut -- these people have made me
18 listen to different viewpoints.

19 But I leave you with the thoughts of my hero. His
20 portrait is in my office. Come watch it sometimes. He said,
21 fondly do we hope, fervently do we pray that better times of
22 peace will come -- I'll insert these words, instead of Civil
23 War -- to our Bar association when we will or as we are, as we
24 certainly shall be touched by the better angels of our nature.
25 Thank you.

1 MS. COOK: Thank you, Mr. Van Atta.

2 I'll recognize the delegate at this pro microphone.

3 MR. HERBAGE: Thank you. I'm Gerry Herbage.

4 I'll be brief. I don't want to repeat a lot of
5 things, but I do want to report that the Curry Bar Association --
6 and for those of you who don't know about Curry County or where
7 it is, it's somewhere -- sort of the end of the universe but it's
8 Brookings, Gold Beach and Port Orford. We're a small county
9 and -- in southwest portion there. But at any rate we had a
10 meeting, and Gary Georgeff was the featured speaker and he did
11 make a presentation, and I would say that more than half the
12 members of the Curry County Bar were present at our meeting. So
13 it was very well attended, and it was unanimous among the members
14 to support both items 19 and 20 that are on the agenda.

15 And again, I don't want to repeat a lot of what was
16 said. I think that the people in our Bar have been saying that
17 they aren't sympathetic to the needs of being aware of
18 discrimination and other problems, and they are being -- acting
19 correct and appropriately. They feel this is not appropriate to
20 have a mandatory CLE requirement the way it's been done. Thank
21 you.

22 MS. COOK: Thank you.

23 I'll recognize Mr. Siegel at the other microphone.

24 MR. SIEGEL: First I would like to say thank you
25 for having another microphone for those of us who are a little

1 shy about going to the pro or con.

2 I just like to make a comment that I think that the
3 program has a very unfortunate name, elimination of bias, because
4 first off, it presents the program as being one whose goal is to
5 change viewpoints. It kind of assumes a viewpoint of bias, and
6 then its goal is to change that, to eliminate that bias.

7 To me, there's almost a subtle accusation in that,
8 which people are almost bound to rebel against. Is -- is bias a
9 difficult-to-understand problem, a difficult-to-understand
10 phenomenon with many subtleties? One which every well meaning
11 member of society should address himself to? Well, yes, it is.
12 It's a very tough thing to understand and to truly confront.

13 But I think a much better name for the program and
14 a much better goal for the program wouldn't be to change
15 viewpoint, but be to encourage the examination of a phenomenon.
16 And I -- I think it would go over much better if -- if the name
17 was something like study of bias or confrontation of bias rather
18 than elimination of bias.

19 MS. COOK: Thank you, Mr. Siegel.

20 Recognize the delegate at the con microphone.
21 Thank you for your patience.

22 MR. McLAUGHLIN: No problem. Bruce McLaughlin,
23 Board position, Washington County area generally.

24 I thought I was a pretty enlightened person. I
25 spent my life fighting discrimination, antiapartheid

1 organizations, trying to get military recruiting thrown off of
2 campuses. But I got a lot out of the program that I went to. It
3 really opened my mind and look at ways that I could improve
4 myself and just see things in a new light.

5 Anybody that suggests that bias doesn't exist, that
6 it -- it's really not a problem, they don't want to find one.
7 And I think we heard a little bit -- not from everybody who has
8 spoken in favor of this, but there's certainly an underpinning of
9 a parse and political agenda behind the elimination of this CLE
10 requirement as much or more they want to put it or solve it in
11 the first place. Thank you.

12 MS. COOK: I'll recognize this delegate at the pro
13 microphone.

14 MR. FOX: My name is Mike Fox. I'm not a member of
15 the Board delegates. I'm a lawyer. I've practiced in Eugene
16 since 1974.

17 I rather doubt that the members of this body have
18 spent much time in post-continent, post-totalitarian societies
19 (as heard). In the last couple of years I've had the occasion to
20 live in one and to work and teach in one, and this program that I
21 am speaking against today smacks very much of the kind of
22 political reindoctrination that they have worked so hard and are
23 trying so much now to relieve themselves from the shackles of.
24 It is contrary to our notion of freedom that we should be
25 lectured to and told how to think, and that's exactly what's

1 | happened here, is that we are being sent essentially to a
2 | political reeducation camp that my colleagues in Eastern Europe
3 | are so glad that they don't have to go to.

4 | Mr. Georgeff told a personal story about where he
5 | grew up. I get the license to tell one now, too.

6 | MS. COOK: Next minute and 45 seconds.

7 | MR. FOX: It will be short (unintelligible).

8 | (Laughter.)

9 | I'm Roman Catholic. My wife was raised a heathen.
10 | Her sister was raised a heathen, married a Jewish man. She
11 | converted to Judaism, and I attended the Bar Mitzvah of my two
12 | nephews -- one of my two nephews in August. My wife and sister-
13 | in-law's adopted brother is Iranian. He's nominally a Shiite
14 | Muslim. He married a Jewish girl. The only thing I can do to
15 | make my Christmas dinners more inclusive would be to have my
16 | O'Shaughnessy twin cousins from New Jersey show up.

17 | I don't need to be told by the Oregon State Bar how
18 | to behave. Thank you very much.

19 | MS. COOK: Thank you, sir.

20 | Ms. Meadows at the con mic. I recognize
21 | Ms. Meadows at the con mic.

22 | And if somebody would like to call the question,
23 | please rise to the other mic. Thank you.

24 | Ms. Meadows.

25 | MS. MEADOWS: I would like to point out I think

1 Mr. Georgeff has been discussing members that he was -- regarding
2 the percentage of members who had supported the proposal, that
3 even in his opinion polls he's provided represents only 21
4 percent of the total members who are in support of getting rid of
5 this requirement.

6 I represent the New Lawyers Division, which is a
7 much more diverse section, division of the Bar. It's an
8 increasing number. And I could say to this body that the numbers
9 you need to be worried about are the numbers of increasing
10 diversity in our client base and increasing diversity among our
11 members. And the elimination of bias, whether we call it
12 something else, is increasing awareness and making us better
13 lawyers. It's good for business. If you understand potential
14 clients, you're going to be able to serve them better and they
15 are going to come to you for representation. Makes it easier for
16 you to understand and get along with your opposing counsel.

17 My constituency is those members who are 36 years
18 of age and under and in their first six years of practice. That
19 diversity is continuing to increase. Oregon State law schools
20 are increasingly diverse. This Bar is going to become
21 increasingly diverse.

22 I'm not aware of the CLE programs that have been
23 discussed by those pro speakers, but I would put to you the
24 Oregon New Lawyers Division executive committee travels through
25 all of the regions every year, and every year we offer an

1 elimination of bias CLE credited program. So I understand
2 accessibility is an issue. I would encourage all of you to
3 contact me, and we will come and put on that presentation to
4 address the accessibility issues, and we're open to feedback and
5 discussion regarding content.

6 The elimination of bias programs which we present
7 and which I've attended address specific legal issues and they
8 address awareness and information. They don't preach; I'm not
9 aware of those which do. And I suggest that you come, contact
10 us, we will bring them directly to you. You don't have to drive
11 to Portland. Thank you.

12 MS. COOK: Thank you.

13 I'll recognize the delegate at the other
14 microphone.

15 MR. DUVAL: Hugh Duvall out of Eugene. I would
16 call the question.

17 MS. COOK: That needs a second.

18 MULTIPLE SPEAKERS: Second.

19 MS. COOK: That motion is not debatable, but does
20 require two-thirds, so hopefully the speakers in line have their
21 placards; if not, you can -- I promise you can get right back in
22 line if this does not pass.

23 If two-thirds vote in favor of this, the debate is
24 terminated. And We'll move immediately to the vote.

25 All those in favor of terminating debate, please

1 raise your placard.

2 (Vote taken.)

3 MS. COOK: Any opposed?

4 (Vote taken.)

5 MS. COOK: Debate is terminated.

6 Mr. Georgeff, you're now recognized for a one-
7 minute wrap-up, please, sir.

8 MR. GEORGEFF: Thank you, Madame President.

9 Point one, my good friend, Danny Lang, president of
10 the Douglas County Bar Association, who has just gotten cut off,
11 wanted to point out that they had a full meeting of the Douglas
12 County Bar and had a hundred percent vote in favor of eliminating
13 these MCLE requirements.

14 Point two, the evidence is -- the only evidence
15 available apparently is my survey, and it doesn't represent
16 everybody, but it was a broad sample, and 84 percent were against
17 continuing this program.

18 I would remind everybody this would not eliminate
19 courses on this subject, just eliminate the mandatory
20 requirement.

21 Ask for your vote on this one, and if not on this
22 one, then the next one. Thank you.

23 MR. McLAUGHLIN: Point of order.

24 MS. COOK: Yes, sir.

25 MR. McLAUGHLIN: I'm curious as to what we're

1 voting on because 19 was called, but it was also moved to amend
2 the language of 19 as it's written.

3 Are we voting on the amendment of the language and
4 then vote on adoption, or are we just accepting the amendment of
5 the language?

6 MS. COOK: Thank you for that question. We
7 accepted the amendment of the language because it was -- there
8 was no objection at the time.

9 So the motion upon which we are voting now is as it
10 appears in your materials as No. 19, with the exception or the
11 change, Mr. Georgeff, of making it a recommendation to the Board
12 of Governors as opposed to directive. Am I correct?

13 MR. GEORGEFF: That is absolutely correct.

14 MS. COOK: Okay. Thank you.

15 All those in favor of agenda item No. 19 as
16 amended, please raise your placards.

17 (Vote taken.)

18 MS. COOK: All those opposed.

19 (Vote taken.)

20 MS. COOK: Resolution does not pass.

21 I invite Mr. Georgeff to move for the adoption of
22 his resolution No. 20. I understand he's going to amend that one
23 as well.

24 MR. GEORGEFF: Yes, I move for the adoption of --
25 it's actually resolution No. 9, agenda item 20, to amend the way

1 we did the other one, that this would simply be a recommendation
2 to the Board of Governors and not an attempt to bind the Board.
3 I don't think we need to discuss that further.

4 MS. COOK: Thank you. Absent any objection, we'll
5 accept the amendment.

6 Is there a second?

7 MULTIPLE SPEAKERS: Second.

8 MS. COOK: The amended motion being made and
9 seconded, I recognize Mr. Georgeff for five minutes. Thank you.

10 MR. GEORGEFF: Thank you. We're on to the next one
11 and the issues are somewhat different, as our friend who came
12 here all the way from Texas to participate pointed out.

13 The membership doesn't like the program, there's
14 really no doubt about that at all. This is supposed to be a
15 representative body, and the principle of representative
16 democracy should be that those who govern should not impose on
17 the governed a program which they don't want. That was a quid
18 pro quo in the runaway town hall form of government.

19 I want to point out that -- on both the resolutions
20 I presented, that they were submitted with the help and the
21 support of Velda Rogers from Region 6, Mr. Cauble, Mr. Seulean
22 from my region. And also since then, I want to point out we have
23 a testimonial from Mr. William Schroeder, who many of you may
24 remember, a 50-year Bar member, former member of the Board of
25 Governors, one of the founding members of the Professional

1 Liability Fund Board, and also a recipient of the Award of Merit,
2 and he supported both the resolutions.

3 At this point everybody has pretty much made up
4 their mind except for maybe a few people who might be sitting on
5 the fence, and I want to talk to those people now.

6 I really want to address my fellow liberals, and I
7 know there are many here, people of goodwill who like the message
8 of eliminating bias but perhaps can see the wisdom that this
9 should be put to a vote of the membership. I want you to think
10 about something. When this program was imposed, it seemed like a
11 good idea on the -- to the people who wanted to do it. And the
12 political tide in this country may change, and it is changing. I
13 look into the future, I see the blues face continue to turn red
14 and perhaps the next time around what it's going to be is
15 somebody wanting you to take a course on biblical values, family
16 values, creationism. You may laugh at that, you might even
17 sneer, saying the Constitution will protect you. And does the
18 Constitution do that?

19 Didn't we just have a president who adopted a
20 national day of prayer, which seems to this agnostic to violate
21 the Establishment Clause, without a murmur.

22 Don't we have an attorney general who believes that
23 torture is okay?

24 We have right to speedy trial and have a U.S.
25 citizen in the Navy brig for three years.

1 What about search and seizure after the Patriot
2 Act?

3 And did you really believe Justice John Roberts
4 when he said, "I don't remember joining the Federalist Society,
5 and I have an open mind about Roe v. Wade," or words to that
6 effect.

7 My point is your Constitution is only as good as
8 the honest will of the people who support it, and when the shoe
9 is on the other foot and somebody else wants to impose a
10 political program on you that you object to, are you going to be
11 able to say, "When it was my turn, my turn to help control the
12 decision, I voted in a principled way, and the principled way was
13 to let the membership decide." That's what my question is to
14 those people. Thank you.

15 MS. COOK: Thank you, Mr. Georgeff. Any
16 discussion?

17 Mr. Lopez at the con microphone.

18 MR. LOPEZ: Very briefly. I want to congratulate
19 this delegation for its leadership on the last amendment that
20 went down. I ask you to consider that you are leaders, and you
21 have been put here for your leadership skill and for your
22 leadership ability. We don't always do or have to do everything
23 that we want to do. Sometimes we have to do things that don't
24 seem palatable, but they are right.

25 I am firmly convinced that this elimination of bias

1 requirement is right. I ask you to continue your leadership and
2 vote against it.

3 MS. COOK: Thank you, Mr. Lopez.

4 Mr. Haberlach at the pro microphone.

5 MR. HABERLACH: I'm Bill Haberlach from Region 3,
6 elected delegate.

7 Contrary to what Mr. Lopez indicates, I don't think
8 we're voting on this particular resolution as to whether or not
9 we're going to eliminate the bias. We're just asking to put it
10 to a vote of the membership.

11 This is a situation where a representative form of
12 government, do you represent the will of your constituents or do
13 you represent your own personal beliefs? And after years of
14 thinking about this and the representative form of government,
15 you have an obligation to consider both. And if your beliefs are
16 not in tune with those of your constituents, you simply have to
17 make a decision.

18 I have heard enough from the attorneys in Jackson
19 County to realize that this is such a divisive matter, that it is
20 destroying the entire credibility, not just of the Board of
21 Governors, but that of the entire Bar.

22 To the attorneys in Southern Oregon, they feel that
23 this is an unfriendly, demanding, pushy organization that is
24 trying to interfere with their professional practice. They
25 resent this terribly. And this is something we need to consider

1 as to -- are we going to take our Bar, which has always had the
2 support of its members, and do something that may not have the
3 support of its members?

4 This reminds me of Henry David Thoreau when Thoreau
5 didn't want to pay taxes for a war that he didn't like. Thoreau
6 eventually paid his taxes, but on the Civil Disobedience he
7 writes that the authority of government must have the sanction
8 and consent of the government.

9 If we do not have the agreement of the governed,
10 then we're going to have anarchy, and anarchy is something we do
11 not need in this organization. So I would ask that you put this
12 to a vote of the entire membership.

13 MS. COOK: Thank you, Mr. Haberlach.

14 Mr. Lang.

15 MR. LANG: Thank you. I, too, am a liberal. I
16 worked for civil rights in the mid-sixties actively before
17 several of you were probably born. My heroes are Ghandi and
18 Martin Luther King. On the other hand, I support diversity. But
19 on the other hand, there's another minority; there's a minority
20 that wants to have what the Oregon Constitution recognizes in
21 Article III, section 1, Bill of Rights. That's freedom of
22 conscience.

23 And if we start imposing requirements that you must
24 study this and study that, then I think we're offending another
25 very important minority, people like Thomas Payne, give me

1 liberty or give me death; people who feel very strong of
2 conscience. I don't think anyone here should make the mistake
3 and think that if we put this to a vote of the membership or the
4 people that have spoken in favor of this are racist or bigoted or
5 biased. I think it's actually much more the other way. I'm
6 proud to be a lawyer. I'm proud of being a colleague of all of
7 you. But on the other hand, we need to recognize those people
8 who wish to make their own mind, to think for themselves, who
9 don't need to be told how to believe in God, who the God is, or
10 whether there's a God. We get into those areas, we see what
11 happens among us here; it gets very divisive. Perhaps a vote of
12 the membership will be enlightening and will promote the
13 discussion further among our members.

14 I only will correct one thing that Mr. Georgeff
15 said. We did conduct a poll. It was a very open poll, it was
16 not suggested. Douglas County Bar was 80 percent for the
17 elimination of bias, and we've had good discussion on it. So I
18 think it's time we let the members decide to protect the very
19 minority as a freedom of conscience, who may believe a little
20 different than anybody else marching in the parade.

21 MS. COOK: Thank you, Mr. Lang.

22 Ms. Hoffman.

23 MS. HOFFMAN: I'm Janice Hoffman and I'm from
24 Region 5, and I realized I have almost 29 years of experience
25 with this Bar.

1 And just lightning quick, I remember in my first
2 job interview in rural Georgia, I was asked how I feel about the
3 last Bar meeting when naked ladies could jump out of the cake.

4 I came here to Portland, Oregon, and interviewed at
5 a large law firm here and was told point blank, they had room for
6 me in their trust and estates department, but no woman lawyer was
7 going to be a litigator in their firm.

8 So memories are short and attitudes shape over
9 time, and we've become a subtle group where we no longer are as
10 overt as we were. But I know that it was worth an hour of time
11 to the National Association of Criminal Defense Lawyers last
12 month to have me address the issue of the cultural biases or the
13 cultural perception of mens rea requirements in the law. And we
14 went through how our varied laws, in their phraseology, such as
15 the word "reasonable," such as the word "willful," turn on
16 people's cultural experience and perception. And what it turns
17 out is that all of us in our naivete assume that these have
18 common meaning, but when you dissect them as legal matters, they
19 turn on cultural questions, racial questions, gender questions,
20 and our law is filled with them.

21 What I'm hearing, that the people are tired of
22 being patronized to. That's fair. But that goes to content and
23 that goes to people taking a more active role in the
24 presentations in their community.

25 I'm an elected member of Region 5. I was put here

1 | because people trust my judgment. I don't need to refer things
2 | back to the community of all lawyers for this vote. Why am I
3 | here?

4 | So I would urge everyone to vote against this.
5 | This is part of our responsibility. If our community doesn't
6 | like how we vote, they don't vote for us next time, they get a
7 | whole new group of delegates. That's the system we have. So I
8 | urge everyone to vote against this and just get on with the next
9 | measure.

10 | MS. COOK: Thank you, Ms. Hoffman.

11 | Mr. Olsen.

12 | MR. OLSEN: Arden Olsen, Region 2, elected
13 | representative.

14 | I'm at the other microphone because I want to make
15 | a comment. Assuming that this were to pass, I have a concern
16 | about the mannerism of elections to the membership.

17 | We've had experience in initiatives and referenda
18 | in Oregon where you can see what happens is that people wind up
19 | making decisions, and you're not sure once the thing was over
20 | whether the kinds of views that you wish had been embedded in the
21 | legislature, the kind of debate that we're having here, has
22 | really happened in a way that a matter gets attention.

23 | And so if this were to pass and if the Board of
24 | Governors were to decide to do it, I would ask that consideration
25 | be given to some mechanism whereby something analogous to the

1 ballot statements that go out with initiatives, since the people
2 can have a chance to talk about whether it's a good idea or a bad
3 idea, given where we are today, would be helpful.

4 I personally am probably of the view that this body
5 will have a better debate about these kinds of issues than you'll
6 have with the general membership at large. I don't accept that
7 this is a Republican issue or Democratic issue. I reject the
8 kind of polarization that happens around some of these issues. I
9 just hope that we make this decision in a way that the right
10 kinds of considerations get managed. Thanks.

11 MS. COOK: Thank you.

12 Mr. Browning.

13 MR. BROWNING: Thank you very much.

14 Occasionally we do the right things, but we adopt
15 them in the wrong way for the right reasons but with the wrong
16 result.

17 I'm standing at the other microphone because as my
18 good friend, Mr. Georgeff, has indicated, I really haven't
19 decided which way to go. The concern I have is we are here as
20 representatives. Even though I opposed it, we went to the House
21 of Delegates model on the basis that we would have a better
22 discussion, we would have a rounded-off discussion; we wouldn't
23 have a situation as was characterized earlier by Mr. Yugler that
24 an open vote but with only a 10 percent return was somehow or
25 another insignificant, even though 60 percent of those who voted

1 | voted in favor of a particular thing.

2 | What are we going to do here if we have a vote and
3 | only 10 percent of the people vote, and it's two percentage more
4 | from the Portland area than from down in the valley, and then
5 | we're going to pretend that somehow or another that represents
6 | the will of the Bar. I think that would be just as insignificant
7 | and instatistical.

8 | We need to make a decision today. I think it's
9 | going to go with the upstate folks versus the down state folks.
10 | I think that's very, very sad, because I don't think it's the
11 | kind of issue that does that. I think it's the kind of issue
12 | that should have been presented when the president goes around to
13 | each of the Bar societies as she goes around, and it's the kind
14 | of issue that should have been presented in the various CLEs as
15 | we went to the various CLEs. It's the kind of issue that should
16 | be taken into account, but that we shouldn't be taking the time,
17 | the very limited time as long as we only have 15 hours per year
18 | and taken from that 15 hours and made mandatory.

19 | So I'm probably going to vote against sending it to
20 | the membership as a whole, but I'm also going to try to find some
21 | way to continue to work to not make it be a mandatory part of the
22 | MCLE but part of what's presented to each and every member, and
23 | that we continue as part of our aspiration to provide the best
24 | possible legal services to every citizen of our state. Thank
25 | you.

1 MS. COOK: Thank you, Mr. Browning.

2 Recognize the delegate at the pro mic. Thank you
3 for your patience.

4 MR. SEULEAN: I'm Dave Seulean, a delegate from
5 Region 3.

6 And I attended the diversity program yesterday and
7 it was a great program. I go to all of them. I get a lot out of
8 them. I can tell you anecdotal stories of bias that's been
9 exercised against me where I was the victim, and I can in honesty
10 tell you where I was the perpetrator, but I don't think that's
11 really the point with this body.

12 The members that I talked to in Region 3, the
13 concern is -- is we've gone to this. We are the attorneys.
14 We've all been educated in law school about this. We talk about
15 it in our circles. Whether you're Republican or Democrat or
16 liberal or conservative, that doesn't matter. We talk about
17 this, and we come from our heart when we do this. The concern
18 that these folks have is -- is the cynical implication that we
19 just don't get it, we're attorneys and we've got to be reeducated
20 every three years because we'll slip back into our evil ways. I
21 know of no other professional group that views its own members so
22 cynically that we need to continually be reeducated on this, and
23 that's the concern of the membership down in Region 3. It's that
24 we do admit what we do, we do want to do it better, and it's the
25 cynicism that counts, it's the way it's set up. So that's why

1 I'm going to vote for sending it to the membership.

2 I know we can say it's a republican thing, we've
3 been sent here. But in the alternative, if we don't have a vote
4 on that now, I do want the membership to vote. If it's that
5 sensitive and it leaves the group this emotional on both sides
6 about it, let's let the membership look at it. Do you think it's
7 going be stopped here? No. It will be talked about in all the
8 local Bar meetings and the topic won't go away. That's why I
9 think the Bar still needs these programs, need them strongly, and
10 we need a lot of them, but we don't need the mandatory aspect of
11 them. Thank you.

12 MS. COOK: Thanks. I'll recognize the gentleman at
13 the con microphone.

14 MR. McLAUGHLIN: Mr. McLaughlin again. We've just
15 been through a series of resolutions. This is the first one that
16 all of the sudden there's some anti-democrat policy we're engaged
17 in? We didn't send -- didn't send any of the others back to the
18 membership to vote on? I'm just damn proud of my vote and if my
19 members don't like it, either they weren't communicating with me,
20 or they voted for the wrong person, or they will vote me out next
21 time. This is about leadership. Let's stand up and be leaders.
22 Thank you.

23 MS. COOK: Thank you.

24 Ms. Gruber.

25 MS. GRUBER: Well, since we're talking about

1 leadership and why people sent us here, when I was elected two
2 years ago I did what I was told was a rather unique thing. I
3 sent out a campaign letter to all 2000 attorneys in my region,
4 and not only did I tie for first place with a fairly well-known
5 individual and I being a rather unknown; I tied for first place,
6 but more significantly, we got twice the voter turnout that year
7 than in previous years, not only in our region but throughout
8 Oregon. I -- I got the figures from the Bar office back to 1999.
9 I ran in 2003. Because people are interested in this. And I
10 made it very clear to in my campaign letter that I did not think
11 that this diversity CLE belonged in a legal education class.
12 People sent me here to do something about it.

13 And it's hard for me to grasp this notion that --
14 that our -- the 13,000 members of the Bar are too lowly to be
15 allowed to vote on such a significant issue? Significant issue.

16 The mandatory legal education program was
17 established to keep us all abreast of changes in the law, to
18 protect the public from some old coot who -- or cootesse, what's
19 the woman's name -- went through law school way back when, and
20 the law had moved on and he or she was still sitting there with
21 those old skills. That was the reason for it.

22 And now it is political indoctrination. There's no
23 other way to say it. Even the presenters of almost every program
24 I've been to -- I've been to seven, with various sponsors. I'll
25 give you a list if you want, be happy to give you a list. Almost

1 every one I went to, the presenter made it very clear they
2 were -- they made derogatory comments about conservatives. They
3 made complimentary comments about liberals. They, too, saw their
4 presentation as a political presentation. Why else the comments?
5 Snide little remarks here and there on whatever subject of the
6 day was going on in -- you know, in our nation, in our capitol.
7 So it isn't conservatives or common sense attorneys who see this
8 as political propaganda. The actual presenters themselves know
9 they are peddling left wing political propaganda.

10 MS. COOK: Thank you, Ms. Gruber. Appreciate it.

11 I'll recognize the delegate at the con mic. Is
12 somebody at the other mic? I can't tell.

13 I'm sorry, love to recognize the delegate at the
14 other mic, please. Mr. Orr.

15 MR. ORR: Good afternoon everyone. My name is
16 Melvin Oden-Orr and I'm from Portland, Multnomah County, and I'm
17 at the other mic because I want to talk about something that this
18 is apparently a part of, that I want to make sure everybody
19 understood sort of the big picture.

20 The diversity requirement is a part of a plan to
21 make the Bar a better Bar. Another part of that is the
22 affirmative action program that is scheduled to sunset next year.
23 I'm at the other microphone because that is the issue that I want
24 everyone to focus on, that this issue, each and every resolution
25 geared towards the elimination of bias, directed towards the

1 affirmative action program, all those things are all chipping
2 away at undoing what is an effort to make the Bar a better Bar,
3 to make us better lawyers, to make us prepared to practice in a
4 time in this nation where eventually will be a majority. It's
5 going to be a lot of people with a lot of perspectives from a lot
6 of background, and it's going to be important for us to be able
7 to deal in that environment.

8 I rise to say we need to stop the chipping away at
9 the effort to be a better Bar. That's all.

10 MS. COOK: Thank you. I'll recognize the delegate
11 at the con microphone. Thank you for waiting.

12 MS. REEVES: Madame President, my name is Liani
13 Reeves and I'm a delegate from the Portland area. I'm standing
14 before you today not necessarily with my delegate hat on, but
15 certainly as an attorney of color practicing in this state of
16 Oregon.

17 I wasn't going to say anything, but I wanted to get
18 up and make a few remarks based on things that have been said
19 already.

20 First of all, I can appreciate Ms. Hoffman's
21 comments about being told she -- you know, no woman was going to
22 be a litigator. I haven't been in the Bar 29 years. I've been
23 in the Bar a lot fewer years than that, but I was told similar
24 things because I was an Asian woman. So those issues have not
25 exactly gone away.

1 The other thing I wanted to say is that it's been
2 brought up that this is a divisive, isolating issue and I agree.
3 This is undoubtedly a divisive, isolating issue. When people sit
4 around and talk about how isolated they feel at these CLEs,
5 that's how I feel most of the time.

6 What we're asking for with this CLE requirement --
7 I don't think elimination of bias is a particularly good name for
8 it because I don't think bias will ever be eliminated. What
9 we're asking is for three hours out of three years of your life,
10 you sit down and you think about some of these issues. I wish
11 that for three hours of three years I didn't have to think about
12 these issues, but I live with them every day.

13 As far as somebody -- I think somebody in this
14 group mentioned the survey that went out, when you're looking at
15 whether or not there was a bias issue in our Bar. Yes, a survey
16 went out to minority attorneys, it went out to organizations that
17 represent minority and low-income clients. I certainly hope that
18 when we're looking at whether or not our justice system is fair,
19 that we are not surveying a bunch of white men. I don't think we
20 all should be surveying, you know, people that wouldn't be able
21 to adequately speak to those issues and say whether or not the
22 justice system of ours is just.

23 Again, I'm an elected leader like all of you, and I
24 think I can represent on behalf of my district, and if I can't,
25 then they can vote me out. But I do want to remind people that

1 our Bar is not representative of our population. Our Bar has
2 about four percent of attorneys of color and our population is a
3 small percent, so when we're looking at whether or not that
4 representative body can take a look at whether or not we are fair
5 to all of the people in this state, you would take those numbers
6 into consideration as well.

7 MS. COOK: Thank you.

8 I'll recognize this delegate at the pro mic.

9 MS. HOHENGARTEN: Hi. I'm Alison Hohengarten and
10 I'm the president of the Deschutes County Bar Association, and
11 I'm here at the pro microphone not to speak on whether or not I
12 believe we should eliminate the elimination of bias credit or
13 not. I do firmly believe that this is a hotly contested enough
14 issue that it should go back to the members of the Bar. I
15 respect the fact that we're elected officials here to make a vote
16 on behalf of those members, but at least it's obvious to me this
17 is a heated enough item that it should go back.

18 When I met with the members of my local bar
19 association or at least the ones interested enough to show up,
20 this was the one that we had the most disagreement about, and for
21 that reason I'm here.

22 I would vote that we should put it back to the
23 members, I think it's just important enough that we do that.

24 MS. COOK: Thank you.

25 I'll recognize the delegate at the con microphone.

1 MS. UBERLHAU: Thank you. My name is Judy Uberlhau
2 and I'm from District 3. I have a couple quick comments. First
3 of all, the elimination of bias, somebody needs to rethink what
4 we call this course. Somebody also needs to rethink what content
5 is accepted. But given that, it's very important to think this
6 is not about political correctness, it is not about liberal
7 versus conservative. It's about our common humanity. And it's
8 just as important for attorneys as for anybody else to understand
9 each other, to honor each other, to respect each other, and
10 that's part of a good practicing lawyer.

11 We are a representative body. You know what
12 happens in representative bodies? If they don't do what their
13 constituents want, they throw them out. What are we doing?
14 We're not -- we've refused to live with what this body said, and
15 so now we're going to send it out to the body. And what is --
16 what if, as someone pointed out, only 20 percent of the Bar
17 responds, and out of that 20 percent, let's say 75 votes to get
18 rid of this, is that representative? It certainly is not. And
19 so that's why I am voting against this.

20 MS. COOK: Thank you.

21 I'll recognize the delegate at the other
22 microphone, please.

23 MS. LOWE: Valerie Lowe, delegate from Eugene. I
24 would like to call the question.

25 MS. COOK: Thank you. The question has been

1 called. Is there a second?

2 UNIDENTIFIED SPEAKER: Point of order.

3 MS. COOK: Yes.

4 UNIDENTIFIED SPEAKER: That would take a motion for
5 the previous question for that to be mandatory.

6 MS. COOK: We have a motion to call the question on
7 the underlying motion we've been debating.

8 UNIDENTIFIED SPEAKER: I know. But that's not the
9 previous question.

10 MS. COOK: I took that as a motion for the previous
11 question. Is that how you intended it, to cut off debate?

12 MS. LOWE: Yes.

13 MS. COOK: That is not debatable. It requires a
14 two-thirds vote. If you vote in favor of that, the debate will
15 be cut off and we'll move to a vote on the amended resolution.

16 All those in favor of terminating debate, please
17 raise your placards.

18 (Vote taken.)

19 MS. COOK: All those opposed.

20 (Vote taken.)

21 MS. COOK: Mr. Georgeff, I'll recognize you for one
22 minute to close, please, sir.

23 MR. GEORGEFF: Thank you, Madame President.

24 The rules provide for a vote of the membership. If
25 that's ever going to mean anything, this is the time. The

1 evidence is from Region 3, 30 percent response rate, 84 percent
2 don't want the program, 100 percent of Curry County Bar doesn't,
3 80 percent of Douglas County. I thank Mr. Lang for his
4 correction.

5 As Ms. Coburn said, as Mr. Haberlach said, this has
6 been a divisive issue. And one of you suggested or several of
7 you suggested, well, the members can vote me out if they don't
8 like my leadership, and none of those people said that they did
9 anything, not a single thing to ask their region membership
10 whether they wanted this program, which has been so divisive, to
11 continue.

12 The vote would be at the time of the next House of
13 Delegates election. If it's reliable enough to elect delegates,
14 it should be reliable enough for the membership. I ask you to
15 support this resolution. Thank you.

16 MS. COOK: Okay. Mr. Georgeff, I understand that
17 your resolution as amended is a recommendation, not a directive.

18 MR. GEORGEFF: Absolutely correct.

19 MS. COOK: Thank you.

20 All those in favor of agenda item No. 20 as
21 amended, please raise your placards.

22 (Vote taken.)

23 MS. COOK: All those opposed.

24 (Vote taken.)

25 MS. COOK: The resolution fails.

1 This concludes the 2005 House of Delegates meeting.

2 I thank you all. Safe travels. Thank you.

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