OREGON STATE BAR

2006 HOUSE OF DELEGATES MEETING

Eugene Hilton Conference Center

66 East 6th Avenue

Eugene, Oregon

SATURDAY, SEPTEMBER 16, 2006, 10:00 A.M.
MR. RAWLINSON: Good morning. It is my pleasure to call the 2006 meeting of the House of Delegates to order.

One of the handouts that you have as delegates is a purple sheet which contains parliamentary procedures. We'll be adhering to the parliamentary procedures here today, and here to explain the handout and to give you a brief overview is our parliamentarian for today, the Honorable David Gernant, Multnomah County Circuit Court. Help me in welcoming Judge Gernant.

(Applause.)

MR. GERNANT: Good morning. (Inaudible). I think this overview is the best summary of parliamentary procedure I've ever seen, and I didn't write it. So just be aware of that if you want to make a motion, be aware of where you are on that piece of paper.

If people want to make motions that are not on this overview and they're in accordance with Robert's Rules, of course, then we will proceed. Thank you.

MR. RAWLINSON: Well, I hope that's a sign of how expeditiously we'll be moving through matters today.

(Laughter.)

A couple of reminders on parliamentary procedures, however. Please identify yourself when you go
to the microphone by your name, where you're from; if you are a delegate, where you are a delegate from; and then identify, as House Rule 740 requires, whether you are pro or con.

Now, we have pro and con mikes, but, you know, in the heat of battle and whatever, people forget which one to use, so please just tell us whether you are pro or con.

Secondly, on amendments, I'd love to not have any today, but I suspect there will be. If you want to make an amendment, please, please make it in writing. There is a table in the back. There are forms there to complete. Please bring it up to the staff. That way we can make sure that all of the delegates understand exactly what the language is of your amendment and it doesn't cause any confusion.

That brings us to Item No. 3 on the agenda. By the way, please identify the various resolutions by their agenda item number. I think that will cause much less confusion. So for instance, Affirmative Action is Agenda Item No. 8. Agenda Item No. 3 is a report from the president.

In view of the large number of agenda items that we have today, in interest of full consideration and debate, I am going to waive my right to read to you or
present to you the president's report. It is in writing. It is in the materials that you have, and we will send it out on the Internet.

So we'll move on now to the next agenda item. I'm going to take just a moment to thank the members of the Board of Governors who worked so hard for all of you. And what I would like to do, rather than go on with a lot of language and compliments, I'm just going to ask each of them to stand as I read their names. Please remain standing until I finish the entire group. Please hold your applause until all of the names have been read.

Your vice president from Salem, Mark Comstock; your vice president from Hillsboro, Doug Minson; your president elect from Portland, Albert Menashe; your fourth-year public member from Corvallis, Dr. Jack Enbom; your third-year member from Portland, Linda Eyerman; your third-year member of the board from Salem, Marva Fabien; your third-year member of the board from Roseburg, public member, Jon Hill; your second-year member from Vail, Carol Skerjanec; your second-year member from Medford, Tim Gerking; your second-year member from Portland, Rick Yugler; your second-year public member from West Linn, Bette Worcester; your first-year member from Eugene, Gerry Gaydos; your first-year member from Portland, Ward Greene; your first-year member from Portland, Terry Wright; your
first-year public member from Portland, Bob Vieira.

Let's give these folks a round of applause.

(Applause.)

We have an outstanding staff at the Oregon State Bar. Unfortunately, Karen Garst could not be with us today. She is recovering from some surgery, but I am going to ask Sylvia Stevens, as general counsel, who is on my right here, to stand and accept the appreciation for all of the Oregon State Bar staff.

(Applause.)

We have court reporters today. The stenographic reporting is being provided on a complimentary basis by the Oregon Court Reporters Association. Court reporters include, Eleanor Knapp, if you would stand, Eleanor; Robin Cassidy-Duran.

(Laughter.)

I see. Thank you. Well, I'll stand for you. Valia Lamb, and Sara Fahey Wilson. Let's give them a round of applause.

(Applause.)

In the interest of -- again, moving ahead so we have as many delegates here when we start the action items, I am going to move ahead to Agenda Items 5, 6, and 7, which are nonaction items.

Item No. 5, the Chief Justice of the Oregon
Supreme Court -- as you know, the Chief is completing his first year. I think to say that he has hit the ground running is an understatement. He has engaged in outreach programs to legislators and to business leaders. We are very proud of the enthusiasm he has brought to his position. Please join me in welcoming the Chief Justice of the Oregon Supreme Court, Paul De Muniz.

(Applause.)

CHIEF JUSTICE DE MUNIZ: Thank you. Thank you. Good morning. First of all, thank you for giving me the opportunity to make just a couple of brief comments.

Five or six years ago, Former Justice Sandra Day O'Connor wrote an article on professionalism. And in that article on professionalism, she said when you become a member of the bar, you don't just gain the means to a livelihood. You assume obligations of professionalism.

And she identified three obligations of professionalism: Obligations in your dealings with other lawyers; obligations toward the legal institution itself, the bar; and obligations to the public.

And I think when she talked about obligations in your dealings with other lawyers, she meant things like obligations of honesty, civility, resolving conflict, not creating conflict yourself.

With regard to obligations toward legal
institutions, I think she meant to improve and promote the
development of the bar as a legal institution.

And when she said we have an obligation to
the public, she meant to contribute to the betterment of the
public in which we interact every day.

I would like to acknowledge the president of
the bar and the Board of Governors for their leadership,
their commitment to the improvement of our legal
institution.

I would like to compliment and acknowledge
and thank all of you delegates here, and I would like to
thank everyone else who is here by your mere presence today.
What you've demonstrated is you honor those obligations that
Justice O'Connor mentioned: your obligations to other
lawyers; your obligations to the legal institutions, and
your obligations to the betterment of the community.

I thank you for all of that. I really
appreciate your presence here today.

Before I turn the microphone back, I would
like to make one other brief comment. There is a person
here today who has always, by his conduct, 14 years as Chief
Justice of the Oregon Supreme Court, demonstrated day in and
day out what it means to treat other lawyers and other
people with honesty, civility, and forthrightness; what
it means to work tirelessly to promote and improve our legal
institutions, the bar; and what it means to take every day to contribute to the betterment of our community.

And he rode down with me this morning, kept me awake, kept me away from all those Oregon fans going 100 miles an hour down the freeway. It gives me just enormous pride and pleasure to acknowledge today the presence of my predecessor, Former Chief Justice Wallace Carson. Please join with me.

(Applause.)

Let me just say in conclusion, again, thank you for giving me the opportunity to be here to make a few brief comments, and thank you to all of you for everything you do for the bar.

(Applause.)

MR. RAWLINSON: How is that for a couple of role models? Thank you very much.

(Applause.)

Items 6 and 7 -- and, Albert, if you wouldn't mind using this podium here -- Items 6 and 7, as you can see on your agenda, are the report of the Board of Governors Budget Finance Committee. Item No. 7 is the notice of membership fees, and that is a nonaction item seeing as how there is no dues increase.

It is my pleasure to welcome my long-time friend, chair of the budget finance committee and president
elect, Albert Menashe.

(Applause.)

MR. MENASHE: Thank you, Mr. President. I am pleased to report that the financial condition of Oregon State Bar is solid.

I'm going to address Agenda Item 7 first, which pertains to 2007 membership fees. The best news, I'll start off with, is that there will be no bar dues increase in 2007.

(Applause.)

If you look at page 4 of your agenda, for those of you that have read the entire agenda like a love letter, you will see in 7 1(a) and (b), it says for members admitted in any jurisdiction before January 1, 2007, and the same thing again in Subsection B. It should read 2005, so that's a typographical error.

As I've said, there will be no bar dues increase. In fact, there's no increase currently planned until 2011, barring any unexpected program or circumstance.

To explain this to you just briefly, we're on kind of a five-year cycle. We voted last year at the House of Delegates for a bar dues increase effective this year of $50. We project a profit this year. We also project a profit next year.

In 2008, which would be the third year of a
five-year cycle, we'll probably break even. And in 2009 and
2010, we will expect what the CPAs call a net expense. And
it finally dawned on me that what they really meant was
we'll have a loss.

And again, in 2011, barring anything
unforeseen, we'll have another bar dues increase and start
another five-year cycle.

So moving from the fact that there's no bar
dues increase and the general financial condition of the
Oregon State Bar, which is Agenda Item 6, in 2005 we did
experience a loss, but remember that was the fifth year of
the cycle, but two factors caused the loss to go a little
greater than we hoped.

One was an unusually high attorney fees that
we had to pay pertaining primarily to one matter of
litigation. And secondly, lawyers had anticipated online
CLE would have been available in 2005, and as a result of
that, online CLE publications were not available, hardback
books were not purchased in anticipation of that, so we did
lose some money.

But 2006 is proceeding even better than
budgeted. Remember again, this is the first year of the
cycle. We budgeted a profit this year of $372,000, and
based on the first eight months of the year, we're actually
ahead of that. But we're comfortable we're going to meet
the profit that's been budgeted for this year.

In addition to the $372,000 profit this year, we've been able to provide funding for the new loan repayment assistance program, fund the new leadership college, increase the budget line item for attorneys fees from $50,000 to $100,000 a year, fund the good work of the task force on disability, and to provide financial support for the ABA Young Lawyers national conference held in Portland earlier this year.

In addition, we've been able to continue our financial support of the Campaign for Equal Justice, the Classroom Law Project, and the Council on Court Procedures.

A couple of other tidbits are that the Oregon State Bar is audited each year and we have a clean audit report for both calendar years 2004 and 2005.

We have one significant liability, and that's approximately a $500,000 mortgage on our existing building. And finally, we are pleased that our operating expenses are reasonable -- or excuse me -- our operating reserves are reasonable, capital reserves are good, client security fund reserves are good, Affirmative Action program funding is good at this time, and that the strong well-funded sections are operating very successfully.

The last topic I want to mention is the new bar center. Many of you have heard about this. And this
has been a project that has consumed a good deal of time of
the budget finance committee for the last three years.
We've been looking at real estate, assessing the needs of
the Oregon State Bar, and determining whether the current
building could be remodeled and utilized for a significant
period of time.

Today we have about 13,000 active lawyers in
the state of Oregon. Projections are that in the year 2025
we will have about 20,000 -- perhaps a little more than
20,000.

So our current building, which is 41,000
square feet, is just about at capacity. In looking ahead at
the future, we just negotiated an agreement with a company
called Opus Northwest to build a new building for the Oregon
State Bar at a location one exit south of the current bar
center on Kruse Way. It's right next to that Bridgeport
shopping center that is in fact built by the same folks that
are going to be building our building.

Let me say first, and perhaps most
importantly, that the Board of Governors is embarking on
this project with the intention of not having the
construction of a new bar building impact member dues in any
way, not only now, but over the next 25 years. That was a
primary goal of the Board of Governors in planning this new
building.
And with the contract having been signed, ground should be broken about November 1st or so, and it is anticipated that the building will be completed in February of 2008. This building is going to cost somewhere between 17 and 18 million dollars. Our current building was built in 1986 for $2 million. Twenty years later, we expect to sell it for somewhere between and 7 and 8 million dollars.

So if you apply the equity received from the sale of the Kruse Way building to the new building, we expect approximately a 10 or 11 million dollar mortgage.

As I said, our current building has 41,000 square feet. The new building will have 73,300 square feet. The Oregon State Bar will initially occupy 50 percent of the building. The PLF has moved out of the current bar building and will rejoin us and take about a quarter of the building, and the remaining quarter of the building will be leased.

We've been fortunate enough to negotiate a master lease whereby the developer has guaranteed the lease on the building for the first five years. And it appears that the income from the PLF leasing the other quarter of the building will generate enough income to allow us to operate that building in a fashion equal to the costs associated with our current building.

Obviously, it also gives the PLF, as well as the Oregon State Bar, additional space to grow over the next
25 years when we anticipate membership to increase.

We've studied this very hard to try to be as good stewards of your money as we can. We believe this is a good long-term economic deal as well as a very good practical deal. As I said, we paid $2 million for a building 20 years ago. People thought that the bar at that time and the Board of Governors was crazy to do it, and we now are going to realize between a 300 and 400 percent profit over that 20 years, which is about 20 percent a year.

We anticipate that this building will increase in value, but we're being very conservative on our estimations. And in using a conservative estimate of two and a half percent per year, in 25 years we probably will be fully utilizing the building that will be paid for, and we will expect a net equity in excess of $32 million. So stay tuned. Thank you for your attention and have a good meeting.

(Applause.)

MR. RAWLINSON: Well, we're fast approaching the time when verbal eloquence will replace e-mail correspondence. A couple of housekeeping items. You have some handouts. They are peach-colored sheets in your handout packs. They contain amendments to pending measures. They also contain a proposed additional item which we'll be talking about shortly dealing with LRAP that's been proposed
by Mr. Williamson.

You will also find in the clipped-together materials a peach sheet. Don't let that one confuse you. It's out of date, so I would not -- don't take the staple out, or if you take the staple out, discard it. Only the two that are loose are the two that should be considered to be effective today.

I'll remind you that we have presenters with five-minute time limits; those that speak in opposition and otherwise: three-minute time limits. This colored reminder up here will go green, yellow at one minute, red when your time is up. I'm going to have to be relatively strict with those time limits in the interest of all the business that we need to cover today.

That takes us onto the Agenda Item No. 4, which is the approval of the final agenda. Before I accept any motion to approve the agenda, I have three procedural matters I want to bring to your attention.

First, you have heard that there are going to be possible agenda items removed. I'm going to talk about that in just a moment.

Number 2, there is at least one item that is not on the agenda of 28 items that I believe is going to be proposed. We will take that as the second order of business before we approve the final agenda.
And thirdly, we will determine whether or not there are any amendments in the order in which the agenda item will be considered, and we'll accomplish that as the third item and give everybody an opportunity to speak on each of those items and then, and only then, we will approve the final agenda.

So proceeding in that order, first of all, you may have remembered there was e-mail traffic about three particular items being removed from the agenda. Which ones are they? They are No. 9 dealing with revisement of the bylaws for mileage reimbursement; No. 25, dealing with enabling the House of Delegates to promulgate and amend bylaws, and they are No. 26, dealing with revising bylaw No. 10 concerning discrimination and enabling the military to advertise.

First of all, I want to alert the entire House that it is the opinion of the general counsel of the Oregon State Bar, and it is the opinion of the Board of Governors, that all three of those motions are out of order.

Why? Because it is the opinion of the general counsel and the Board of Governors that Chapter 99, from which this body and the Board of Governors has its enablement powers, does not entitle the House of Delegates to revise bylaws.

It specifically does enable the Board of
Governors to revise bylaws under ORS 9.080. Any one of you will be quick to point out under ORS 9.139 that you can direct the Board of Governors to do anything you want, and you sure can.

Just as you're doing under agenda Item No. 20, you're telling the Board of Governors that we are going to insist on military advertising. That's your job. You tell us to do it, and we'll do it. But then it is our interpretation that the Board of Governors, and the Board of Governors alone, needs to figure out how to do it. And if it believes it needs to change the bylaws, it needs to do so. If it believes that it can accomplish what you have told us to do some other way, then we believe that's the course of action the Board of Governors should follow.

Now, might there be disagreement with the position I just shared with you? Of course. That's what we're all here for. But as a procedural matter, we could have removed those three items and forced you to amend your agenda, and I think you probably would, and we'd be right back to the agenda, so we're not going to do that.

What we're going to propose to do is to leave 9, 25, and 26 on the agenda. We will allow them to go forward. You will have an opportunity to vote on each of them, and you will just simply be reminded when we come to that that it is at least the opinion of the general counsel.
and the Board of Governors that those are out of order because they seek to do what we believe this body cannot do, namely change bylaws.

To the extent they seek to tell us to do anything that doesn't change the bylaws, you're certainly entitled to do that. That would simply be a reminder that will not change the agenda. 9, 25, and 26 remain on the agenda, and we welcome your debate on those three items. So that's point one.

Point two: You have the proposed agenda before you. It is the 28 items. And (inaudible) under Bylaw 3.3 and House Rule 5.4, those 28 items go out to everyone. Everybody gets noticed for 45 days, and that is a requirement.

However, we have allowed in years past a suspension of the rules to add items at the time of the meeting, and this would now be the time, if anyone would like to make a motion to suspend the rules to add an additional item to make that motion. Okay, Charlie.

MR. WILLIAMSON: Mr. President, I would move to suspend the rule to add a resolution to sunset the LRAP program.

MR. RAWLINSON: I have a motion before you. Do I have a second?

MS. GRUBER: Second.
MR. RAWLINSON: Could you give me the name of the delegate who would like to second it?

Thank you. Ms. Gruber?

MS. GRUBER: Diane Gruber.

I second the motion.

MR. RAWLINSON: I'm sorry. If I didn't ask you to do this at the very beginning, we will get lax about it. Diane, you're from --

MS. GRUBER: I am a House of Delegates member from Region 6, West Linn, Oregon.

MR. RAWLINSON: Great. Thank you very much, Diane.

MR. COMSTOCK: Mr. President, Mark Comstock, Board of Governors member, Eugene, Region 6.

Point of order, does this -- I assume that this is about sunsetting LRAP. I would submit that this is premature in that the LRAP committee on the Board of Governors has been working on this for a year and has not yet submitted its report to the Board of Governors about whether there will be an LRAP program.

It has taken substantial time, and I believe it will take substantial time to educate the body about the LRAP program that is potentially proposed. So I would submit that this is a premature motion at this time.

MR. RAWLINSON: Thank you. It is a
non-debatable motion. And I will consider that as a
point-of-order request, and I will find that motion to be in
order and the second to be in order. You have a motion
before you and a second, and I am going to rule as the chair
that this is a procedurally proper matter.

It requires a two-thirds vote of the House.

What you're voting on is adding what would be proposed
Agenda Item No. 29. It is on your handout. It proposes to
sunset the LRAP, the loan program, after three years.

Delegates, are you prepared to vote? All
those in favor of allowing the bylaws to be suspended and
allowing this item to be added as No. 29 indicate by raising
your placards. We are going to need a two-thirds vote.
Let's look at those votes.

Mr. Williamson, I'm sorry. We're not going to
be able to do that. Perhaps next year.

I've been reminded to please ask you to speak
directly into the microphone so that everyone can hear us.

The third item before we approve the final
agenda is to determine whether there should be any change in
order of the sequence of items once we have them on the
agenda.

Bylaw 3.4 and 5.6 of the House rules requires
that these particular items be submitted to the Board of
Governors and then submitted to you in draft as they are.
First of all, as I see folks moving to the microphones, I'm going to really encourage you not to do a lot of -- I won't call it horsing around -- moving items around because I think it's going to cause confusion. I particularly implore you to leave the numbers of the items the same so we can all look at the same sheet and know which one is 28 and which one is 24 and which is 11.

Other than that, I will also announce, since I see Mr. Hennings standing, that I am going to exercise my prerogative as chair and allow Item 21 to follow 12. It is going to stay 21, but I'll allow it to follow 12 because I've been assured by the presenters of those particular items that there will only be one presentation and that the presentations in favor will be limited, so I'll do that as a time saver.

I still see a delegate standing. Is there a motion?

MR. JOHNSON: Mr. President, Mark Johnson, elected delegate from Region 5, former president of the association.

I missed your order of events, I'm afraid. (Inaudible.) I want to make a motion to delete Item No. 25 from the agenda. If there is a second, I will speak to it.

MR. RAWLINSON: Okay. There's been a motion to delete No. 25. Do I have a second?
MS. OVERGAARD: I will second. Mary Overgaard, Region 5.

MR. RAWLINSON: Mary Overgaard, Region 5, seconds it.

MR. JOHNSON: Mr. President, those of us who read this agenda, as Mr. Menashe said, like a love letter, I am sure have noticed that the problem with Resolution No. 25 is this is a resolution that purports to direct the Board of Governors to give this body the authority to amend the bylaws. And a simple reading of the resolution will show a problem with this. (Inaudible.)

It certainly cannot direct the Board of Governors to give this authority to the House of Delegates because this authority belongs to the Board of Governors by statute.

The resolution appears out of order.

MR. RAWLINSON: Mr. Johnson, you seem to have support in the room next door. Is there any opposition?

MR. JOHNSON: I'm most grateful for that.

MR. RAWLINSON: Any opposition to the motion, please.

Delegates, all those in favor of the motion to delete No. 25 -- this is a majority vote -- raise your placards.

Those opposed? The motion carries. No. 25
has been deleted.

Any further motions relating to the sequence before we approve the agenda?

MR. JOHNSON: Again, Mr. President, Mark Johnson, elected delegate from Region 5.

At this time I will move to delete Item No. 20 from the agenda, and again I will address that issue if there is a second.

MR. RAWLINSON: There has been a motion to Delete No. 20. Whoever would like to second --

MS. OVERGAARD: I will second.

MR. RAWLINSON: Please identify yourself.

MS. OVERGAARD: Mary Overgaard, Region 5.

MR. RAWLINSON: Mary Overgaard, Region 5, seconds the motion.

MR. JOHNSON: Mr. President, I'm making this motion for a similar reason. And I think Resolution No. 20 is the one that directs the Board of Governors to change its approach to allowing military recruitment advertisements to be printed in the bar bulletin.

The delegates that have read the bar bylaw that pertains to this situation, they will have discovered it reads as follows: "Furthermore, advertising or solicitations for employment must offer people employment opportunities. Advertising in bar communications for
employment opportunities may not discriminate against
candidates based on the terms listed above."

And the list that's listed above is the list
that we're all familiar with, which includes sexual
orientation.

Resolution No. 20, in my opinion, simply
directs the Board of Governors to take an action that is
unauthorized.

MR. RAWLINSON: Thank you. Mr. Mozena would
like to speak in opposition. Mr. Karandy, I'm sorry.

MR. KARANDY: Eugene Karandy, Albany, House
of Delegates, Region 3. As the president pointed out in his
introductory remarks referring to items 24 and 25 and 9,
those are specifically directing bylaw amendment to
Resolution 20.

House of Delegate Resolution No. 5 is not
directing or mandating to the Board of Governors how they
would implement those provisions if they were in fact -- if
this resolution was in fact adopted.

So therefore, it is not correct to say it is
automatically in violation of the bylaws because it would be
up to the Board of Governors how to implement the resolution
if the Board of Governors decided that they would have
discretion to amend the bylaws to adopt or implement this
resolution.
MR. RAWLINSON: Thank you, Mr. Karandy. Mr. Browning?

MR. BROWNING: Bob Browning, elected delegate Region 4. I also have experience in the Marine Corps, and the history -- though myself I did not go to Vietnam due to a back problem and a wide yellow stripe down the middle, I have had many family members that have served in the military. And I believe this matter deserves the consideration by the body assembled today.

Furthermore, it is my opinion, as well as the opinion of many members of the bar, that the Board of Governors has misread the wording of its own bylaws as to this particular matter. And I believe it worthy of discussion. As such, I would be voting against deleting it.

MR. RAWLINSON: Thank you, Mr. Browning. And I would just like to comment that I appreciate that so far we are not speaking to the merits. We're simply speaking of procedure and whether or not this item should be deleted. And I would appreciate if the speakers would limit their comments to that.

Mr. Mozena?

MR. MOZENA: I think I would confirm what's already been said by both Mr. Browning and Mr. Karandy, but I would comment that this was vigorously debated on a listserve and needs to come to the body. Pro or con, this
needs to be addressed by this assembly.

MR. RAWLINSON: Thank you. Mr. Georgeff.

MR. GEORGEFF: Thank you, Mr. Rawlinson.

Gary Georgeff from Region 3, Brookings, Oregon. I would just point out that I've had some experience with the divisive issues in the state bar, the elimination of bias petition last year, and this issue really needs to be debated however it is resolved. Thank you.

MR. RAWLINSON: Okay. Folks, we have a motion to delete Item No. 20 from your agenda. All those in favor of deleting it, please raise your placards. This will require a simple majority.

All of those opposed.

Opposition has it. No. 20 will remain on the agenda.

I now would entertain a motion to finally approve as the final agenda the items which remain, which would be 1 through 28 minus No. 25.

MR. TYNER: John Tyner, Region 4. I so move.

MR. RAWLINSON: Thank you. I have a motion. Do I have a second?

MR. WILLIAMSON: I will second it.

MR. RAWLINSON: Mr. Williamson has seconded it. All those in favor, raise your placards.

All those opposed.
Thank you. We have a final agenda. I'm going to move now on to Agenda Item No. 8, which is the affirmative action item. I'm going to ask that before I invite the chief up to make a presentation that we have a motion and a second to formally put this matter before the House.

MR. TU: Hi. Trung Tu, elected delegate from Region 5, Portland, Oregon. I move to adopt Resolution No. 1 to continue the affirmative action program.

MR. RAWLINSON: Thank you, Mr. Tu.

MR. HARRELL: Gary Harrell, House of Delegates, Chair of the Health Law Section, Region 5. I move to second.

MR. RAWLINSON: We have a motion and a second. I will invite the chief to the podium to make a presentation.

CHIEF JUSTICE MUNIZ: Thank you, President Rawlinson. It is a great honor to be here and to be given the opportunity to present Resolution No. 1, the reauthorization of the affirmative action program.

As I stand before you this morning, I'm keenly aware that I stand in some very large footprints. I stand in the footsteps of the two prior chief justices, Chief Justice Carson and Chief Justice Peterson.

Those footprints and their legacy represented
a commitment, a commitment to recognizing and continuing
dthis program known as the affirmative action program. It's
unassailable -- it is truly unassailable that an institution
such as the legal profession or the judicial system -- it is
unassailable that it does not benefit by the full inclusion
of diverse people, backgrounds, cultures, ideas, and
viewpoints.

The Oregon State Bar's 30-year commitment to
the affirmative action program has played a key role -- has
played a key role in making our legal profession and our
justice system more accessible to all segments of our
society. This program is visible evidence -- visible
evidence of our commitment and our recognition of our
obligations.

As Justice O'Connor said in her article on
professionalism, our obligation is to make the legal
profession better than when we found it, and it's a
recognition of our obligation to the betterment of our
community.

This is our opportunity to continue to create
the mechanism for creating future leaders and role models in
our legal profession, people to guide those from other
segments from our society. We need their leadership to make
our institution and the judicial system fully representative
and fully legitimate in the eyes of the public and those
that we represent.

So it is a great privilege that I move

Resolution No. 1. Thank you very much.

(Applause.)

MR. RAWLINSON: Consistent with our normal
procedure, is there anyone who would like to speak in
opposition?

Well, then, I will allow those who would like
to speak in support of the motion. Mr. Tu.

MR. TU: Yes. I'm Trung Tu, elected delegate
from Region 5, Portland, Oregon.

I graduated from Lewis & Clark Law School in
2000, and currently practice commercial and business
litigation in the law firm of McEwen Gisvold in Portland,
Oregon. I'm proud and honored to say that I am the product
of the Oregon State Bar's affirmative action program.

During law school I was the recipient of and
participated in just about every single opportunity offered
by the affirmative action program, including the scholarship
stipend, firm employment retreats, first-year honors
program, and the public honors program.

Through the affirmative action program, I
made valuable connections with attorneys who wanted to help
me succeed as an Oregon attorney. I made connections with
attorneys who helped me feel wanted and needed as an
attorney in Oregon.

The affirmative action program and these attorneys who I met made me want desperately to practice law in Oregon, so after graduation I took the Oregon bar exam and passed. But no matter what I did, I couldn't find a job in Oregon, so I had to take a job as a staff attorney with the U.S. Court of Appeals in San Francisco.

I moved to San Francisco and practiced -- worked at the staff attorney's office for two and a half years. The staff attorney's office was probably the most diverse legal environment I've ever worked at. Of about 65 staff attorneys, I would estimate that over a third were people of color or lesbian, gay or bisexual or transgender, and over half were women.

San Francisco was also the most diverse city I've ever lived in. I estimate that probably 40 percent of the city's population were Asian or Asian-America. I loved living and working in San Francisco, and I could have easily stayed there. However, because of the affirmative action program, I chose to come back to Oregon to practice law.

I am living proof that the affirmative action program works. Over the past several weeks there've been a lot of comments about how the affirmative action program stigmatizes and is demeaning to people of color. I think that is absolutely false. As a product of the affirmative
action program, I have never felt that way. I do not know one attorney of color who participated in the affirmative action program who feels that way.

Instead, the affirmative action program has empowered me and has made me feel wanted and needed as an attorney here in Oregon. Therefore, I urge all of you to vote in favor of reauthorizing the affirmative action program.

By not reauthorizing the affirmative action program, the bar is sending a message to attorneys of color that we are not wanted here in Oregon. Please do not send us that message. Thank you.

MR. RAWLINSON: We don't have anyone at the opposition microphone yet, but we do have someone, Mr. Haberlach, at the other microphone.

Before I recognize you, Mr. Haberlach, I'm faced with a dilemma that I have a federal judge and a former Oregon State Bar president, and one of the most outstanding trial lawyers in the state all wanting to speak on this.

I plan for those that want to speak on it to allow them their opportunity, but I would ask others who might be inclined to consider that we are pressed with a lot of material to cover.

Mr. Haberlach?
MR. HABERLACH: Thank you. My name is Bill Haberlach, and I'm the elected delegate from Medford, Region 3.

As a practical matter, since there is no opposition, debate is window dressing and advertising, so I move that we close the debate and vote.

MR. RAWLINSON: That is a priority motion. Do I have a second?

MR. GORHAM: I would second. Steve Gorham from Salem.

MR. RAWLINSON: Steve Gorham seconds. Steve Gorham from Salem has provided me with a second. I would ask the House on voting on this, we have some senior speakers who have worked on some preparation.

The motion before us is to close debate and it is a majority motion. All those in favor indicate by raising their placards.

All those opposed?

Boy. How about those in favor again?

AUDIENCE MEMBER: Point of order.

MR. RAWLINSON: Yes.

AUDIENCE MEMBER: Is this not a two-thirds vote?

MR. RAWLINSON: You know, you're exactly right. It is a two-thirds to cut off debate. Debate will
not be cut off.

Mr. Mozena, you may speak.

MR. MOZENA: I speak for diversity, but I speak for a race neutral program. Our program in Oregon is race conscious.

The 2003 decision by Justice O'Connor has called us to be cautious and skeptical when we were using race conscious programs and we are using race as a factor. We are doing with our Oregon State Bar program.

Both California and the state of Oregon have made racial preferences illegal. We as lawyers must continue to look at what our compelling interest is in diversity very closely. It must be narrowly tailored, as Justice O'Connor found in the majority opinion, it must be time limited.

So as lawyers, sure, we want to jump on and say diversity is great. But if it becomes racial balancing, if our goal is racial balancing, Justice O'Connor and the Supreme Court of the United States has said time and again it is patently unconstitutional if we are looking for racial balancing.

So today I come to you simply lawyer to lawyer and say we need to step back and look at this and think about what we are doing because we are using race as a factor. So I come today with a motion, and my motion is
this: It is a motion to strike the year 2021 and to create a blank, and remembering that the Supreme Court has said to us to be cautious, to be skeptical, to be (inaudible), to look to narrow tailoring, to be time limited, and I ask that the blank be filled in one year at a time so that we can remember it is our duty to continue to look to narrow-tailor this so we reach the day when we can do race neutral.

And let's look at California and let's look at the state of Washington to see what they're doing to do a race-neutral type of analysis.

So I make that motion, and I make it so that we affirm and confirm our affirmative action program, but we do it on the shortest, narrowest way that Justice O'Connor has told us to do it and the Supreme Court.

So where, Mr. President, do I present my amendment?

MR. RAWLINSON: Mr. Mozena, let's make sure we have understood the amendment. Are you changing the expiration date?

MR. MOZENA: Mr. President, I am doing a form under Robert's Rules of Order called a striking a fill in the blank, so the way that this is handled -- and I would ask that the President consider this -- that we take the program -- first we rule on the amendment to fill in the blank to keep it narrowly tailored. Then we advance it one
year at a time to keep it narrowly tailored, and each one of
those years is taken as a vote of the assembly. Am I clear?

MR. RAWLINSON: Again, we don't have a second
yet. There is a motion for a blank that apparently would
proceed on a year-by-year basis to determine to what
particular date there would be an extension of the
affirmative action program. Is there a second?

MR. KARANDY: Second, Eugene Karandy from
Albany.

MR. RAWLINSON: Eugene Karandy of Albany
provides me a second. That's a non-debatable -- I'm sorry.
Someone wants to debate it.

MR. KARANDY: Point of order. That's a
non-debatable motion.

MR. RAWLINSON: Thank you. We are now going
to vote, ladies and gentlemen of the House, on whether you
would like to accept that motion. We will do it by simple
majority. All those raise their placards if you would like
to amend to add the blank to go year by year on the
extension.

All those opposed?

The motion failed.

(Applause.)

We are back to the main motion. Mr. Harrell.

MR. HARRELL: Mr. President, I'm Gary
Harrell, House of Delegates, chair of the Health Law
Section. I'm not a racial minority, no one in my family is
a racial minority, and I have not been helped by this
program personally. As you might say, I have no dog in this
fight.

However, I do have members in my family who are
deeply racially prejudiced, and I would like to speak
briefly to the idea that we have pretty well cleaned up the
racial discrimination problem in this country and that we're
just now dealing with the last vestiges.

I would respectfully put forth that that's
not the case, and that a program such as the affirmative
action program remains very important in order to make sure
that people of color have the opportunity that other people
who are white folks have. And that's all I have.

MR. RAWLINSON: Thank you. I would remind
folks that if you're going to speak in favor of the main
motion you would be at the pro mike. If you have an
amendment, you should be at the other mike. I think that
will help us here in future. We will go back and forth.

I see we have someone at the other mike after
we have heard from the pro mike. You are recognized.

MR. DERR: My name is George Derr. I'm not a
delegate. I am a delegate to the American Bar Association.
I just want to say a couple of things.
I don't think anybody here isn't in favor of reversing and correcting the wrongs of the past. Just speaking from a street level, I can tell you that this program is not working the way we think it is going to work. I think what you're finding is white lawyers and white members of the community (inaudible) and resentment because of it. I think it is aggravating and escalating the racial problems in this country, and I think people need to look at the practical effect of (inaudible) this program and how people are perceived out there when they are of color, not white, and they are in the profession because I am hearing more and more people say, That person got that job or that position because of their color and not their credentials.

And I think you need to think long and hard down to the street level backlash this is creating.

Secondly, I am a member of the Oregon State Bar, and I think that under Keller v. California State Bar. I think requiring members of this bar to participate in this and have the bar association have its membership theoretically endorse affirmative action violates our rights as members of the Oregon bar and (inaudible) an organization that takes an ideological position with which we're opposed, and I think the Court needs to look at -- or excuse me -- the bar needs to look at that fact. I think this whole
program violates the rights of the members of the bar.

Lastly, I am not a delegate. I cannot make a
motion. I believe the people voting (inaudible), and I
think what ought to happen here is somebody ought to make a
motion to require that affirmative action dues be a
voluntary contribution and let's just see where the money
flows. (Inaudible) but let the members choose not to
endorse it. That's all I have.

MR. RAWLINSON: Thank you. I'll recognize
the pro mike. Mr. Marmaduke.

MR. MARMADUKE: Mr. President, members of the
House of Delegates, friends and colleagues, I would like to
add my voice to those many people's voices who support the
renewal of the program. Can you hear me?

There we go. Thank you. Excuse me if I turn
my back to you but --

MR. RAWLINSON: That's quite all right.

MR. MARMADUKE: -- I'd like to address the
House.

MR. RAWLINSON: It happens to me at home.

MR. MARMADUKE: I think that what you do now
with this program really is going to have historic
significance for many people for many years to come. For
example, for students, there are students for whom the
study of law and practice of law can turn dreams into
For clients, whether they're rural or urban

For clients, who seek equal access to justice in Oregon and who
seek a justice system that is populated with judges and
lawyers who fully understand and appreciate the backgrounds
and values of ethnic minorities it can be very important.

For the businesses -- client who are

businesses, we in Portland, in my experience, are already
receiving a demand from clients that their law firms be
diverse and representative of what their client bases are
becoming and have become.

For law firms themselves, it is important
because it will expand talent pools available to them, and
it is important because it will sharpen the depth and the
breadth of their perspectives on some of the problems that
they are more frequently now being asked to confront.

And finally, I think it is important for the
maintenance of the public trust and confidence in our
judicial system as being an open, inclusive, and fair system
for resolution of disputes and administration of our laws.

Personally, I think that the immigration of
our majority and minority members into our society together
is something that can't fairly be characterized as a rural
or urban issue or as a democrat or a republican issue.

And I honestly believe it's really an
American issue that is imperative -- imperative that we put into effect because it will solidify and strengthen us as a nation.

Now, happily the program that is before the House is an all-inclusive program, contrary to what has been said. It is not restrictive to minority members only. It invites majority members who support diversity to participate. And I think that by being a wholistic approach it really should silence any arguments of unfairness or bias.

So I say to you again that what I think we have here is a program that has already demonstrated that it is a successful program, and it predictively can be viewed as it is undoubtedly going to be successful in the future, and I ask that you consider, when you consider what to do about renewal, what renewal approval says to the world around us. It will say that the Oregon legal profession cares enough to take positive long range strategic steps to make equal access to justice a reality.

That being so, I feel confident that we will have your vote and support, and I want to thank you for the opportunity to express my personal strong support.

(Applause.)

MR. RAWLINSON: Mr. Marmaduke, thank you. I would remind the speakers to please try to stay within the
three-minute limit. Consistent with our practice of going
from the pro mike to con or other, I have a delegate at the
other mike.

MS. VAN METER: Heather Van Meter, Region 5,
Portland. Just a point of information. Do we have the
statistics available on the percentage of minorities
currently in the state bar perhaps compared to the
percentage in the population?

MR. RAWLINSON: We have the percentages
available. I don't have any of those at my fingertips this
morning. I'm sure we could get those for you. If you want
to contact -- if Karen Garst's not in next week, Sylvia
Stevens will get those for you.

MR. LOPEZ: Thank you, Mr. President, Angel
Lopez, delegate from Region 5, former president of the
Oregon State Bar, legal advisor to the Mexican Consulate
here in Portland -- or there in Portland, I guess.

I have some names I want to share with you,
people that I have been proud to know for years: Ernest
Warren, an African-American lawyer in Portland; the
Honorable Marco Hernandez, a judge in Washington County;
Ronault Catalani, an international kind of guy who is a
lawyer and a very powerful speaker. I heard him yesterday.

The commonality that these individuals have,
other than having made great strides in life and having
bestowed so many benefits on the political and social
landscape here in Oregon, is that they all credit me with
the inspiration to become lawyers in the first place.

They all credit me for inspiring them to
become lawyers when I was the director of the affirmative
action program for the Oregon State Bar from 1979 to 1982,
three real good years for me, and three good years for the
bar as well.

The fact of the matter is that I myself would
not have stayed in Oregon to practice law but for the
benefits bestowed on me by the affirmative action program,
things as seemingly insignificant as a loan so I could stay
and sit for the bar exam.

Last week I was in court being appointed on a
very, very serious case with a Latina woman from another
culture, and I was just thinking at that point I was proud
to accept that appointment because here is a woman who has a
competent, aggressive good lawyer who understands her
culture, who understands her language, and who can give her
a voice in an American court. That's the point of the
program.

It cost me $40 to fill my tank yesterday to
come up here. It's going to cost me $30 to continue
supporting this wonderful program. I think between the two
I would prefer to walk because that $30 to me is much more
important than the $40 I put in the tank. Thank you.

(Applause.)

MR. RAWLINSON: Consistent with our policy of going from the pro to the other and con mike.

MS. JOHNSON: Thank you. I'm not a delegate, Mr. President. My name is Kellie Johnson, but I am a member of the Oregon State Bar. I am also president-elect of Oregon Women Lawyers. I am a deputy district attorney in Multnomah County. I also serve on the board of Girl Scouts Behind Bars. I am a community member. I am a member of the PTA in Multnomah County at my child's school.

I mention all of those things because if it were not for the Oregon State Bar affirmative action program I would not remain in Oregon. This program not only assisted me in finding a job while I was a student at the University of Oregon, but it gave me my passion for trial work which has led me to do prosecution when I began in Lane County and now in Multnomah County.

I'm good at what I do. If you live in Multnomah County you are safer because of me.

I want to say that the talent that affirmative action picks out for the State of Oregon and helps to acculturate to the environment or support and continue the passion to diversifying our bar is something that, if I may say, that no individual lawyer in this room
The fact that you have a choice to say that
you can look for a diversity and that you can have a diverse
employment pool is from the direct action and participation
of people in the affirmative action program.

If you get rid of that, I ask you, who in
your firm or who in your small firms are going to do the
recruitment for you. I think this is a matter of not about
is this something that disadvantages white people. I think
this is a time to exercise the vote of I, which is I am
committed to this because diversity is not just a matter of
adding salt to the kettle.

Diversity is an issue of adding brilliance, a
diverse perspective, talent, and raw community to our
practice because, as we venture more beyond just lawyers but
become those parents and those people in our community, we
see that our effect as lawyers is much greater than who we
practice in the bar with.

I would just ask you today, when you consider
this issue, that you use the vote of I. Not because it's
good for those women and those minorities, but because it is
good for all of us.

(Appause.)

MR. RAWLINSON: Kellie, I'll remember your
eloquence. We met last evening, and I'll remember your
blessed Irish name.

We are back to the pro mike and, Judge Aiken, I'm pleased to recognize you.

JUDGE AIKEN: It is a huge privilege to speak to you and to thank you for your commitment and your willingness to give (inaudible) the Oregon State Bar.

But I want to pay special tribute to one of my heroes, and that is Chief Justice Carson who really is one of those individuals who stood up and opened doors for people. I am here because people opened doors, and it is really incredibly important that this door remain open.

And I'm so very, very proud of the affirmative action program because of the diversity (inaudible) I become aware of when I started working (inaudible) when I was on the bench. And the opportunity the students now have because (inaudible). Somebody opened the door for them, the Oregon State Bar.

Affirmative action is an opportunity for all of us bring to the table people who have so much more to give, and I know that because what I end up doing as a judge is resolving a failure to communicate. That's usually how lawsuits start -- a failure to communicate.

And what I've tried to do is dedicate my professional life to helping to resolve those disputes in a way that (inaudible) honor of a profession, the kind of
respect that deserves, and that is bringing diverse people
to the table.

And what I can tell you is, when you have
people representing these individuals who are not part of
our culture, who are not part of our experience, who have
not had the privileges that those of us have had -- when we
have people who can look across the table and
representatives they have confidence and experience and
knowledge, things get done a different way. That is a way
(inaudible) of the process and gives great integrity and
respect to institution.

It's a question of whether we want to remain
relevant. (Inaudible.) It is time to embrace the future.

I was educated by my husband, who was a
political science professor at the University of Oregon, who
said, You have an obligation -- you have the privilege to
reach out and open doors for other people.

This affirmative action program made it
possible for countless individuals to remain and be a part
of our bar. I talked to one last night, born in poverty, a
kid from Guatemala, raised in and out of foster care. His
brother went the wrong way.

He watched television. He decided he wanted
to be a lawyer. On television lawyers have respect and
power. He didn't know how to do it, but he fought and
struggled to get that opportunity, and people opened doors. And when he finished at Georgetown University and looked around (inaudible) where is a state that makes difference? Where will I get help? Where will I get community?

He came to the University of Oregon School of Law, and the affirmative action program benefitted him directly because it gave him community and it introduced him to Spanish-speaking lawyers, to help (inaudible) into Oregon. To be a part of this community.

It got him through the Oregon State Bar. He graduated early and is a member of the bar and he is in a big firm in Portland still struggling to become part of the community.

And when I talked to him last night, he has moved into his first home. And he struggled with the end of the week where he is way beyond his billable hours and doesn't quite know how he is going to make everything work. He said to me, You tell them that I'm just one of many, many people who have a community that I can turn to and keep opening doors, and you tell them I can't be there because I've got to do the best I can to make everyone proud; that I'm part of the bar and I'm part of Oregon, but it made a difference to me to come to Oregon and it made a difference for me to stay in Oregon and it made a difference because I
will give back.

So on behalf of all the students and all those individuals who have benefitted by the bar, (inaudible) the opportunity to have the diverse bar membership to help resolve disputes in a way that gives respect to our institution, and about the future -- because I have five sons, and I want them to be able to work in a community that looks like the world, not just like them.

Thank you.

(Applause.)

MR. RAWLINSON: Thank you, Judge. I am going to remind the House we are limited to three minutes, and I'm going to enforce that a little bit more strictly as we proceed. We have a lot of items to cover.

Mr. Haberlach, I have a suspicion what you might like to present to us.

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

And even Federal judges can't see a red light that's flashing when you're looking the wrong way. But I would like to point out that I am not a con and I'm not a Duck, but I move the question.


MR. RAWLINSON: Thank you, Mr. Georgeff. It
has been pointed out to me, and I apologize. I hadn't noticed that we do have one other speaker back at the other mike. I have a motion before me, I have a second, and so it is formally before the House, but I would like the House to know, as you vote, that we have a speaker who would like to be heard on this issue, and so I'll now take that vote.

All those who would like to close the debate, including cutting off this last speaker -- it is a two-thirds vote -- please indicate by raising your placards.

All those opposed? The motion carries. I apologize.

We have an opportunity for one-minute closing. Chief, are you satisfied? Would you like to waive?

CHIEF JUSTICE DE MUNIZ: Yes.

MR. RAWLINSON: Very good. Thank you very much.

Folks, we have before us a very important motion. The motion is for the continuation of the affirmative action program. If you wish to show your support for the continuation for that, please raise your placards.

All of those opposed.

(Applause.)

Nothing I can say would top that
demonstration of appreciation for the hard work that all of you have done. Thank you very much.

Let's move on to Agenda Item No. 9. That is the mileage reimbursement matter. This particular matter seeks reimbursement for those attending the annual delegate meeting. It's on pages 5 and 6 of your materials.

Ms. Gruber, you are the presenter for this particular agenda item. As she comes to the podium, I will need a motion. I would remind the House that this is subject to general count and Board of Governors' objection, as I mentioned earlier.

Ms. Gruber, would you like to make a motion?

MS. GRUBER: I do so move.

MR. RAWLINSON: I will consider that to be a motion to adopt Agenda Item No. 9. Do I have a second?

MR. BROWNING: Second, Bob Browning.

MR. RAWLINSON: Mr. Browning seconds the motion. It is now formally before you. You have five minutes, Ms. Gruber.

MS. GRUBER: Thank you. Oregon is a huge state. There's 375 miles from Brookings to Baker City, 300 miles from the California border to the Washington border.

Next year this body will be meeting in Salishan in beautiful Lincoln County. After the new bar headquarters is built, I understand that all future HOD
meetings will be held in Tigard at the new center.

Regardless what locations are chosen for future meetings, many HOD members will be disadvantaged both by time expended and money expended in attending HOD meetings.

I attended my first HOD meeting in September -- excuse me -- in 2003 in Seaside. 127 HOD members attended the meeting that year.

I attended my second meeting in Portland in 2004. Only 111 attending. The start of the meeting was delayed because we didn't have a quorum, and somebody jokingly said -- after a quorum was announced, somebody jokingly said, "Lock the doors. Don't let anybody out."

The membership at the House of Delegates exceeds 200, so I was left to wonder why so few elected delegates don't attend the most important meeting of the year.

In addition, I notice that often regions have fewer candidates for HOD positions than there are openings. In the months leading up to the 2005 election, I contacted numerous attorneys to encourage them to become HOD candidates.

That year Region 3 had 14 candidates for six seats. Region 6 had 21 candidates for 11 seats. Now, that's what I call, you know, real elections. It gives the
attorneys real choices, and I humbly take some credit for encouraging 11 of those candidates to run.

However, that same year Region 2 attorneys weren't allowed to vote because there were four openings and only three candidates.

The 2006 election had the highest voter turnout ever -- ever, 31 percent. Nevertheless, the attorneys in Region 1, Region 5, and out of state, didn't have an opportunity to vote on their HOD delegates because there were fewer delegates -- excuse me -- fewer candidates than the open positions.

The House of Delegates is the body that speaks for the membership. The more involvement and the interest in the House of Delegates the healthier the Oregon State Bar as a whole.

Too often I hear attorneys say something like, "The bar is not interested in my opinion. They just want me to mail in my dues and keep my ideas to myself." As a matter of fact, I heard this yesterday.

By changing the bylaws to provide for mileage reimbursement, we are sending a message to all of Oregon's attorneys that their involvement is not only needed but wanted.

As drafted, this resolution has a 100 mile deductible for everyone who attends a HOD meeting and who is
not otherwise reimbursed by the bylaws. It also has a 900
mile maximum. In other words, if the round-trip mileage is
150 miles, then 50 miles would be reimbursed at the IRS rate
for that year.

For members whose round trip is in excess of
1,000 miles, total reimbursement will be 900. I have no
particular attachment to the 100 mile deductible or the 900
mile maximum.

I invite this body to make resolutions to
change those mileage figures. Regardless of the actual
reimbursed amount, the new bylaw will send a message to the
membership that their involvement in the House of Delegates
is needed and wanted.

Due to the $50 dues increase last year, there
is money in the bar's budget to fund this expense. As Mr.
Rawlinson stated earlier, we are flush.

According to the bar's calculations, which
have been handed out there -- I know some of you (inaudible)
all the seats, but those calculations came from the bar
staff. And if everybody attended a HOD meeting held in Lake
Oswego, the total cost would be $11,000.

Of course, not everybody is going to attend,
so Karen Garst and I agreed that this expense will be no
more than $7,000 a year.

This resolution as drafted will provide for a
minimum amount of work for bar staff. No documents will be required other than some type of claim form. If a HOD member wishes to claim his or her mileage reimbursement, he or she simply submits a simple claim form. Gas receipts, motel receipts, plane tickets won't be needed.

I do not view this bylaw as just a means for reimbursing HOD members for some out-of-pocket expenses. After all, the attorneys' time is far more expensive than whatever out-of-pocket to get here.

Please vote yes. This bylaw change will increase membership involvement in the House of Delegates.

Thank you.

(Applause.)

MR. RAWLINSON: We are open for discussion.

I am going to recognize Mr. Greene at the other mike.

MR. GREENE: Thank you, Mr. President. I'm Ward Greene. I am a member of the Board of Governors.

On behalf of the Board, we take no position as to this item. However, our estimate of the cost to the bar is that it would be slightly higher than that proposed. We estimate it is likely to cost between $5,500 to $11,000. And I have to say we're very careful of the bar's pennies and nickels and dimes, and then the dollars take care of themselves.

But again, this is one of those issues that
may or may not be properly before the House. Thank you.

MR. RAWLINSON: Thank you, Mr. Greene. I'll go back to the pro mike. Mr. Haberlach.

MR. HABERLACH: My name is Bill Haberlach, and I'm not going to move the question (inaudible) at this time, but I have been a member of the House of Delegates since the beginning of this time. And I live in Medford, Oregon, which is only 35 miles away from California. You can see it down at the bottom of the map.

You know, it's the same distance from Medford to Portland than it is from Portland to Medford? How often do you guys come to Medford for a bar meeting?

AUDIENCE MEMBER: Once in 20 years.

MR. HABERLACH: And when you do, do you smile? But I think that this is a reasonable suggestion. I've proposed this numerous times before. Just think of the cost that we spent last night for the reception over at the Valley River Inn. I'm not sure whether or not that would have been enough to reimburse all of the people over 100 miles away, but I urge you to vote for it.

And the other thing is, since this is a very simple issue and there's not a lot to debate, you've had an opportunity to study it, and if you haven't made up your mind by this time, you probably shouldn't vote.

So I would call for the question.
MR. RAWLINSON: I'm going to consider the motion to call for the question out of order since he was at the pro mike. I am going to recognize Mr. Abrams.

MR. ABRAMS: Thank you. Marc Abrams, elected delegate, Region 6. I thought we were discussing military matters later in the agenda. I don't recall being drafted into this body. We each volunteered to be here. We each ran for election.

We volunteered to serve knowing the terms and conditions. Those terms and conditions were you pay for your tank of gas. It is an honor to be here.

With regard to the idea that we are flush, if we listened carefully to Mr. Menashe, he said we are in the first year of a five-year cycle where we will have a declining flushness (inaudible).

More to the point, if what we are trying to do here is have inclusiveness, I've heard nothing -- and nothing on e-mail traffic that demonstrated that there is any lessened ability for a diverse body to serve because they don't get mileage reimbursement.

If that's the argument, put the money into the affirmative action program. But in any event, we all decided to be here, and I don't want the compensation. I'd rather it go to something better.

MR. RAWLINSON: Thank you. We're back to the
pro mike. Mr. Georgeff.

MR. GEORGEFF: Thank you, Mr. Rawlinson.

Gary Georgeff, Region 3, Brookings, Oregon.

Just on the merits, it seems a reasonable thing to do to encourage participation by members of outlying regions. Mr. Haberlach being (inaudible) distance to California, I’m in Brookings, the very bottom left-hand corner of that map, which is four miles from the California border. I think it’s a good idea.

I’m also going to have a procedural motion to amend to address the point of order question. Do you want to do that at this mike or --

MR. RAWLINSON: I'd like you to do it at a separate mike. Do you want to take the other mike, I will recognize you shortly.

Mr. Hamlin.

MR. HAMLIN: Bruce Hamlin, elected delegate from Region 5. I think that the resolution ought to be defeated. I have seen no evidence that the level of participation in the House of Delegates is dependent upon financial issues.

I recall that the Oregon House of Delegates meeting in Portland -- and Mr. Paulson has told us that the House of Delegates is weighted heavily in favor of Portland, but failed for lack of a quorum despite the fact that there
was probably the least number of miles needed to be traveled.

Unfortunately, I think what happens is that people get elected to the House of Delegates and then fail to give it the priority that it deserves in attending the meetings.

MR. RAWLINSON: Thank you. Mr. Browning.

AUDIENCE MEMBER: Really, as was said by the earlier speaker on the floor, Mr. Paulson is almost (inaudible) despite the fact the (inaudible).

Unfortunately, I think what happens is that people selected to pass (inaudible) and failed to give it the priority that it deserves.

MR. RAWLINSON: Thank you. Mr. Browning?

MR. BROWNING: Bob Browning. I'm a delegate from Region 4. Of course present. Really, it was said by one of the earlier speakers on this matter. I really don't have anything to add on this matter because we wouldn't receive reimbursement. Forest Grove and Lake Oswego round trip is about 100 miles from the (inaudible) not to do that anyway -- 100 miles. And as an attorney, I would probably not -- choose not to do that anyway.

I do see, though, as someone who has attended all but one HOD Town Hall, every other conceivable kind of governmental bar meeting that has been since I joined in
September of 1979 and attended the bar convention that year that came two weeks after my admission to the bar. I was originally opposed to the House of Delegates.

We have the House of Delegates, however, and I find nothing in terms of what we consider or the involvement that we have or our role that we play in the governments of the bar that suggests that we are somehow or another less equal than say the BOG or certain other activities that are carried on where BOG members, and rightfully so, not only get some mileage, but they get some housing and get some meals and they get some other things.

The people that are going to most benefit from this are not likely to be here, younger members who would like to run, who would like to run from the inner lands who need a little bit of economic help. And sometimes it doesn't take a huge amount. We've heard people be concerned about $30 making the difference between new admittees and non-new admittees.

If that's the case, then $35 or $40 or $50 worth of mileage help, if that's what it takes to get people from Vail to continue to be involved, and not just those who have the money because of years of practice.

Younger people in the bar -- and you will hear me talk later in support of the leadership college -- younger people in the bar are our future, and whether they
be white, black, blue, green, or brown, whether they be male
or female or transgendered or in the process of changing
from one to the other, it is so very, very important that we
continue to represent, the greatest possible ability that we
have, to represent this wonderful, wonderful profession
called the practice of law; the profession that
distinguishes, most of the time, our society from virtually
every other society in the world.

And if I see this as one small way -- an
incentive to encourage people to continue to be involved in
this wonderful profession, then I'm in favor of it. Thank
you.

MR. RAWLINSON: Thank you, Mr. Browning.

Mr. Haberlach, I know you were up first. We have a House
rule that lets all others speak before we speak a second
time, so the delegate that would be at the mike.

MS. ANDERSON-HANSELL: I'm Sally

Anderson-Hansell from Region 1, and I drove five hours in my
gas-guzzling four-wheel-drive SUV to be here. The one
weekend I'm here is when the Pendleton Round-Up occurs --
let 'er buck -- and I consider it an honor to be here.

I oppose this motion.

MR. RAWLINSON: At the mike?

MR. VARALLO: Christopher Varallo. I am a
delegate from the out-of-state region. I want to thank you.
I'm from Spokane, Washington. It's my pleasure to be here and to be part of this wonderful institution that appears to be pretty unique to Oregon.

As a young lawyer, I would like to thank you all for allowing me to be here and a part of this. I would like to speak in favor of this resolution. I may be the only one here who had to fly here and stay the night last night and fight with all the opposing football fans for a hotel room. I'm staying in Albany. Thank you.

(Laughter.)

MR. VARALLO: The Best Western was $500. My firm paid that for me. I am lucky in that I work for a firm that paid for this, that paid for my air fare and paid for my rental car. And it paid to have me come out here and do this as a benefit. A lot of my colleagues are not so lucky.

I see this institution as similar to other governing bodies. And if I'm not correct, please correct me, but most governing bodies of this type do pay for some type of mileage reimbursement. And would I apply for it? I don't know. I understand my firm subsidizes the bar, but that's my choice, if it's decided.

As to the issue of how much it would cost, I would put out there that's been not even a year, and if it turns out to be $15,000 I think it's the body's prerogative
to change it in a year. Nothing is cast in stone. But I
would speak in favor of it for those reasons. Thank you.

MR. RAWLINSON: Thank you. Mr. Georgeff?

MR. GEORGEFF: Thank you. Gary Georgeff from
Eastern Oregon. This is just purely procedurally. The
board has pointed out there is a question of whether this
motion is -- or Ms. Gruber's agenda item is out of order.

At Ms. Gruber's request, and I understand
also suggested by Mr. Karandy, something of a
parliamentarian, I make the following motion --

MR. RAWLINSON: Go ahead.

MR. GEORGEFF: -- that's to amend by
inserting the following paragraph at the end of the
resolution: "Resolved that the House of Delegates directs
the board of governors before amending Article 7.5 of the
bylaws to first determine if any legislative changes are
necessary to implement this resolution and to seek such
legislative changes determined, if necessary, to implement
this resolution."

And the point of this is if this motion
passes, the supporters believe this could resolve the
question of whether it's properly in order and binding on
the Board of Governors. I'll present this.

MR. RAWLINSON: Mr. Georgeff, I have a point
of order question for you. Sounds like you are making an
amendment, first of all, to allow for a review to see if
there's any legislative change that would be necessary,
which would include, I guess, a change in the Oregon Revised
Statutes.

Are you also addressing the issue of whether
or not it requires bylaw changes?

MR. GEORGEFF: This doesn't really address
that it requires a bylaw change. What it addresses is
simply to determine the legislative changes that are
necessary and then directing the board to seat those changes
if they are necessary.

I frankly don't know if they are. It's just
to get past the question of whether it's all properly in
order or not.

MR. RAWLINSON: Thank you. Is there a second
to the motion to the amendment?

MR. HABERLACH: I'm Bill Haberlach from
Region 3, and I second the motion.

MR. RAWLINSON: Thank you. We have a motion
and a second. I announced at the beginning that we'd like
to have any motions to amend in writing. I'm going to
strictly require that.

Is there anyone in the house that would
require this particular motion to be in writing?

Hearing none, we'll consider the motion to
amend. All those in favor of amending the motion to adopt
the language that Mr. Georgeff proposes, please raise your
placards.

   All those opposed? Wow. I'm sorry. I'm
going to have to request that we have our counters come up,
and we'll have to count placards. Please remain in the
delegate area.

   All those in favor, please raise your
placards. This is a simple majority vote. We have those.

   Okay. All those opposed?

   Delegates, we have an outcome. The motion to
amend failed 55 to 73. We are back to the main motion.

   Do we have speakers?

   MR. BURFORD: Yes. Christopher Burford,
Chair of the New Law Section, from Pendleton.

   I would like to move to amend the motion for
the resolution by deleting the word "direct" in the second
line and replacing it with the words "request that."

   MR. RAWLINSON: Is that the extent of your
motion?

   MR. BURFORD: Yes. And it is in order to --
with the intention of overcoming the objection that was
mentioned earlier.

   MR. RAWLINSON: Thank you. Is there a second
to that motion to amend?
MS. ALLEN: Beth Allen, Region 5.

MR. RAWLINSON: I'll consider that to be a second. Again, we have a motion that was not submitted in writing. If there is any delegate who objects to that, please let me know now.

Hearing no objection, we will consider that motion before us. All in favor of the motion to amend, indicate by raising your placards.

Those who are opposed, raise your placards.

The motion is amended.

We will now return to the main motion.

Ms. Gruber, you have one minute to close, if you'd like.

MS. GRUBER: Oh, my goodness. I forgot about my motion.

MR. RAWLINSON: I'm sorry. There is somebody at the con mike.

MS. HOFFMAN: Thank you very much. I'm Janet Hoffman, and I'm a representative from Portland, Oregon.

I think the reason why this should be defeated is if you look in paragraph b, it says, "All members of the House of Delegates who attend the annual House of Delegates meeting will be eligible for mileage reimbursement, regardless of the means of transportation utilized."

If we're talking about this being an economic
measure to help those who could not otherwise attend, the wording of this particular section far exceeds that. I could theoretically be a passenger. I could be riding my bicycle. I could hitchhike. It has no direct correlation to the costs that have been incurred to attend this particular meeting.

And so for that reason, I think that it should be defeated.

MR. RAWLINSON: Thank you, Ms. Hoffman.

MS. GRUBER: Could I speak that?

MR. RAWLINSON: You have one minute to close.

MS. GRUBER: And thank you very much for that question. It was intentionally kept simple so that the bar staff and the attorneys did not have to gather up all these receipts.

It isn't a direct attempt to reimburse for every penny. It was an idea of encouragement, kept simple, and without too much invasion into one's privacy. Don't have to figure out how they got where they got. It's just a simple mileage calculation, which is one of the reasons why at the beginning I said feel free to change the $100 deductible and the $900 maximum, because, again -- and I go back to my earlier point -- the biggest expense is not the gasoline or the plane ticket.

In my humble opinion, it's the attorney's
time. I will be working all day tomorrow, Sunday, because I have spent today and yesterday here. And I bet you a lot of you will be doing the same to catch up if you can. And I probably won't catch up until the following weekend what -- the time I've used up doing this work. Thank you.

MR. RAWLINSON: Thank you, Ms. Gruber.

You have the main motion before you. All those in favor of the motion which adopts Addendum Item No. 9 as amended seeking mileage reimbursement, please raise your placards.

All those opposed? Boy. One more time.

Those in favor?

Sorry, folks. We're going to have to count them.

All those in favor, please raise your placards.

Do we have the opposed counted? Those opposed? Thanks, folks.

You folks have already worn out the attorney and he's left. And the verdict is not guilty.

(Laughter.)

The motion does not carry. It was defeated 73 to 62, so agenda Item No. 9 as amended fails.

Moving on now to agenda Item No. 10, Termination of the Oregon State Bar Leadership
College. This item is on page 6 of your agenda.

Ms. Gruber, this is your motion. We appreciate having your presentation of the first motion, and I'll need a second to put it before the House. May I have a motion?

MR. GEORGEFF: I second it.

MR. RAWLINSON: Now we have a motion.

MS. GRUBER: I move to deal with Item No. 10 of the agenda.

MR. RAWLINSON: Thank you very much, Mr. Georgeff. Do we have a second?

MR. GEORGEFF: I second.

MS. GRUBER: The leadership college was established just after last year's House of Delegates meeting. This body was not given the opportunity to discuss and debate the need for this college, the cost of this college, nor which bar members should be enrolled in this college.

Therefore, I submit in Resolution 6 to give you, the House of Delegates, that opportunity. My concerns about the leadership college are three-fold: the cost, which is paid by membership dues; the way it divides the leadership, quote/unquote, from the rest of the membership; and the way that a few members, very few, are singled out for special advantages not available for the rest of the
At the House of Delegates meeting in Salem last year, the Board of Governors presented a resolution to raise our annual dues by $50. We were told that this was needed for salary increases and PERS benefits.

In addition, we were told that $5 would be earmarked for the student loan reimbursement program. I voted no on that resolution because I believe our dues are already too high compared to the benefits that the member receives.

The resolution passed and our dues were raised. Several weeks later, I was surprised to learn that some of our increased dues were being used to start a leadership college wherein an unelected -- unelected board singles out attorneys as emerging leaders and provides them with five seminars at various locations throughout the year, some of which carry CLE credits.

The cost of the leadership college was estimated by bar staff to be between $28,000 and $30,000 annually. $28,000 a year is real money for most of the membership. Before committing this kind of money every year, the House of Delegates should discuss it.

Coincidentally, I just hired an attorney who has been inactive for three years because she had a baby. She will be earning about $28,000 working part time. This
is not a small sum. The college mission statement reads as follows, quote: The mission of the leadership college is to recruit, train, and retain emerging leaders for the legal community in the Oregon State Bar, unquote.

A very troubling aspect of this leadership college is the way that certain members are singled out for special advantage not available to others. There is already a wide gap between the membership and those who are perceived to be in control of the bar.

The way the students are chosen, at the very least, perpetuates that currently held perception that the majority of the membership is not wanted or needed within the governing structure of the bar. Just send in your dues and be quiet. This may be an inaccurate perception. Nevertheless, it does exist.

A future leader arises naturally through his or her interest in bar activities and his or her own talents and initiative. A future leader is elected by his or her peers and should not be imposed upon the membership through an unelected board. The membership should be encouraged to get involved in the governing process.

The leadership college, as currently structured, discourages attorneys from getting involved. If this body wants to keep the college, I propose the board be
terminated and the students be selected only from bar
members who have been elected by the membership, and that
the selection process for students be done by drawing straws
or some other random process.

There is no need for a 13-member board to
tell the membership who our emerging leaders should be. The
only board this college needs is the ones who choose the
courses, manage the budget, and select the teachers. The
board should be a small group chosen only from this body
because each of us has been elected by our peers and we have
already shown an interest in the bar's governing process.

As far as recruiting is concerned, the
membership has already been recruited from bar members, and
there is no need for a college board to do so. If our
future leaders are chosen by an unelected board, we will see
a decrease in the membership's respect for the bar and a
widening of the existing gap between the bar members and the
bar leadership.

Thank you.

MR. RAWLINSON: Thank you. At the con mike,
Mr. Yugler.

MR. YUGLER: Good morning, everyone. I'm
Rick Yugler. I'm a member of the Board of Governors,
second-year member. I also chair the member services
committee of the Board, and I am here to speak on behalf of
the Board of Governors in opposition to this resolution.

The resolution is really based on an incorrect preamble and incorrect assumption of a number of items. Number one, costs. Though there is a budget of $28,000, the actual cost is much closer to $9,000. In fact, currently it's less than $9,000.

The second item in the preamble of this resolution says that this was done through a dues increase without the knowledge of the House of Delegates. That's incorrect as well.

And other programs -- this is money out of the general budget for membership services along with many other membership services provided. There was no dues increase for this program.

Third and most important, the preamble to the resolution contends that the leadership college widens the gap between members and decision makers. In fact, the leadership college closes the gap by recruiting and training future bar leaders. This is a Board of Governors initiative to train future leaders.

Just as the Board of Governors has a leadership conference of all bar leaders in January, this is another tool. This is intended to draw participants from all areas of the bar, all regions of the bar, to recognize diversity, and to make the bar better. In fact, the
leadership college draws its participants based on geographic diversity, ethnic diversity, and practice areas from everywhere across the state.

It opens the door to leadership in the bar structure. And it's a recruitment tool. Many of you are here because you were asked to be here by somebody. Similarly, the leadership college asks people who have leadership potential to get more involved, get more educated, because we do have an obligation to the future all the time to promote growth of future bar leaders.

The other thing the preamble contends is that this provides free CLEs. Well, actually, anyone who is signing up for this for just a CLE will not be appointed.

And finally, it is not assured that anyone who goes to the leadership college will be elected to anything. Just like everything else, they must stand for election for certain positions in the bar.

We're faced across the bar, and for all volunteer organizations, with a drop-off in volunteerism. There is a big problem not only for our bar, but for all bars. The Board of Governors has adopted this program as a tool to make sure we have a diverse leadership for the future, not only ethnic, but geographic diversity, and we urge you to continue this program.

This is its first year, and we hope it will
be permitted to exist. And I hope in ten years someone will
be standing here who went through the leadership policy
program. Thank you.

MR. RAWLINSON: Thank you, Mr. Yugler. I
will recognize Ms. Crawford at the other mike.

MS. CRAWFORD: Thank you. Well, I am one of
the fellows in the leadership college, and I don't know how
Ms. Gruber thought that we all got here, but I can tell you
how I got here.

I was looking at the bar website one day and
saw the little blurb about the leadership college. And I
happen to be volunteering for the diversity section right
now, and it is the only volunteer thing I do for the bar.
But someday I hope to be sitting in this group of seats
instead of that group of seats.

But I have worked for a big firm. In fact,
right now I'm not working at all, but when I do do legal
work, I typically work for state or federal governments, so
I'm not involved in firm work. I don't have the networking
that you all have. I don't know anybody outside of my
committee work, so I think this would be a great way for me
to meet people and to polish my skills as a communicator, as
a leader, as someone that can give back to the bar, because
lots of people have given to me, like my mentors in law
school, my professors. Everyone that's given to me, I want
to be able to give back. That's why I would be at the leadership college.

I'm also at a disadvantage because I live in Monmouth. For those of you that are familiar with Monmouth, it's kind of in the middle of nowhere. It's not real close to anything major except Salem.

(Laughter.)

(Inaudible) So that's how -- I applied for it. It was like applying for a job. I had to say why I was interested. I had to get my resume. I had to say what I had hoped to get from the program, what I hoped to give to the program. It was like applying for a job. And I kind of waited, like I was waiting for an answer from applying for a job, to see if I got into it. And I was real excited to get into it.

And I've met a bunch of really great folks who have given me great support. And I'm really happy to be part of the program. And I think that always (inaudible) might have otherwise because I'm part of that leadership college. Without having been -- having the leadership college, I don't know that I would be brave enough to sit here at this mike and talk to you about things (inaudible) in support of the leadership college because I wasn't confident enough in myself as an attorney who would say my voice is important in the things that I believe are
important.

So please support the leadership college because it gives people like us that are in nontraditional jobs, in nontraditional towns, that don't usually -- you know, people's strongholds in a state of (inaudible). Thank you very much.

MR. RAWLINSON: Thank you, Ms. Crawford. I'm going to recognize Mr. Lang at the con mike. Three minutes, please.

MR. LANG: Good morning, colleagues. I am Danny Lang from Douglas County. I'm a delegate this year. I am a fellow of the leadership college.

It was said earlier today the younger people are the future. Well, at age 66, I'm one of those younger people.

(Laughter.)

And I've been energized, actually, by all of you, every one of you, and I want to give back, so I joined the leadership college. And I've volunteered for other positions following my participation in the leadership college, and, yes, I intend to be back and intend to improve the Oregon State Bar. That's my commitment.

The leadership college this year was the sunrise. We shouldn't end today the sunrise. What we need to do is allow it to develop further.
I actually have one point of agreement with my colleague, Ms. Gruber. I think it should be a little more inclusive in number. I think maybe 30, 40, or 50. I think there were 49 applicants. And I'd like to actually see Ms. Gruber be welcomed into the college in the future.

We're going to spend $18 million for a new bar center. What's $30,000 on a little investment in human talent? That's what today has been about, human talent.

That's what I'm hearing.

And I guess I need to recognize that I am an elderly minority now, so I would urge you to save this program. My fellow fellows are great people, and I think it's a good chance for us to intermingle with the Board of Governors who attend the college sessions. It's just a good program.

I also was asked by John T. Bridges, who is on the Leadership College Advisory Board, to state that their board, as I understand it, was unanimously in favor of renewing the leadership college and not terminating the leadership college.

So I thank you very much for your attention.

And I intend to continue volunteering.

MR. RAWLINSON: Thank you, Mr. Lang. I'm going to recognize the gentleman at the other microphone.

MR. McLAUGHLIN: Bruce McLaughlin, District
4. First of all, if anybody has got an extra ticket to the Duck game, let me know.

And the second thing, I think we should recognize that this looks like it's going to be an overwhelming vote like some of the others and move things along. Maybe we should just call the question.

MR. RAWLINSON: I have a motion to call the question. Someone want to second it?

MR. HABERLACH: I'm Bill Haberlach from Region 3, and I second it.

MR. RAWLINSON: Mr. Haberlach seconds the motion. This will require a two-thirds vote to prevail. All those in favor of the motion, please raise your placards. All those opposed?

The motion carries. Debate is ended with the exception of one minute for closing, if you'd like to, Ms. Gruber.

MS. GRUBER: Well, I offered this so that the body had a chance to discuss it and perhaps offer amendments. And we have debated it and we've thought about it, and I just wanted to give you this opportunity. Thank you.

MR. RAWLINSON: Thank you. We'll now vote on the main motion. All those in favor of doing away with the leadership college, please raise your placards.
All those opposed, please raise your placards.

It looks like you won't need my help on that one.

Next agenda item, No. 11, direct the Board of Governors to establish a requirement for special assessment above normal bar dues. This would have the membership itself make a determination to special assessment.

Mr. Mozena, you have submitted an amendment. It is on the peach-colored pages that I pointed out to the delegates earlier. Could we move this along? At least begin by proposing the amended motion as the main motion?

MR. MOZENA: I would so propose it.

MR. RAWLINSON: Okay. Do I have a seconder who would adopt the amended motion, which is on the peach pages, so that we can proceed to that as the main motion?

MR. KARANDY: Second.

MR. RAWLINSON: Mr. Karandy, thank you. We have a second. We have a motion and a second before you. It is agenda No. 11 as amended. It's set forth on your peach-colored pages.

Mr. Mozena, you have five minutes. Thank you.

MR. MOZENA: A special assessment gives a great benefit to a program, and it also is a great detriment
to the bar because it sets forth an amount that is locked in. So as I've talked to the Board of Governors, they've indicated that that would set aside a certain sum of money as a trust fund.

Many of the individuals I've talked to in the bar have indicated that they feel at a loss losing the old Town Hall meetings, that they feel really that the HOD has somewhat disenfranchised them.

And, you know, I have a great belief in the bar as a whole and in lawyers as a whole and in the democratic process, and so if we're going to do a special assessment that gives a great benefit to a program and gives a great detriment to the bar, then let's consider a policy to refer it out to a vote of the membership. And that is really simply what I'm saying.

If we are going to do something as dramatic as a special assessment, then the entire bar should consider it. It can be debated in our publication. It can be considered thoughtfully, and it can be considered over time. And that seems to me to be a very reasonable and a very democratic way of doing it.

And as a professional organization, then we get a full membership participation. And that is the motion that I bring to you today, which seems to be a way to keep the entire bar participating in those matters that we
consider as important as a special assessment.

MR. RAWLINSON: Thank you, Mr. Mozena.

Debate is now open. Is there anyone in opposition?

Mr. Hill.

MR. HILL: My name is Jonathan Hill. I'm from Region 3, Roseburg, previously from Region 1. I'm honored to serve the Oregon State Bar as a public member of the Board of Governors.

As a public member, from time to time it's my duty to call upon you to see the big picture, and I'm here to do that. House Resolution No. 9 would require that any special assessment above the normal bar dues would require approval of the majority voting of the membership of the bar, setting the amount and the duration of the assessments.

Currently, the Board of Governors has the authority to establish annual membership fees and must provide a notice of proposed fees for the upcoming year to all members no less than 20 days prior to the annual meeting.

The House of Delegates must approve the increases by a majority vote. House -- excuse me. Special assessment is not defined in the Chapter 9. It is not defined in OSB bylaws. The proponents have not stated a purpose for treating special assessment such as the Affirmative Action Program differently from regular dues or
increases.

Currently, both assessments and increases require approval of the HOD. To parse out the assessment and require that a majority of all bar members approve assessments is inconsistent as a matter of policy.

The House of Delegates was established by the legislature in 1995. It is the result of low attendance at town hall-style membership meetings. Prior to the creation of the House, members were invited to a meeting. Votes were put before those who voluntarily appeared. Attendance was not strong and the House was created.

The House is now the proper forum for the membership of the bar to advise the board and to debate and decide matters of policy related to the membership for the administration of justice.

It is -- if this resolution is passed, the organization will have a split system that relies on the HOD for dues and separately on the general membership for special assessments. It's a very poor design.

If the House of Delegates is sufficiently representative of the general bar membership and capable of voting on general dues increases, can they be trusted with a vote on special assessments as well? Thank you.

MR. RAWLINSON: Thank you, Mr. Hill. At the other mike, Mr. Johnson.
MR. JOHNSON: Mr. President, Mark Johnson, Region 5. I raise a point of information, I guess. I'm sort of baffled by the procedure that we're following here. I am now confronted with a resolution that I didn't see until five minutes ago, but my understanding is that the resolution -- that this resolution differs from the one on our agenda in that it creates an exception for the client security fund, the PLF.

And my question is, with those exceptions, does this resolution affect any bar program other than the Affirmative Action Program?

MR. RAWLINSON: I'm going to allow Mr. Mozena to answer that question if he'd like to.

MR. MOZENA: What makes sense on this -- and this is a good point that the delegate raises. This seems to me to be a procedural type of matter. And normally with procedure, if we use the rule of law to battle, it would be perceptive and therefore it would not affect the Affirmative Action Program.

MR. RAWLINSON: Mr. Karnopp?

MR. KARNOPP: I'm Dennis Karnopp from Bend. I'm an elected delegate. And I see this, with all respect to Mr. Mozena, as a solution really searching for a problem. I don't see that there really is much of a problem. You know, I doubt that there is anybody here
that's spent more time and paid more attention to what the Board of Governors have done in the last 12 years than I have.

I was president of this organization, and I've been very active. I want to tell you that your elected representatives, the Board of Governors members, take this job very seriously. And the particular part they take very seriously is when they get to spend your money and they've got to come ask you for your money.

And I know when I was president, I was darn glad not to have to suggest any increase in dues. And I know Denny is really glad not to have to suggest an increase in dues, too.

And with all respect to the sponsors -- I mean, this says extraordinary expense, 30 bucks. 30 bucks, that's an extraordinary expense? I don't think so. I don't think so. I think the Board has to have the flexibility to continue to run this organization, and if it ain't broke, don't fix it. Thank you.

MR. RAWLINSON: Thank you, Mr. Karnopp.

(Applause.)

MR. RAWLINSON: Just as a policy of going from the con to the other mike, I'll recognize the delegate at the other mike.

MS. OAKES: Karen Oakes, Klamath County Bar
president as well as delegate. Having absolutely no
interest in the Oregon game but seeing a long agenda in
front of us, I move to call the question.

MR. RAWLINSON: I have a motion to call the
question. Do I have a second?

MR. PORRAS: Second.

MR. RAWLINSON: I may ask somebody to go to
the microphone.

MR. PORRAS: Anthony Porras, Region 5, I
would --

MR. RAWLINSON: Second the motion?

MR. PORRAS: I'll second the motion.

MR. RAWLINSON: Called the question. Thank
you.

We have a non-debatable motion before us. It
takes a two-thirds vote. All those in favor of calling the
question, cutting off debate, raise your placards.

Those opposed? Motion carries.

Let's go to the main motion. The main motion
is agenda Item No. 11 as amended to direct the Board of
Governors to establish a requirement for special assessments
above normal bar dues which would cause that vote to have to
go to the membership.

All those in favor of that motion, please
indicate by raising your placards.
MR. MOZENA: No minute to wrap up?

MR. RAWLINSON: I'm sorry. You certainly may, Mr. Mozena.

MR. MOZENA: Thank you, Mr. President.

If you weren't here today and you were out there just practicing law, you would want to have a right to vote on this. And, you know, if we prevent that, I just think we're just getting a little bit elitist. Okay? And so vote as you may, but if you were sitting out there at your desk today working on Saturday, you'd want to have a say. That's all I have to say.

MR. RAWLINSON: Thank you, Mr. Mozena.

Back to the vote of the main motion, all those in favor, please raise your placards.

Those opposed? Motion fails.

(Applause.)

We're now moving to agenda Item No. 12, adopt fairness in compensation for those practicing public defense law. If you will recall, we are going to move forward to agenda Item No. 21 to be heard immediately following this item.

May I have a motion to put this matter before us?

MR. RAWLINSON: We have a motion by Mr. Hennings. Do I have a second?

MR. GORHAM: Second from Steve Gorham (inaudible).

MR. RAWLINSON: Thank you. We have a motion and a second. Mr. Hennings, please.

MR. HENNINGS: This matter is one that's been before this body and always accepted. The question is the support that the Oregon bar will make --

MR. RAWLINSON: Can I have just a moment? Those that are in the back and visiting, I appreciate that you'd like to visit with other friends here, and I just would encourage you to please go into the corridor to do that because there are some important matters still to be determined. Thank you.

Mr. Hennings?

MR. HENNINGS: The question is what the State should be paying public attorneys who are performing the very, very tough service of defending our system as defense attorneys.

We're talking about publicly paid attorneys who have not gotten raises in two decades. We're talking about people who are the equivalent in terms of talent and in terms of expenses that they undertook to go through law school, who cannot afford to do this business to the extent
that it seriously raises questions of whether or not the
justice that we all stand for will take place in our courts.

My office, the Metropolitan Public Defenders,
the biggest public defender in the state, we are paid, quite
frankly, better than most of the people that are providing
these services. In my office right now, the pay
differential over a ten-year period of time between our
office and the district attorney's office is $182,000.

At that kind of rate and at the change in the
rates over years, in four years a district attorney in
Multnomah County will be paid more starting than the top ten
in my salary structure.

That's the issue. The issue is one of
fairness. And the issue is important to the bar because the
bar has to guarantee that justice is done and has to
guarantee that adequate attorneys are available on both
sides.

Therefore, I move this matter. I also ask
that anyone in support not speak to the matter, and the
reason I do that is because I don't think that this is
seriously controversial, and, in fact, I will suggest on the
second's permission that this matter be voted on
immediately. Thank you.

MR. RAWLINSON: Thank you.

MR. TYNER: I think the motion to call the
question has to be from the floor, but thank you for your thought.

MR. RAWLINSON: You heard the presentation. I have a delegate at the other mike. Do you have a motion?

MR. McLAUGHLIN: Just if Mr. Tyner didn't make clear, I call the question. I'll play ball with him.

MR. RAWLINSON: We have a motion to call the question. Do we have a second from a delegate?


MR. RAWLINSON: Mr. Browning seconds. It's a non-debatable motion. Two-thirds vote. All those in favor, indicate by raising your placards.

All those opposed? Motion carries.

On the main motion, the motion is to adopt agenda Item No. 12, which is referred to as the adoption of fairness in compensation for those practicing public defense law.

All those in favor, indicate by raising your placards.

Those opposed? Motion carries.

We are on to No. 21. Number 21 has been amended. That is on your peach sheet. Mr. Shepard, as you approach the microphone, could you let us know if you would consider the amended motion as the main motion.

MR. SHEPARD: Please.
MR. RAWLINSON: We have the amended motion on your peach sheets before you. Do I have a motion to adopt No. 21 as an amendment?

MR. TYNER: So moved.

MR. RAWLINSON: I have a motion for adoption. Do I have a second?

MR. LOPEZ: Angel Lopez. Delegate from Region 5. I have seconded that.

MR. RAWLINSON: I have a motion and a second. Mr. Shepard, you have five minutes.

MR. SHEPARD: Fellow delegates, my name is Ross Shepard, and I'm an elected delegate from Region 2. Welcome to Eugene.

The American Bar Association, after a drafting process that lasted for almost two years and encompassed 13 revisions and potential drafts, has published an important ethics opinion in July of this year concerning excessive case loads carried by those lawyers that provide criminal defense to individuals that are without means to hire an attorney.

And the opinion correctly states that all lawyers are commanded and compelled to practice competently with diligence and with a freedom from conflict of interest. And as he did explain well in his opinion, a concise, nicely drawn opinion -- and I think it can be understood even by
non-lawyers -- the opinion describes how those public
defenders and private attorneys that have too many clients
are put in an unwilling situation of not being able to
adhere to these ethical standards.

The amendment that has been distributed to
all of you provides a process to iron out a few minor
wrinkles that would be of great assistance to Oregon
practitioners. The ABA, of course, does not address
Oregon's actually unique system for providing public defense
in that all of these services are contracted for by the
Public Defense Services Commission.

And the ethics committee, I suggest, would
have a pretty easy job of resolving these final unanswered
questions.

The amendment further then directs the Oregon
State Bar in concert with the Oregon Criminal Defense
Lawyers Association and the Public Defense Services
Committee on an exact parallel track to the resolution just
unanimously approved. So I suggest to you that this is a
resolution you should be happy to vote for and be proud to
be a member of the Oregon State Bar for all lawyers
compelled to operate under the same rules.

So I move for adoption of Resolution 21.

MR. RAWLINSON: We've had presentation on
Resolution No. 21. Debate is now open. Do we have anyone
at the con mike? Mr. Hamlin.

MR. HAMLIN: Mr. President, I'm Bruce Hamlin.

I'm an elected delegate from Region 5. I want to emphasize from the start that I have no quarrel with the substance of the ABA opinion. I have no quarrel with the importance of providing criminal defense to indigents.

I want to speak, though, about the process here, because to my knowledge, this is the only time in the history of the House of Delegates that the House of Delegates has been asked to essentially adopt and vote a resolution that says that we're just telling the ethics committee to adopt it. But, in fact, we're dealing with the substance of ethics opinions and we've got a procedure for that. We have a state bar legal ethics committee. I used to be a member of it.

There is no reason that it could not, on its own, consider a request from any member of the bar and it could not adopt in whole or in part the substance of the ABA.

And I don't see a particular reason, other than getting 150 votes, rather than the votes of the legal ethics committee, to do it here. Thank you.

MR. RAWLINSON: Thank you. Ms. Eyerman.

MS. EYERMAN: Mr. President, Linda Eyerman, Board of Governors Region 5. I'm speaking on behalf of the
Board of Governors here to say that we -- in principle, we
support this amendment; and as amended, we think we can work
with this. So that's my point.

MR. RAWLINSON: Thank you. Mr. Tyner.

MR. TYNER: I don't think it's very

controversial, so I call the question again.

MR. RAWLINSON: Okay. The question has been
called for, which means no more speakers. Do we have a
second?

MR. BROWNING: Second.

MR. RAWLINSON: Thank you, Mr. Browning. We
have a motion and a second, a non-debatable motion.

Two-thirds vote. All those indicate by aye. Those opposed?

Motion carries.

We're now going to vote on the main motion,
which would be the adoption of Item No. 21 as an amendment.

All those in favor indicate by raising your placards. Those
opposed?

Mr. Shepard, congratulations.

MR. SHEPARD: Thank you.

MR. RAWLINSON: Let's move on to Item No. 13.

This is the traditional honor to show respect for the many
fine lawyers who we have lost over the course of the year.

We have additionally treated this as a formal matter, and so
I would ask Ms. Eyerman to get this matter before us for a
motion.

MS. EYERMAN: I will move the In Memorium resolution.

MR. RAWLINSON: Thank you. Do I have a second from the delegates?

MR. YUGLER: I second it.

MR. RAWLINSON: Mr. Yugler, thank you. We have a motion and a second. Before we proceed with the traditional reading, you have the list. Has anyone noted that we overlooked anyone and would like to move for amendment?

MS. EYERMAN: We actually have a number of names that aren't on the list that are on my list, so if you could perhaps let us know at the end of any other names.

MR. RAWLINSON: Thank you, Ms. Eyerman. Do you wish to proceed?

MS. EYERMAN All right. Would you all please stand. I am going to read the names of those in the Oregon State Bar who we have lost this year as a result of death. There are 69 names on my list, and the last one is as important as the first one, so I would appreciate if we could just have silence until I get to the end.


I apologize if I mispronounced anyone's names. No disrespect intended.

And are there any names to be added to this list?

AUDIENCE MEMBER: Margy Lampkin, Oregon City attorney, just passed away.

MS. EYERMAN Thank you. Any other names to be added? Well, I think we should give a round of applause to celebrate the lives and practices of these people.

(Appause.)

MR. RAWLINSON: Thank you, Ms. Eyerman. We cannot go through the reading of the In Memorium each year without being reminded that we are blessed, each of us, to be part of something that's bigger than all of us.

Moving on to Item No. 14, proposed amendment to the Oregon Rules of Professional Conduct, this is set forth on pages 9 through 12 of your materials.

Ms. Stevens will make the presentation. Do I have a motion and a second to place this formally before us?


MR. RAWLINSON: Thank you, Ms. Isaacs. Mr. Yugler?
MR. YUGLER:  I second the motion.

MR. RAWLINSON:  Thank you.  Ms. Stevens?

MS. STEVENS:  In the interest of time constraints this morning, I don't really plan to say anything about any of these rule changes.  I'm otherwise happy to answer questions.

These are principally, as the background statements explain, efforts to correct a few errors, clarify a few things, and restore some things that we took out of the rules when we adopted the new rules that we figured out later we should have left in.

So I don't know if they make any significant changes in our rules of conduct, but I think they will enhance them.  And as I've said to people before, this is a work in process, so you will see us probably doing this every year.

If there are questions, I'll be happy to answer them.  I would hope that you approve these changes.

MR. RAWLINSON:  Thank you, Ms. Stevens.  We have a motion before us.  We have a second.  We have no one at the microphones.

All those in favor of the adoption of the amendments to the Oregon Rules of Professional Conduct indicate by raising your placards.  You're way ahead of me.

All those opposed?  Motion carries.
On to 15, proposed revised statement of professionalism, pages 12 and 13 of your materials.

Mr. Menashe will make the presentation. Do I have a motion and a second to place it formally before us?

MS. SKERJANEC: I so move.

MR. RAWLINSON: Ms. Skerjanec provides us with a motion. Mr. Greene provides us with a second. Mr. Menashe?

MR. MENASHE: Thank you, Mr. President. The original statement of professionalism was adopted by the Oregon State Bar in 1990 and approved by the Oregon Supreme Court in 1991.

In 1992, the Bench Bar Commission on Professionalism commenced working on a new revised statement of professionalism. And for those of you that don't know, let me talk to you a second about the composition of the Bench Bar Commission on Professionalism.

It consists of the Chief Justice of the Oregon Supreme Court; the Chief Judge of the Oregon Court of Appeals; the Chief Federal District Judge or designee -- in this case this should be -- the designee is Judge Hubel who is back as the chair of the commission this year.

There are five other judges on the commission. The three deans of our three fine law schools in the state are members of the commission. The president
of the Oregon State Bar; the executive director of the Oregon State Bar; the chief executive officer of the Professional Liability Fund; four lawyers at large; a public member. And a very important member of the commission is one of its founders, former Chief Justice Edwin Peterson.

The commission started their work on revising the statement of professionalism about four years ago, and I can tell you that the meetings were frequent and the participation was quite extensive by all the members.

I was a member for several years, and Chief Justice Carson, as I recall, attended almost every meeting and was very instrumental in discussions regarding the revised statement of professionalism.

The goal of the commission revising them was to make statements of professionalism that were simpler and more inspirational. The statement of professionalism, which I think many of you have seen -- it's in the bar directory -- is quite lengthy. By simplifying it, it would be easier to remember and certainly follow.

It's also intended that the statement be reduced to a size suitable for framing with the hope that lawyers would recognize the importance of professionalism, frame the certificate, and place it in their offices.

It was the goal of the commission to make the statement simpler, as I said, leaving, of course, the
standard of interpretation to be one of common sense. When you read it -- certainly, lawyers have the opportunity to pick lots of holes in it -- but if you look at it from 30,000 feet and use a common sense definition to the new statement of professionalism, it makes good sense.

I can tell you that, in talking to the commission recently, there is an intention to prepare examples of professional behavior to supplement and to explain professional behavior.

Your vote today to support and approve the guidelines will be an advisory vote to the Oregon Supreme Court. If approved by the House of Delegates, this vote will be sent up to the Supreme Court for their approval and hopeful enactment. Thank you very much.

MR. RAWLINSON: Mr. Williamson at the floor mike.

MR. WILLIAMSON: I have a written amendment to -- I would move to insert words before "discrimination" on page -- unlawful or unethical (inaudible). I think that everybody discriminates in some way about some things, and that's just an overly broad statement.

I understand that the bar itself is actually discriminating against the military at this time. So we all do discriminate, whichever side that you're on, but should recognize that there is discrimination and unlawful and
unethical should be professional.

MR. RAWLINSON: We have a motion to amend the agenda item by adding the word "unlawful" before the word "discrimination" in the proposed statement of professionalism.

MR. WILLIAMSON: Unlawful or unethical.

MR. RAWLINSON: Or unethical. Thank you. Do we have a second for that amendment?

MR. VAN ATTA: Second.

MR. RAWLINSON: Thank you, Mr. Van Atta. We have a motion and a second. Any discussion?

AUDIENCE MEMBER: Point of clarification. Is this motion in writing or (inaudible) --

MR. RAWLINSON: He has submitted it in writing as required. Thank you for asking.

Seeing no one at the microphone, I have a motion and a second to amend the main motion. If you're in favor of that, you will be raising your placards now.

Majority vote. All those opposed? I'm going to rule that it passed. So the words "unlawful" and "unethical" will be added to the main motion.

Is there any further discussion on the main motion?

AUDIENCE MEMBER: Excuse me. That was unlawful or unethical?
MR. RAWLINSON: That's correct. Thank you.

Back to the main motion as amended. All
those in favor, indicate by raising your placards.

Those opposed? Motion carries. Thank you.

On to No. 16, Mr. Gaydos. This item opposes
judicial districting ballot initiative, which was ballot
initiative No. 40.

To formally get this before us, could I
please have a motion and a second by a delegate before we
give it to Mr. Gaydos.

I have a motion and -- I have a motion and I
have a second. Thank you very much. Mr. Gaydos?

MR. GAYDOS: Thank you very much. My name is
Gerry Gaydos. I'm from Region 2 and chair of the Public
Affairs Committee. And I want you to know the Public
Affairs Committee does a wonderful job and the staff does a
wonderful job of looking at all matters that come before the
entire board in trying to determine whether that's law
improvement and also trying to determine whether or not it
will get us in trouble.

But the biggest issue that we face today is
one that really falls under one of our true mission
statements, and that's to be partners with the judiciary.
And the judiciary has a challenge before it on many fronts,
but one is this Constitutional Amendment 40.
The Constitutional Amendment 40 is one that really potentially has profound effects on the Oregon Appellate Court and the Supreme Court.

It's appropriate for the bar to take a position on this because of the partnership obligation and because of our unique understanding of the importance of the rule of law and the dispute mechanisms that we so much believe in and that we use on a daily basis.

Judicial election should be about legal expertise, not about regional politics. This particular amendment -- constitutional amendment would fundamentally change Oregon's highest courts and alter a system that has worked since 1910.

We already heard from prior bar president, Dennis Karnopp, that if the system is not broke, let's not fix it. Measure 40 purports to serve the interest of rural Oregonians by (inaudible) and threatens to diminish the quality of our appellate courts.

Measure 40 actually reduces voter input as now all voters have an opportunity to vote for 17, and if this passed, it would only have enough to vote for three.

Measure 40 would provide regional voting to vote for one Supreme Court Justice and two Appellate Court Judges.

Measure 40 also would create a logistical
mess. Under Measure 40 judges on the Supreme Court and the Court of Appeals have to reside in their districts throughout the region. The courts where the judges expected to work full time, however, are located (inaudible) however, are located in Salem.

(Laughter.)

So we're really going to be changing the nature of what we're requiring of our current judges. And, obviously, it's important that we are supportive of the judiciary and continue to be partners, that we continue to have the wonderful relationship between the practicing bar and judiciary. We must support them and oppose this Constitutional Measure 40. Thank you.

MR. RAWLINSON: We're now open for discussion. By the way, for the record, the motion was made by Mr. Karnopp and the second was made by Mr. Greene.

Discussion? Mr. Newell.

MR. NEWELL: Bob Newell, elected delegate from Region 5. I'm here only because I seem to be unable to say no and consequently agreed to work with Peter Glade to try to raise money for the opposition to this measure, which is going to require a lot of it. So if any of you have checks floating around, we need all the money we can get because this was narrowly defeated in 2002. It is sponsored by out-of-state interests, and they have a lot of money.
And we have to beat it.

MR. RAWLINSON: Thank you. Ms. Eyerman?

MS. EYERMAN: Well, I had a conference call last night with Chuck Tauman, who is working on the campaign, and I think that I need to make a couple of points so that the membership understands the urgency here.

This is on the ballot in November. This redistricting proposition is going to be voted on by the electorate in Oregon on ballots that go out in less than a month, so we -- it is an urgent matter that money be raised in order to educate the electorate here because they don't understand the court system.

There needs to be a campaign, and the money needs to be raised fast. As I understand it, the campaign has put together a plan where their goal would be to get a thousand dollars from each of the lawyers and judges in this state, and then they would have the funds they need. They need that money by the end of this month, September 30th, and I just want anybody who can write a check to do it today.

No on Constitutional Amendment 40. And I understand that not everybody can write a thousand dollar check. I have one in my hand, and I want to start the process. But they need money, so, please, do whatever you can. It is really critical, and I can't underestimate how
urgent it is.

And the checks go to Bob Newell, or write on a piece of paper your pledge, because they will be able to take credit cards, really. I just have to say, please understand how important it is for action and not just words here.

MR. RAWLINSON: Ms. Eyerman, thank you. If you will give that check to Mr. Newell, I will give mine to Mr. Glade, and they will then receive several more from the rest of the delegates here today.

Do we have any further debate? I'm going to assume that you don't need a minute of closing, Mr. Gaydos?

MR. GAYDOS: That's correct.

MR. RAWLINSON: Thank you. All those in favor, indicate by raising your placards.

Those opposed? Motion carries overwhelmingly.

On to agenda Item No. 17, elimination of rule prohibiting post-trial contact with jurors.

Mr. McKinney, this is your matter. Thank you for coming to the podium. Could we please have a motion, Mr. McKinney, and a second to get this motion before us?

MR. MCKINNEY: I would move this be approved.

MR. RAWLINSON: Thank you. Do I have a second from the delegates?
MR. LERNER: Second.

MR. RAWLINSON: Thank you. Could you please just stand and identify yourself for the record?

MR. LERNER: Kenneth Lerner, Region 5.

MR. RAWLINSON: Okay. Can you help me with the name?

MR. LERNER: Lerner.

MR. RAWLINSON: Thank you, Mr. Lerner. We have a motion and a second. It's now formally before us.

You have five minutes. Thank you.

MR. MCKINNEY: Thank you. I won't take the five minutes. I greet (inaudible) those here in Oregon from the Coast to Crater Lake, land of recreational opportunity. Thank you. Nice to be here.

Those of you who have tried cases outside of Oregon know there's a big difference at the end of the jury trial. We get to interview jurors. And what you find out when you interview the jurors is a lot of things. There's certainly no better education a trial lawyer can have than immediate feedback.

And it's not just about education of lawyers. We're seeking to amend UTCR 3.120 because we think it's important for the administration of justice.

I've tried 30 or more cases outside the state, in California, to a jury. And in at least two of
those cases, talking to jurors afterward, we discovered a problem.

On one of the occasions, I had a juror that was upset because it turned out that one of the jurors had gone out and done his own investigation, consulted experts, and brought that back to the jury room. And it substantially affected the rest of the jurors.

Well, it affected my verdict, but that was the right thing to do. But the judge should have granted a new trial on that.

And I had another case where an award seemed kind of small. In talking to jurors afterwards, I found out they just picked a number they wanted to award my client and divided it by the number (inaudible).

Talking to jurors is important. Now, I'll grant you mischief can occur if that happens. And we need to set procedures in place (inaudible).

We can put procedures in place to keep that from happening. Most states allow juror contact, have procedures on what you can say to the juror, what you can't say to the juror. It's an important part of the process. It's an important part of the administration of justice.
And I encourage you to pass this resolution.

MR. RAWLINSON: Thank you. Discussion? I see no one at the microphone. We must be getting close to
the game.

All those -- would you waive your closing,

Mr. McKinney?

MR. McKINNEY: I would do that.

MR. RAWLINSON: We have a motion before us.

The motion is to eliminate the rule prohibiting post-trial contact with jurors. All those in favor, indicate by raising your placards.

All those opposed? Motion carries.

Moving on to No. 18. Thank you, Mr. McKinney. Number 18: encourage and recommend availability of optional form pleadings.

I understand that you've submitted as well a written amendment. I'm sorry. Mr. Neuberger has -- well, why don't we just take this in order. It's not your amendment.

MR. McKINNEY: It's not my amendment.

MR. RAWLINSON: Let's stay with the main motion. We have a motion to put this before us.

MR. McKINNEY: I move approval of this.

MR. RAWLINSON: Why don't I inform the House of the amendment, and perhaps we can make this a single step rather than two steps.

The amendment is to strike the following language, quote, Counsel on Court Procedures and UTCR
Committee, close quote. If you're comfortable with that, Mr. McKinney, I would propose that we proceed with the amended motion as the main motion.

MR. MCKINNEY: I'm comfortable with that.

MR. RAWLINSON: Great. Would you make the motion, then, to adopt the amended motion as the main motion?

MR. MCKINNEY: I would.

MR. RAWLINSON: Okay. Thank you. Do I have a second?

MR. GEORGEFF: Gary Georgeff. I second.

MR. RAWLINSON: Thank you, Mr. Georgeff. You have five minutes.

MR. MCKINNEY: I won't use my time. This is simply an act (inaudible). Those who practice in other jurisdictions know that other jurisdictions are doing this. We may not like practicing with pro per third parties, but you're going to have to face the fact that they are here to stay. And we can simply waste a lot of our clients' time and money doing motions to dismiss and motions to make more definite and certain because they don't know what they are doing, or we can just get ahead of the problem and create form pleadings.

And if you've ever seen a form pleading created, it is very basic. It lists the requirements of the
cause of action and says -- and leaves a blank for the
parties to fill in the facts necessary to state that cause
of action.

And it makes it easier for them to appear in
court. It makes them -- gives them a chance to state their
cause of action without too much trouble. We know what the
elements of a claim are.

You go to the jury verdict forms. They are
all set forth in there. So we can just take the elements of
the claim and put them into a cause of action on a blank
form. Make sure it's available at the clerk's office and
have them available to the public.

The average practitioners won't use these,
but these are going to be made available if somebody comes
-- if they can't afford to hire you, you can give them the
form and they go home and finish it themselves. It's an
access to justice issue.

I will say that this came before you last
year and there was a lot of confusion over which committee
is going to handle this. We were told the counsel on court
procedures, the UTCR committee, would be the best to make
it. I find out in preparing this that there's another
committee, the (inaudible) committee, that has jurisdiction
over this.

I think it's something that all committees
need to address. We need to get on top of this problem quickly and start working on these forms and make them available.

And truthfully, I think we need to understand that the forms help everybody. If we could have a standard form for a judgment or if we had a standard form for substitution of attorney, this kind of makes -- these things make our practice better and more simple. And so I encourage your approval of this.

MR. RAWLINSON: We have a motion before us. The motion is now open for debate. Do I have anyone at the con or other mikes? Mr. Browning.

MR. BROWNING: Mr. President, Bob Browning from Forest Grove. The only concern I have is that several of the counties have gotten in their mind that the standard form pleadings are the only pleadings that can be used in their court and that you have to buy the form from them. So I just kind of hope that somehow or another in the process of doing this we make it clear to the clerks that they don't have a little monetary way to generate money here.

The forms ought to be optional. And I hope they will remain optional, because many times we have a need for them to be handled that way. And I don't think it's right that in several of the counties we should have to pay three bucks just to file an FED. Thank you.
MR.rawlinson: Thank you, Mr. Browning. At the pro mike, Mr. Georgeff.

MR. georgeff: Thank you, Mr. Rawlinson. As I mentioned before, I practice in Brookings, which is right down there by the California border. I'm also licensed down there. Have been for 10 years. We do form pleadings in California.

Frankly, when you're doing lawyer to lawyer and other lawyer's form pleadings, it's maybe a little bit annoying, but most lawyers don't use them.

And Mr. McKinney is correct in that this is a way that legal services can be developed and delivered to people who can't really afford full representation. People who need to resolve the smaller disputes or maybe above the small claims jurisdiction or they just can't get a lawyer who is interested. And it's an efficient way to handle that process.

It works reasonably well in California. Also, Mr. Browning's point is probably well taken, that these would be dealt with in the way these rules are drafted. So I would support this measure.

MR. Rawlinson: Thank you, Mr. Georgeff. Mr. Christ?

MR. CHRIST: I'm Tom Christ. I'm an elected delegate from Portland, and I'm opposed to this if, as I
understand it, the form generated by this committee would be sufficient as a matter of law in court. In other words, they come and present this in the courtroom and that's taken as good no matter what.

I don’t think that's necessarily fair to defendants in cases, some of whom may be pro se themselves. But they are denied the opportunity to come up with some new argument against the cause of action that may not have been considered by the committees that drafted the form.

The law changes over time, and somebody may come up with some new argument against a client, and it would seem by this resolution that they would be foreclosed from presenting that just because this has been blessed by this committee.

I think it may be appropriate to come up with forms that you can see, and stick in a CLE, which would provide guidance to pro se claimants.

But the sense of this resolution is that once this form has been approved by this committee, that will pass, necessarily, in the court of law. I think that's wrong. I'm opposed to it. Thank you.

MR. RAWLINSON: Thank you. At the other mike, Mr. Kent.

MR. KENT: Chris Kent, Region 5. I'm interested in hearing what everybody has to say about this
issue, but I see our ranks are dwindling so I move to call
the question.

MR. RAWLINSON: I have a motion to call the
question. Non-debatable motion. Do I have a second?

MR. McLAUGHLIN: Second, Bruce McLaughlin.

MR. RAWLINSON: Thank you, Mr. McLaughlin. I
have a motion and a second. Takes a two-thirds majority.
All those in favor, indicate by raising their placards.

All those opposed? Motion carries.

We'll proceed with the main motion. The main
motion is to encourage and recommend availability of
optional form pleadings. As you know, we have an amendment.
Yes. You wish to speak? One minute closing.

MR. MCKINNEY: I will take that opportunity
to answer a couple of questions. I've used these form
pleadings in other states. When they are adopted, it's very
clear whether they are a mandatory form or a form that's
optional. So it's going to be the job of that committee to
create these forms that everybody knows this is a mandatory
form or it's not a mandatory form.

They are not going to have a form they've
already got. You know, their cause of action is
(inaudible). We're just talking about creating forms for a
complaint for breach of contract, a complaint for fraud, an
answer form, just say: I admit the following paragraph. I
deny the following paragraphs. And just -- there's only
going to be a few forms that are going to be simple. They
don't intend to cover every subject.

And I recommend you approve on that basis.

Thank you.

MR. RAWLINSON: All those in favor of the
motion as amended, raise your placards.

All those opposed? Motion carries.

On to No. 19. Mr. McKinney again. Amend
ORCP 7A to eliminate "true copy" certification. Please
provide me with a motion to put this on the floor.

MR. MCKINNEY: Move approval
of --

MR. RAWLINSON: Move approval --

MR. MCKINNEY: -- of Resolution No. 19.

MR. RAWLINSON: Thank you. May I have a
second from a delegate who will identify themselves.

MR. GEORGEFF: Second, Gary Georgeff.

MR. RAWLINSON: Thank you. We have a motion
and a second. Mr. McKinney.

MR. MCKINNEY: Greetings again from Douglas
County. At the Douglas County Bar Association, we have been
pretty busy. And one of the things we did is we sat down
and said, you know, this could be better accomplished
another way, and we have already covered two of them.
One of them is it's true and correct copy is really stupid. I'm sure there was a reason for it at some time in the past -- before we had copy machines and maybe trial lawyers didn't trust each other and maybe when we didn't have as many forms as we have now because we're certifying in other documents that we're serving true and correct copies of documents. We don't need redundancy to say this is a true and correct copy of the document.

Times have changed. This rule is -- this requirement is stupid. I will say this, that I had a flood of calls saying, "And what about this one, too," because apparently there is a similar one in family law that they have to do something similar. And we didn't include that one here.

But we want the UTCR committee and the counsel in court procedures to take a look at this and say, okay, let's do away with this rule.

And are there any others just like it and we probably don't need anymore? (Inaudible) I don't know. I don't think so. I think (inaudible). I will recommend your approval. Thank you.

MR. RAWLINSON: Thank you. Motion is open for discussion. Mr. Hamlin?

MR. HAMLIN: Bruce Hamlin. I'm an elected delegate from Region 5. I spoke against this when it came
up last time. I'm speaking against it again for the simple reason that this is something within the jurisdiction of the Council on Court Procedures. I was asked by the Council on Court Procedures -- although I'm not a member -- from the chair of it to speak against it.

The Council on Court Procedures considered the very request that is incorporated into this resolution and voted last Saturday to send it out, not in exactly the form requested but similar, for publication, so that it could be finally adopted if it gets the requisite votes in December.

MR. RAWLINSON: Thank you, Mr. Hamlin. At the con mike, Mr. Lang.

MR. LANG: Thank you. This is just a modernization, and it gets rid of some uncertainties. It gets rid of a lot of rubber stamps in the office.

We all have a requirement that we serve somebody with a true copy, and so we're not deleting anything.

As much as I loved steam locomotives in my youth, they are gone, and I think this needs to be gone. Procedurally, if somebody says it's up for a vote, all this is is a policy recommendation by you folks, by my colleagues, that it's time we move forward (inaudible) -- with fax machines and other things, that we don't need to
get that rubber stamp out.

And a lot of attorneys ask me, say
(inaudible) the request for admissions, do I need to know
those answers -- there's a lot of confusion out there, so
let's just park this locomotive in a museum somewhere.

MR. RAWLINSON: Thank you.

MR. LANG: Thank you.

MR. RAWLINSON: Thank you. At the con mike,
Mr. Enbom.

MR. ENBOM: Yes. I'm Jack Enbom. I'm a
public member of the Board of Governors, but I also serve as
a public member on the Council. And they have had some
consideration over the last year, and it is up for review
and will be voted on in December. And I have no question
it's likely it will pass as presented and we'll do away with
this in function.

MR. RAWLINSON: Thank you for that
information. Any further discussion?

MR. McLAUGHLIN: Call the question.

Mr. McLaughlin.

MR. RAWLINSON: Thank you. No. I'm going to
treat that as unnecessary since we have no one else at the
microphones. So we'll just proceed to vote unless you want
to close.

MR. MCKINNEY: One brief comment. I forgot
to mention earlier that because I had this on the agenda, I got calls from different counties. And apparently there's at least two counties where it's practical not to follow this. The secretaries initial that stamp after it's stamped. The attorneys don't bother.

(Inaudible.) It's a rule that is so annoying that people aren't even following it. And even though the Council in Court Procedures may be fixing it, let's let them know that we want this passed.

MR. RAWLINSON: Motion before you is to do away with the true copy certifications. In favor of that, place raise your placards now.

All those opposed? Motion carries.

MS. VAN METER: Mr. President, I request a quorum.

MR. RAWLINSON: Thank you. Do I have a second to request the quorum?

MR. GORHAM: Second. I second that.

MR. RAWLINSON: Thank you. I have a second. Folks, if you would all please remain in your places, we'll have the tellers come out and count and we'll see if we have 109 to continue.

We have some delegates that stepped out for a moment. We might try to go out and round them up.

AUDIENCE MEMBER: Point of order,
Mr. President. I would ask that the counting of the quorum be delayed for approximately four minutes while we determine whether or not there are delegates outside who might well be here.

MR. RAWLINSON: I will grant that request.

Please don't leave if you are already here.

(Laughter.)

MR. RAWLINSON: If you know the delegate sitting next to you or a friend of yours has walked out for a moment, would you please go out and round them up.

(Brief recess.)

MR. RAWLINSON: If I could have your attention, I am told that we have rounded up all of the delegates who were out in the hallway and everyone is now here. If you would take your places, we will proceed with the teller count.

Please raise your placards and let us know you are a delegate.

(Placards raised.)

Ladies and gentlemen, I am told that we do have a quorum. We have 127 and we need only 109.

I have also been asked to point out that we do have box lunches for you. They are out in the hall now. And what I am going to suggest, if you will promise not to leave and come immediately back, we have got our quorum. So
please do that and we'll go on to the next one.

(Brief recess.)

MR. RAWLINSON: We are on to Item No. 20:

"Direct the Board of Governors to Restore Armed Forces Advertising in the Oregon State bar bulletin."

Mr. Karandy, this is your matter. Come up to the podium. As Mr. Karandy is coming up to the podium, do we have a motion by a delegate to get this matter before us?

AUDIENCE MEMBER: Point of order.

MR. RAWLINSON: Yes.

AUDIENCE MEMBER: We did not vote on the last matter.

MR. RAWLINSON: Thank you. I hadn't realized that.

I have assurances that we did vote on it and it passed.

On to No. 20. Do I have a motion to get this matter before us?

MR. KARANDY: I so move.

MR. RAWLINSON: Thank you, Mr. Karandy. And a second?


MR. RAWLINSON: Thank you, Mr. Browning.

Mr. Karandy, you have five minutes.

MR. KARANDY: In the interest of everyone
having a chance to speak, I'll be as short as I can.

This resolution that I am presenting is specifically just addressing Armed Forces advertising. But however, I think there is deeper and broader implications than just the Armed Forces in whether or not the resolution is passed.

The provisions of the current bylaw, Article 10, banning advertisement, if implemented of course to the logical conclusion, would potentially ban many other employers from advertising who are currently legally allowed to furnish applicants for employment on the basis of one or more criteria in Article 10.

One glaring example in my mind is employers that are purposely opposed, for diversity reasons, to trying to hire individuals of a specific race, group, ethnicity, or whatever, or religious groups that are allowed under federal law to select and give preference to individuals of their denomination.

So perhaps if this specific resolution regarding the military passes, the Board, in carrying out this resolution, could amend Article 10. It's up to the discretion of the Board to allow for those that are legally allowed to give preference to one group or another to do so.

I would just like to make the point that not all discrimination is illegal. Not all discrimination is
necessarily rational. The specific requirements
traditionally of the Armed Forces are created and
implemented by the Federal Government, by the Congress of
the United States and by the Executive branch.

    It's my belief that the best way to address
the bar of the State of Oregon as a group is to reach the
policies of the military. And the best way to address that
is to petition the Congress and the Executive to change the
requirements of recruitment or retention of individuals in
the Armed Forces and not to punish them from publishing in
the bar's publications.

    For those reasons, I am asking to support
this resolution and vote for its passing.

    MR. RAWLINSON: Thank you, Mr. Karandy. The
discussion is now open.

    Mr. Comstock.

    MR. COMSTOCK: Mr. President, Mark Comstock,
Board of Governors. Delegate from Region 6.

    I am here to address the Board's position on
this, and I will tell the delegates that the Board of
Governors opposes the adoption of this resolution in a split
Board vote.

    Just as history, because there has been a lot
of e-mail traffic that has been somewhat (inaudible) and at
times questioning many things. But historically, the
editorial policy is the outgrowth of a longstanding Oregon State Bar stance against discrimination on the basis of race, religion, color, gender, sexual orientation, geographic location, age, handicap or disability, marital, parental, or military status or other classifications protected by law.

The specific history of this was, this came from a 1986 business meeting resolution. It was reaffirmed in 1988. And this editorial policy became a part of the bar bulletin in 1990. This came before this Board of Governors in June of 2005 on a complaint from a member.

The Policy and Governance Committee, of which I chair and did at that time also, looked at the plain language of our policy in Article 10 and asked that the Oregon National Guard, who was seeking to place an ad for employment, certify that they complied with the provisions.

The Oregon National Guard was not able to certify that they complied with the provisions. They were able to state that they complied with the spirit of the article.

The Policy and Governance Committee recommended an exception for the Oregon military to advertise in the bar bulletin. There was a robust debate. It was not a debate of military policy. It was not a debate on current military campaigns. And it was certainly not a
referendum on the value of the military.

What the debate was, it was focused specifically on the bar's mission to respect the Rule of Law and whether the bar could create a higher standard for itself to determine the scope of its non-discrimination policy.

The vote, and it was a split vote in a public meeting, the Board of Governors as a whole rejected the committee's proposal to create an exception. And that is where it stands now.

I would remind the delegates that this resolution is one that is subject to the question of whether the Board can control its own Bylaws.

And I see my red light is on, so I'll leave it to them.

MR. RAWLINSON: Thank you, Mr. Comstock. Mr. Browning.

MR. BROWNING: Thank you, Mr. President. Bob Browning, elected delegate from Region 4.

I will give each of you my disclaimer that I have a son in the Marine Corps of whom I am very, very proud.

I believe that the Board of Governors made an incorrect decision that says, We are an integrated bar and as such we are a quasi-functional unit of state government.
It is important if we believe in the Rule of Law that we follow the law.

The fact is that not all discrimination is illegal. If I choose not to hire someone because they have blue eyes, I have the choice to not hire someone because they have blue eyes even though it may well have no impact on their work whatsoever.

The fact is that the Supreme Court, the supreme legal authority in this land, has ruled that certain forms of discrimination in the military are legal. And for us as an integrated bar to suggest that we may ignore that pronouncement within our various official publications, such as the state bar bulletin, is incorrect.

That having been said, it does not in any way absolve us as individuals, and perhaps even as a group, from seeking through appropriate legal means and methods the changing of those policies. We have the opportunities to vote for Senators and Congressmen who believe that, for example, discrimination on the basis of gender orientation is inappropriate but until that comes forward, we have the obligation to follow the law. And the law of the land is that certain forms of discrimination are legal. And when we ignore that through our legal publications as an integrated bar, we are ourselves then committing an act of unprofessionalism.
It has nothing specifically to do with my son being in the Marines. I don't know if the Marines have ever showed up to do it. But it has to do with if I were a Catholic charity, for example, and wished to make it aware that I had certain programs or functions to give forward and that we are allowed under the law to do certain things with respect to the people who work for us, I don't think we should reject that ad either.

So I believe that certain members of the Board of Governors made an incorrect decision on this particular proposal as a way of setting that decision aside.

Thank you very much.

MR. RAWLINSON: Thank you, Mr. Browning. Mr. McLaughlin.

MR. McLAUGHLIN: First of all, Bob, I'd like to say I am sure on behalf of everybody here that we really appreciate your sacrifice and that of your son.

MR. RAWLINSON: I don't think there is a single person in the room who doesn't take that position.

In fact, I'd like us to give ourselves a round of applause for not committing a Vietnam. We are remembering the military this time around even if some of us may think that the policies of the administration are wrong.

Thank you.

(Appause.)
MR. McLAUGHLIN: The fact that we all feel that, Bob, it can't be said enough. I would have to say that if your son was ever in legal trouble in the military, there are some fine, incredible attorneys here who I would want on my side. And the (inaudible) Officers Corps deserves a lot of credit for what they have been doing, particularly recently dealing with inmates at Guantanamo and such. But there are some lawyers here that I'd want on my side if I were in trouble.

This is wrong just like the policy of dismissing the translators on the eve of this fiasco because of their sexual orientation. This too is wrong. And this is the way we register our protest. In our little corner of the world, that's how we send our message to Congress, that this policy must change.

And like Gandhi, I am a strong believer in non-cooperation. And that's what I choose to do here. Vote this down.

MR. RAWLINSON: Thank you, Mr. McLaughlin.

At the pro mike is Chris Kent.

MR. KENT: Thank you. Chris Kent, Region 5.

You know, this is a really complicated issue, and I am not here to debate all the points of it. I would disclose right up front that the reason I am speaking out is
my son is currently over in Iraq.

I will give you some anecdotal pieces of information.

A couple of premises: Number one, I would like to see more Oregon lawyers in the military. Thank you.

The second premise: I feel this is a personal issue. We are at war. There is not a moment in the day -- my son has been over there four times in the last three years -- that I am not thinking about this all the time.

He came back. And his very close friend was killed in action. The wife has got various legal problems that are brewing. My son is fortunate enough to have his own lawyer, so I prepared Powers of Attorney and things like that.

You know, these folks over there really do need legal services of all kinds. A lot of them, because of the stress of war, have gone through accelerated, unexpected family law issues, custody issues. There is a host of things that they need right now.

And I just feel like we need to put this issue aside. I heard what Mr. Browning says. I agree with that. This is a political issue that people can express their opinions on in a variety of ways. But to slam the door right now and say, We have this particular opinion,
this is how it should be addressed, it does cut support that
the soldiers have.

Most of the folks out there don't have the
ability to get their own legal counsel, like my son or Mr.
Browning's son or whoever else. They do need a lot of help.
They need our help as a country, whether or not we support
the war.

But right now we are at war, and our men and
women are dying. They have legal needs. We have a high
quality bar. We should at least allow the military to
advertise the jobs in our bar journal.

If people object to the military's policy,
then they can take out other ads -- I thought I saw one
e-mail -- or pick up the phone. There are other forms of
protest. But don't shut it down. I don't believe that's
the appropriate thing to do.

I just wanted to provide you some of those
anecdotal pieces of information that we are dealing with.
But the reality of it is that most of the people that are
serving this country right now, they have an accelerated
need for lawyers. We need to have as high a quality of
military lawyers as we can get. And frankly, the truth in
advertising is one of the ways to get it.

So I would urge that the Board reconsider its
position on this and let's go for it. Thank you.
MR. RAWLINSON: At the con mike?

MR. ODEN-ORR: Melvin Oden-Orr, Region 5, Portland.

I speak this afternoon because I had an epiphany just before this meeting. I am former military, United States Marine Corps. I served in the Republic of Panama during the invasion so many years ago. And I am a firm supporter of the United States military, particularly the Marine Corps.

And during the time that we have been having these debates on e-mail up until my epiphany, I would have been at that mike (indicating). Actually, I would have so strongly supported it that I would have been at that mike (indicating), but I probably would have stood here but for my epiphany, which was the following:

It is the small responses to inappropriate conduct and statements that ultimately result in major change. And so for that reason I stand here to say, you know, in the military it is not really a person's unusual characteristics that are grounds for discharge or discipline. It's really their conduct.

And the last time I checked, when I was in the Marine Corps, almost 20 years now, having sex was not something for which you would be disciplined unless you did it at a time and place where it was inappropriate. For that
reason, I think that the policy is not a great one.

But my only reason for saying that is to remind us that every movement toward dealing with inappropriate discrimination is slow, and this is one way of moving that forward just a little bit more. Every signal that goes out reminds one or can cause someone like me to have an epiphany, which was caused by one of my colleagues saying, "Don't you think -- but you know, I think."

And I said, "No. I disagree." Well, good point.

MR. RAWLINSON: Thank you. Mr. Georgeff.

MR. GEORGEFF: Gary Georgeff, Region 3, Brookings.

My view is that discrimination based on sexual orientation is immoral. I think the military policy of excluding people from the military based on that or excluding them once they admitted is a stupid policy. It's divisive and hurts national unity and it hurts unity within the military and damages recruitment.

On the other hand, I respect those who believe that the military serves a valuable function in this country, as the military does for all countries.

So how do you resolve those views? I think there is a way to do it. And the way to do it is not to focus on the merits of the military policy or the immorality
of it, not to focus on the fact that the military deserves
the support, but focus on the proper function of the Oregon
State Bar.

It is a group of lawyers who should not
support unlawful discrimination and shouldn't use our Oregon
State Bar bulletin for that purpose. So if we have a legal
discriminatory policy, it's perfectly appropriate not to
allow people to advertise.

However, as has been pointed out, the courts
have consistently held that this "Don't ask, don't tell"
policy is legal, that it is not the way perhaps the law
should be but that is the way it is. It is a licensing
body, an integrated bar where you don't have a choice but to
be a member if you want to practice law.

We shouldn't use this organization to make a
political statement because it's inherently divisive, and
that is what we are doing.

Mr. McLaughlin's whole point was, this is how
to make our protest. That's fine, Mr. McLaughlin. Go out
and submit a petition. I'll be the first person to sign it
in large letters on the top on a voluntary basis. But we
can't reconcile these different views within the state bar.
Every time we force it on people in this way, we are making
an incorrect determination.

So I support Mr. Karandy's resolution. Thank
you.

MR. RAWLINSON: Thank you, Mr. Georgeff.

The gentleman at the con mike behind Mr. Lang.

MR. PAYNE: Good afternoon. My name is Jeff Payne. I am the co-chairman of the Oregon Gay and Lesbian Legal Association.

I would like to start by saying that, first of all, I don't believe that any of the people who are in favor of this motion are anti-gay. And I also don't believe that any of the people who oppose this motion are anti-military, despite what some of the e-mails flying around the last few weeks let people think.

My grandfather fought in World War I. He was a victim of a gas attack in Europe but lived to a ripe old age. I had two uncles that fought in the Pacific theatre of World War II, both recently. My father rose to the rank of Master Sergeant in the National Guard of Oregon. So there is nothing anti-military about opposing this resolution.

But what I have seen here today in the debates earlier over Affirmative Action and the leadership college focused on one thing, and that was human capital. I think that is what this bar association is all about and what this resolution boils down to.

The bar association needs to say that we will
not waste the human capital that is in this bar based on the
characteristics that said they will not discriminate
against. And allowing another group to say, We want to do
this, that's fine.

I am not going to get in a debate between
illegal and legal discrimination. I am not a constitutional
lawyer. I'll leave that to other people.

The point is, we don't have to do business
with someone that we don't want to. And this bar
association has repeatedly said, We value the capital of our
members enough to say that we will stand up and fight
against discrimination in these various forms.

For that reason, I think we need to send the
message that it's not anti-military or any such thing; that
we will not waste the potential of the gay and lesbian
transgendered and bi-sexual members of this bar and allow
them to be discriminated against.

I'd ask you to vote against the motion.

Thank you.

(Applause.)

MR. RAWLINSON: Mr. Lang at the pro mike.

MR. LANG: Thank you. First of all, I second
the remarks made by the last two gentlemen on the
(inaudible) of why I am here. I am not here to debate the
policy. I don't think my personal views really matter that
much.

Frankly, I think it is a loss of those translators. Six million dollars training an Air Force pilot. So I agree we shouldn't be doing some of these things. But that's not how this issue, I think, should be decided, which is why I am here.

In our Bill of Rights, both the United States Bill of Rights, First Amendment, Freedom of Speech, and in our bar bulletin is our speech. So ironically, if somebody wanted to run the most hideous advertising, maybe that's good because that will spark debate. Whenever we have censorship, whenever we stifle ideas, then the debate goes away. I think a lot of injustice in this country in the past in the area of civil rights, things were swept under the rug.

So wherever you are, I just say, Maybe the criteria you ought to start with is, look at the First Amendment, look at the Oregon Constitutional issues that have actually been upheld to having greater rights and freedom of speech and expression.

Thank you.

MR. RAWLINSON: Thank you, Mr. Lang.

The delegate who is behind Mr. Lang at the con mike.

MS. ALLEN: Beth Allen, Region 5.
I guess I am going to try to direct two primary issues that have come up that I think may be very attractive to people who are sort of wavering on this issue. And the first one is one that Mr. Lang has raised, and it's the First Amendment. We have to allow any kind of advertising into the bar bulletin.

First off, there is nothing preventing anyone from submitting articles to the bar bulletin about this issue. If the public discourse is what folks want, let's do it. Both sides. Let's air it. Certainly it has been on the e-mail. There is no problem having that discourse in the Bulletin.

But there isn't any requirement that we advertise in a way that is illegal. And it is illegal, because in Oregon in certain jurisdictions discrimination on the basis of sexual orientation is unlawful. Advertising on the basis of sexual orientation is unlawful.

There is nothing that I know of in the "Don't ask, don't tell" policy that requires any employer or any advertiser to advertise for the military. So you are not going to be breaking any laws if you continue the policy, not to allow advertising that is discriminatory.

The second issue that has come up, and it's particularly, I guess, hurtful to me to hear we need good lawyers and so we need to have this advertising.
I am a damn good lawyer and I am also gay and I am also a Veteran. I was in the Army. I left the Army because I had to make a decision. I had to make a decision about whether I would stay and serve my country and lie or tell the truth about who I am.

I was asked when I was in law school by a great professor, "Beth, why don't you go into the JAG Corps?" He said this sincerely. He didn't know I was lesbian. He just didn't think about it.

I said, "Because I am going to have to not only lie, but I would be forced to prosecute people because they are gay and lesbian and I can't do it."

The military policy, the "Don't ask, don't tell" policy, I think it sounds like most people here agree is wrong. But I think what Melvin said is important to remember. It is small steps. It is the people who over time make change.

We do not have to, by any law, allow the military access. We can oppose it. We cannot include it and make the statement that over time with other bars, with other groups, with other individuals, we'll make a statement that says, It's not okay to exclude our gay and lesbian sisters and brothers of the bar. Let them serve their country honorably and honestly.

Thank you.
MR. RAWLINSON: With our policy of going back and forth from the con and pro mike, Mr. Mozena.

MR. MOZENA: Mr. President. Even as a student, you know, years ago now, I saw people make fun and discriminate against people who were gay. It always was appalling to me way before it became popular to be so. I have hired and had homosexuals work for me. It didn't make a difference to me. It's the kind of thing that I think we as lawyers just don't care about. We are more concerned about competency. We are more concerned about people being good lawyers. That is really what it is all about.

But all of this today and in the list survey, in the discussions, there is an undercurrent of political issues. There is an undercurrent of issues that reasonable, legal minds can differ on. And what we heard again from the last speaker is about sending a message.

And as a professional organization, it seems to me that we are really leaping out into the political world into a world where we are not representing all of our membership in getting into things where reasonable legal minds differ. So it seems to me this is an action that we should reverse. Get back to being the kind of professional organization that lets lawyers reasonably differ.

Thank you.
MS. GRUBER: Mr. Chair, I move the question.

MR. GEORGEFF: I second.

MR. RAWLINSON: I have a motion for the question and a second. It's a non-debatable motion. It will require two-thirds.

All those in favor of the motion, indicate by raising your placards.

(Placards raised.)

All those opposed?

(Placards raised.)

Motion carries.

The main motion, agenda Item No. 20: "Direct the Board of Governors to restore Armed Forces Advertising to the Oregon State bar bulletin."

All of those in favor of the motion --

AUDIENCE MEMBER: Point of order. Does the proponent wish to have his one minute? I think he still gets that.

MR. KARANDY: I'll waive.

MR. RAWLINSON: Thank you.

All those in favor of the motion, please raise their placards.

(Placards raised.)

All those opposed?

(Placards raised.)
MR. RAWLINSON: It is pretty close. I think we ought to have a count. If someone wants a count, I will grant a count.

MS. GRUBER: We call for a count.

MR. RAWLINSON: Thank you. We'll have a count, please.

All those in favor, please raise your placards.

(Placards raised.)

For those of you that hadn't heard, Oregon is ahead seven to nothing.

There is a count. Those in favor.

All those opposed?

(Placards raised.)

MR. RAWLINSON: Thank you very much.

The results on agenda No. 20, that agenda item fails, 57 to 71.

Moving on to No. 22: "Direct the Board of Governors to Establish an Equal Fee Structure, Voluntary Online Continuing Legal Education."

Mr. Mozena, thank you for coming to the podium. As he does, may I have a motion to bring this matter before us?

MS. GRUBER: I so move.

MR. RAWLINSON: Ms. Gruber provides a motion.
Do I have a second?

MS. YEE: Second, Region 4.

MR. RAWLINSON: I'm sorry. Can you help me with your last name, please?

MS. YEE: Yee, Y-e-e.

MR. RAWLINSON: Thank you very much. I have a motion and a second.

Mr. Mozena.

MR. MOZENA: I think one of the most important things that the bar has attempted to do for us recently is to get the CLE materials online. I think this is going to be extremely beneficial.

Those of you, whether you like the newspaper or not, it is now available. It gives more information. It makes us have access to legal materials. This would do the same thing.

They tried a couple of years ago, as I understand it -- I am a new member -- to do this as a membership as a whole. That failed. So it went to a voluntary basis. I am totally in favor of that. I support that. I think it's going to increase the competency of the bar, both for the individual practitioners and all sizes and memberships of firms.

The only issue that I am bringing in front of you today is the one of pricing. The issue that was brought
to the Task Force was how to price this product.

The pricing has been set up inversely to the size of the firm with the smallest persons, the sole practitioners, paying about $395 down to the largest firms paying $49 and actually down to $29 as it gets to the greater members.

You know, if you look at this, the issue of getting competency out there and getting this out there to the small and the sole practitioners is what is really important here to keep the competency of the bar as high as we possibly can. The large firms are going to have the materials.

Also there was an issue about pricing. You know, the bar was concerned, Are we going to be able to make money with this?

Well, you know, if you look at it and you look at the numbers, actually, the vast majority of lawyers in the bar association are either sole practitioners or in small firms. That's about 60 percent.

Most of the revenue comes from the solos and the small firms. Just a tiny, little bit comes from the large firms. And if you allow the large firms to only pay $5,000 to have funding for 150, 200 lawyers, it is inconsequential on the whole. And the goal here is to get the price down for the solos and the small firms, to get
competency out there so we can help our clients. This is an access to justice. So if you really are interested in getting these materials out, then let's price it equally and equitably. I think the large firms will get it anyway. You know, 10, 20 people in the large firms will get it. The bar is going to have their revenue. It's really going to have it if you look at it.

And they talk about penetration; how many people are going to buy it? Most of the issues that the Task Force has dealt with were speculative. They don't really know how many people are going to buy it. But if the vast majority are sole practitioners and small firms, that's where we want to get the price lower.

I went to the solo and small section of the bar association and brought this up, and it was vigorously debated. And they unanimously support this motion. So the solos and the small firms support it.

You know, it's not even going to be a burden for the large firms. You know, if they only have a dozen, two dozen lawyers who need it, they'll get the product.

One of the arguments we try to meet is that some lawyers will cheat, you know, and other people in their firm will use it. Well, most products like that can only be used by one lawyer at a time. And I personally like to
think that lawyers are honorable and that we shouldn't be
using the argument that they are going to cheat on it.

So anyway, I simply bring this motion to you
to have this wonderful product priced equally and equitably.

Thank you.

MR. RAWLINSON: Thank you. The matter is now
open for discussion.

Mr. Yugler.

MR. YUGLER: Good afternoon, everyone. If I
can just have a few minutes of your attention after lunch in
the middle of the afternoon.

I am a member of the Board of Governors. I,
again, chaired the Member Services Committee and I was a
member of the Task Force along with five other members of
this body who volunteered because they had an interest in
figuring out the best pricing for online CLE products that
would serve every member of the bar, not any particular
segment of the bar.

We tried to achieve fair and balanced pricing
that would result in the biggest market penetration that we
could. And the Board of Governors accepted the Task Force
report from this body.

Now, I am here to tell you that the Board
opposes the resolution. There is a demonstration, by the
way, outside if you are interested in seeing what the
product looks like. The Task Force study rejected the pricing that has been suggested here.

We rejected it because we concluded that it would cost more for subscribers if we went with this method.

We considered that this particular proposal would not have the widest acceptance of use of the CLE product. We considered that it would require additional cost to reprogram it and we would lose portability.

With our current system, with your password, anywhere in the world you can access the crown jewels of the CLE library.

If we go into this, we have to go with a per-user entry, which will pretty much restrict you to a particular computer and particular site, because otherwise there is really no way to release the transferability of the passwords.

Right now if you are in a law firm of a particular size, that sets your price and you get ample passwords that the bar doesn't have to police it or worry about whether you are handing the passwords out, giving them to paralegals, new clerks, associates and so on.

We looked at how other states priced their online product, particularly Illinois. What we were able to learn from their experience is that this is the best model to achieve market penetration.
Now, when you buy a normal book, let's say you buy the entire CLE library for $5,000. If you have a ten-attorney firm, you are going to pay $500 per attorney. For a one-attorney firm, you will have the whole CLE library, you are paying $5,000 per attorney. This is very similar to that. It recognizes that there are economies of scale.

This proposal does not recognize the balance that as sole practitioners in small firms move to online products, there is going to be a drop in revenues of their interest in buying printed publications because there will be less interest. We think large firms and mid-sized firms will continue to have both products.

And we felt that also it was unlikely that mid- and large-sized firms would spend money to go online if they needed to buy on a per-user basis because of the expense.

So we feel that this program received the largest market penetration and will be reconsidered in one year. If we are wrong, we have a year of experience.

This is a very big deal for every level of recipient. $5,000 for the whole CLE library. If you update every publication that the bar makes, we'll be spending $1,100 per year.

Your sole practitioner, the cost is $395,
less a $100 early-bird discount, $295, the price of maybe
two volumes. That is a very good deal for a sole
practitioner.

If you are in a ten-person firm, $995.
That's $110 per user. And we believe that mid-sized firms
will go for that because that brings them more value.

And this proposal, finally, if I may have one
more minute, Mr. Chairman.

MR. RAWLINSON: You may not have one more
minute. You may have ten seconds.

MR. YUGLER: We negotiated with the Oregon
Judicial Department to buy a license for every judge in the
state, every clerk, the entire judicial department based on
this licensing scheme, and it will pay for 25 percent of
this program. We ought not lose that and delay this product
and lose another couple hundred thousand dollars in the CLE
department while we dicker about this.

Thank you.

MR. RAWLINSON: Thank you, Mr. Yugler.

(Appause.)
Delegate at the con mike.

MR. LeCHEVALLIER: Thank you. Rob
LeChevallier from Region 6.

I am in a mid-sized firm now of 18 lawyers in
the last few years. We have one set of CLEs for the firm,
not just used by lawyers. It's also used by paralegals and law clerks.

So I think we are interjecting here where we should let the bar in its wisdom figure out the right pricing. We shouldn't be involved in trying to do the pricing at the House of Delegates.

I can just tell you that small, mid-sized firms are not going to pay for online per lawyer. If they have to, they'll just keep their one set of books, which not all lawyers use all the books.

So I would just recommend that we vote this down and let the committee do its pricing.

Thank you.

MR. RAWLINSON: Thank you, Mr. LeChevallier.

At the pro mike.

MR. BURFORD: Christopher Burford. I am chair of the Indian Law Section, Delegate.

My support for this proposal is very simple. We are one bar. We all pay the same dues. We all belong to the same organization. It should serve us all equally.

I was personally offended when I saw that sole practitioners, and I am not one, were going to be charged so much more than large firms. And I found that objectionable. And I will vote in support of this.

Thank you.
MR. RAWLINSON: Mr. Bachofner.

MR. BACHOFNER: John Bachofner. Delegate from out of state and a member of the Task Force.

We are at the dawn of a realization of a dream of mine, that we have access to all of the CLE materials online, every lawyer in this state, whether you are located in the far corner of the state in Brookings or whether you are located in Portland and just don't want to have to go down to the county library.

If you are a sole practitioner or you are a member of a large firm at your desk, you can have access to all of the CLE materials. This is a tremendous benefit and the Task Force took it very seriously.

The original problem we had was the consideration of our debt structure. We can't lose money when we roll this out. That was the primary thing we were told because of what had happened last year. You heard about that earlier. There was a large contingency of the Task Force that really felt it was important that we roll everything out. That is the purpose behind this. But in order to conserve money, we would have to roll out just a single CLE pilot as a test. That would have failed miserably.

We looked and looked. We looked at some other states that had used similar types of programs, and we
came up with some evidence that would show that we would not lose money if we rolled it out across the board, at least as best as we can tell, because we are venturing out on something that we have not put out yet.

Don't risk losing this because you are focusing on what is $395, or as Rick said, two title prices or two volume prices.

If we try and do it on a per-lawyer basis all across the board, the large firms aren't going to pay for it. My firm, it would run just under $80,000. There is no way in the world my firm will pay that money even though it would be a tremendous benefit.

We all voted that we want to look at this at the end of the year and we want to tweak it. That is the plan. We have the state of Oregon on top of it or on board with the Judicial Department. We are going to at least have a certain amount of money we'll get out of this, and I think we'll break even or come to the point where we are going to make a profit on it.

Let's get this out, particularly to the sole practitioners, who need it most. Don't lose this benefit because you are focused on an extra hundred dollars out there.

I urge you, vote this down.

MR. RAWLINSON: Thank you, Mr. Bachofner.
The delegate at the other mike.

MR. VARALLO: I call for the question.

MR. RAWLINSON: I have a motion to call for the question.

Do I have a second?

MR. DAUGHRTRY: Second.

MR. RAWLINSON: If I could trouble you, the delegate who made the motion, could you give me your name?

MR. VARALLO: Chris Varallo.

MR. RAWLINSON: Thank you very much.

Mr. Daughtry seconded it.

It's a non-debatable motion; two-thirds vote.

All those in favor of terminating the debate, please raise your placards.

(Placards raised.)

All those opposed.

(Placards raised.)

Motion carries. We are going to move forward to the main motion.

MR. MOZENA: One minute, please.

MR. RAWLINSON: I'm sorry. You have a minute.

MR. MOZENA: Just a couple of comments on some of the comments that have been made.

The bar has already got the program. We are
not going to lose it. That's just nonsense, frankly. And so it's really a question of what the pricing is, when it comes out. It's going to give more access to people if it's a lower price.

Now, you know, each of those attorneys in the large firm are just an attorney like everybody else. And if they want the program, they buy the program at the same price. I think this is truly a competency issue and an access-to-justice issue.

If we want that information out to every lawyer, then let's price it down for those solo practitioners in small firms that make up most of our bar.

MR. RAWLINSON: We have the motion before you, agenda No. 22: "Direct the Board of Governors to Establish an Equal Fee Structure for Online Publications."

If you are in favor of that motion, raise your placards now.

(Placards raised.)

Those opposed.

(Placards raised.)

Motion fails.

Moving on to No. 23: "Direct the Board of Governors to recommend renumbering the Oregon Rules of Civil Procedure to conform to the Federal Rules of Civil Procedure."
As Mr. Mozena is coming up to the microphone to make the presentation, may I have a motion to get this matter before us?

MS. GRUBER: I so move.

MR. RAWLINSON: Ms. Gruber has made the motion.

May I have a second?

Mr. Mozena, do you want to help us with that?

MR. MOZENA: Sure. Second.

MR. RAWLINSON: For the ease of the court reporter, Mr. Mozena, you have five minutes.

MR. MOZENA: This is a very simple matter. I basically have come from primarily my first bar, the Washington State Bar, where we number the rules in coordination with the Federal Rules.

This is a tremendous benefit. It's just a research benefit. It gives you a chance to take an analogy to the Federal Rules and the great amount of literature that is out there federally and nationally.

You know, I also, as a lawyer, watched the law move from California to Washington to Oregon last most of the time.

Now, sure, we are mavericks sometimes, but it would be nice if we were able to have the analogous Federal Rule number there. I am not asking to change the numbers.
I just think that they could put it in parenthesis, if they could just have it there as well, what Federal Rule or Federal-type Rule it relates to. Not a big deal. Not a change of the rules. Just a tool to have us coordinate our research in an easier way.

That's all that I am asking for in this motion.

MR. RAWLINSON: The matter is open for discussion. At the con mike.

MS. EYERMAN: Linda Eyerman, Board of Governors.

Speaking on behalf of the Board of Governors, we do oppose this motion. There were two reasons articulated at the Board of Governors' meeting for opposing it.

Number one, unlike Washington, Oregon has its own unique Rules of Civil Procedure. They are different from the Federal Rules, and the entire body of jurisprudence has grown up around them. And they have their own numbers, and we shouldn't be trying to match up different Federal Rules with our own Rules of Civil Procedure.

The second reason that was articulated by the Board is that it's none of our business to be renumbering the Rules of Civil Procedure. That is not what the bar does. So the Board of Governors opposes this resolution.
MR. RAWLINSON: Thank you, Ms. Eyerman.

Mr. Hamlin.

MR. HAMLIN: I would allow the pro person to speak, but I want to speak against it.

Again, I was asked by the Council on Court Procedures to address this issue. This issue has never been presented, to my knowledge, to the Council on Court Procedures and that is the body that adopts the Oregon Rules unless the legislature either modifies or amends them or adopts a rule on its own.

I find it interesting that the resolution, though, says we need a Task Force and we need the Oregon Supreme Court or the bar to do it. The Council is the entity to do it, and that's where it ought to be addressed.

MR. RAWLINSON: Thank you, Mr. Hamlin.

Mr. Mozena, I suspect that you would like to move forward.

MR. MOZENA: Thank you, Mr. President.

Again, this is just something that I think is Administrative Rules. We do think sometimes differently but the same, and having worked almost 50/50 in Oregon and Washington, the rules really do mirror the Federal Rules. We just have them numbered in a different order.

It would be helpful, I think, to all of you, probably more than me, in order to have which number we are
talking about and which number to refer to in doing research on a larger basis. And this doesn't mean that Oregon doesn't have its own jurisprudence on this issue. It just means that we also, when there is a gap in the law, know where to look in an easier way.

MR. RAWLINSON: Thank you, Mr. Mozena.
We have the main motion before us to direct the Board of Governors to renumber the Oregon Rules of Civil Procedure to conform with the Federal Rules of Civil Procedure.
All those in favor of that, please raise your placards.
(Placards raised.)
Those opposed.
(Placards raised.)
Motion fails.
Thank you very much. On to 24.
Mr. Karandy, as you come forward, this particular item proposes to amend Rule 2 of the House of Delegates Rule of Procedures, essentially to make the current version of Robert's Rules of Order the version that is adopted by the Rule rather than the 1990 version.
As I read this, I think it's a very compelling argument.
(Laughter.)
I was wondering if, Mr. Karandy, absent objection by the House, why we just don’t vote on this? What do you think? Why don’t we try it, folks?

MR. KARNOPP: Second.

MR. RAWLINSON: All those in favor of adopting the current version of Robert’s Rules of Order, please raise your placards.

(Placards raised).

Those opposed.

(Placards raised.)

Motion carries.

(Applause.)

Did you want one minute in closing?

(Laughter.)

We are on to -- No. 25 -- of course, we are going to move fast.

No. 26.

MR. KARANDY: I withdraw 26.

MR. RAWLINSON: Thank you, Mr. Karandy. He withdraws No. 26.

No. 27. Mr. Carter.

This item is for adequate funding for legal services for low-income Oregonians.

Mr. Carter, do you sense, as I do, that we may not need a presentation? Would that be satisfactory?
MR. CARTER: I have a bus ticket in my pocket.

(Laughter.)

MR. RAWLINSON: Folks, why don't we try that and move right to the vote?

All those in favor of No. 27, please raise your placards.

(Placards raised.)

Those opposed.

(Placards raised.)

Motion passes.

Mr. Carter, thank you very much.

(Applause.)

Item No. 28, the Oppose Taxpayer Bill of Rights Ballot Initiative.

Mr. Williamson is at the podium. Mr. Williamson, I'd like to give you a motion.

Do I have a second?

MR. GREENE: Second.

MR. RAWLINSON: Thank you, Mr. Greene.

Do you want to try it again?

AUDIENCE MEMBER: Try it again.

MR. RAWLINSON: We are going to try it again, folks. We will see if we can't just get this passed without the debate.
All those in favor of adopting agenda Item 28, raise your placards.

(Placards raised.)

Those opposed.

(Placards raised.)

Motion carries.

Well, Mr. Williamson, we'll want you right back down here.

We are moving on to Item No. 29.

AUDIENCE MEMBER: Not on the agenda.

MR. RAWLINSON: Exactly right. It's not on the agenda.

Folks, thank you very much. I really appreciate how hard you have worked on this.

(Appause.)

(House of Delegates meeting adjourned.)