

OREGON STATE BAR  
2008 HOUSE OF DELEGATES MEETING

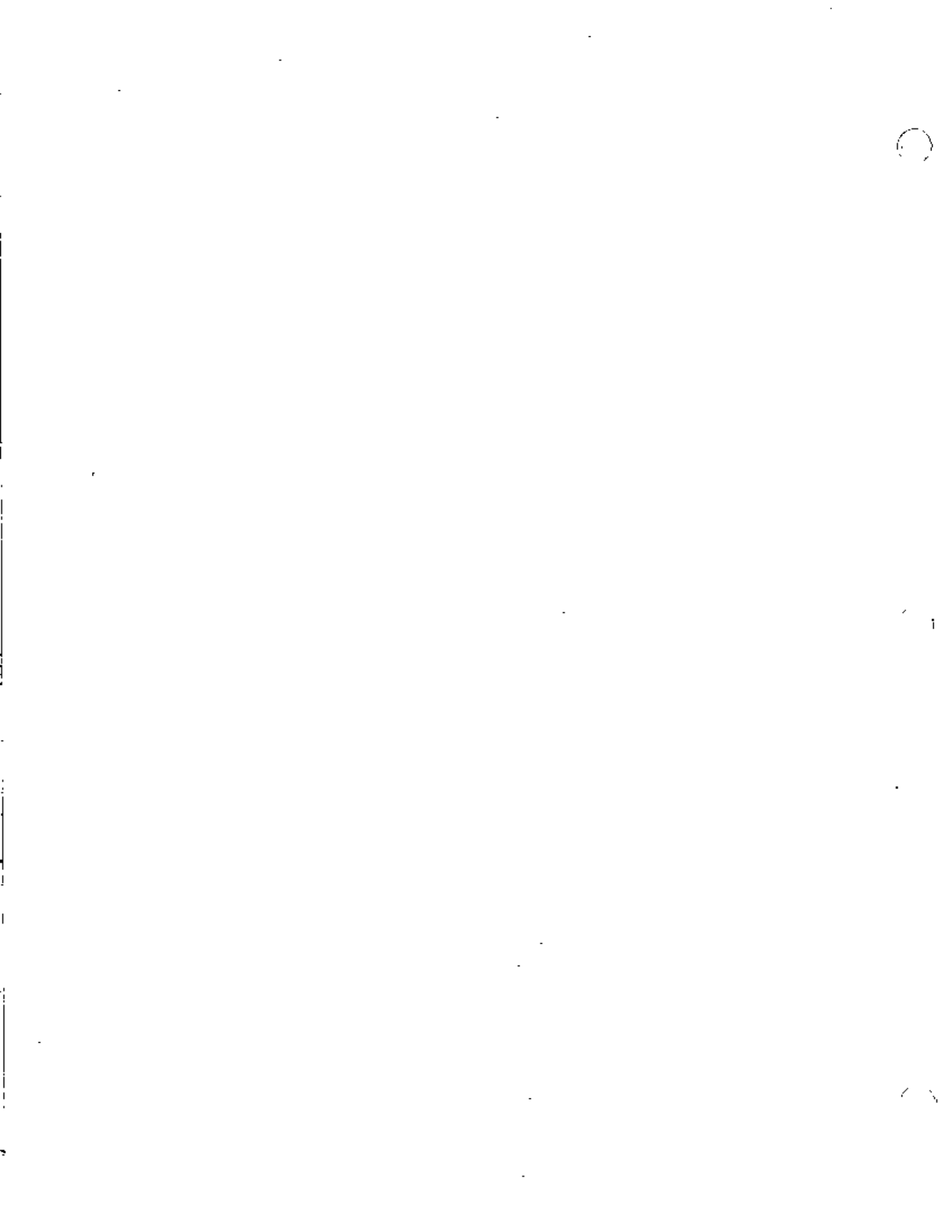
Sunriver Resort  
17728 Abbot Drive  
Sunriver, Oregon

Saturday, September 13, 2008, 10:00 A.M.

Presiding Officer:

Oregon State Bar President, Richard S. Yugler

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## P R O C E E D I N G S

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PRESIDENT YUGLER: I want to welcome everybody. I'm Rick Yugler. I'm President of the Bar, and we're to have our meeting of the House of Delegates today. Welcome, everybody.

First I want to thank Gretia Capri, Robin Nodland on behalf of the Oregon Court Reporters Association for being our official reporters this year.

(Applause.)

PRESIDENT YUGLER: I want to give you a brief overview of the parliamentary procedure real quick. You have a handout here which says "overview of procedures." That should make it very easy. Everyone can read that.

But I wanted to remind you that, in addition to the procedures we're using today, that you have in your packet an expense reimbursement form. So for your mileage, we had a resolution at the House last year the Board approved mileage reimbursement for your attendance at the House. So don't forget to send those in if you want part of your mileage reimbursed.

We have electronic voting for our system, and everyone should have received one of these plastic cards. And you have in your handout instructions about how to

1 operate these nifty devices, but I want to remind  
2 everybody that because we know your name and we know which  
3 device we gave you, that if it's not returned, there will  
4 be a charge of \$75. So, please, do not forget to return  
5 your electronic voting card on your way out. That's  
6 important.

7 As I understand this, we're going to have a  
8 little test of this to see if these things actually work.  
9 Just like when you go to court and want to use PowerPoint,  
10 you know, if you don't give it a try first, it may be very  
11 ugly.

12 But we have a test question. I understand  
13 button 1/A is for a yes, button 2/B is for a no, and  
14 button 3/C is for abstaining. I'm also told that you can  
15 push any button you want as many times you want, but the  
16 last button you push is the one that will be recorded. So  
17 if you vote yes on something and, before the voting closes  
18 you change your mind, you can push 2/B for no. And that  
19 will be the one that's recorded.

20 So I have a test question for you, and the test  
21 question is: Will we adjourn in time today for the Ducks  
22 game?

23 UNIDENTIFIED SPEAKER: What time is that?

24 PRESIDENT YUGLER: 12:30. So all who  
25 believe that we will adjourn in time for the Ducks game,

1 please push 1/A; if you think we will not, push 1/B (sic);  
2 and if you want to abstain because you have a tee time  
3 like myself, push 3/C. So push your buttons. Let's see  
4 if we get a vote.

5 Jared?

6 MR. JARED GOSSEN: 96 responses so far.

7 PRESIDENT YUGLER: 96 responses. 97

8 responses. 98 responses. Almost a quorum.

9 Most people think we will adjourn in time for  
10 the Ducks game. That's great. I did not vote, by the  
11 way. So we have one more for the quorum. Under  
12 parliamentary procedure, I am not allowed to vote unless  
13 there's a tie. So, just bear that in mind.

14 At this time I'm going to ask Jim Westwood to  
15 comment on the remainder of parliamentary procedure, as  
16 we get to the motions a little later.

17 Jim, take a minute.

18 MR. JAMES WESTWOOD: Thanks, Rick.

19 I'm Jim Westwood, and I put my name tag down  
20 because I'm very uncomfortable sitting up here.

21 A parliamentarian is doing his or her job when  
22 everything just goes smoothly and you don't need me. So I  
23 hope that will be the case today. As it goes along, I  
24 hope it's sort of like in Japanese theater, when they have  
25 puppets, and people dressed in black and you see the

1 puppets. I'm not missed or anything. I hope I disappear  
2 from your view.

3 The President is going to run the meeting. It  
4 his meeting. I have told him that unanimous consent is  
5 his friend. You can move things along very quickly simply  
6 by asking for unanimous consent. You don't have to go  
7 through all the rigmarole for a lot of motions and votes  
8 on things.

9 So don't be intimidated. If you don't agree  
10 with something, raise your hand. Fine. The whole idea of  
11 parliamentary procedure is to protect the rights of the  
12 minority, but also to move things along smartly so the  
13 majority can get the business of the assembly done.

14 I will whisper in the President's ear if he asks  
15 me, and only if he asks me; otherwise, this morning I'm a  
16 potted plant. So that's the word on parliamentary  
17 procedure. This crib sheet is good, and we will see how  
18 things turn out, and I hope they will be very smooth.

19 Rick?

20 PRESIDENT YUGLER: Thank you, Jim.

21 Part of my responsibility as the President of  
22 the Bar and the Bar Act of the procedures of the House of  
23 Delegates is to present a report to you of the proceedings  
24 of the Board of Directors since our the last meeting.  
25 I've been very proud to serve as your President, and you

1 should be very proud of the members of the Oregon State  
2 Bar, which is a very forward-thinking and deliberative  
3 body and remains one of the few self-governing  
4 professions.

5 Your participation in the House of Delegates  
6 ensures that the practice of law will continue to be  
7 governed by the judicial branch and that our practice and  
8 our profession will be governed by lawyers who practice  
9 before the Supreme Court.

10 I'm pleased to report that this year there's  
11 been a lot of change at the Oregon State Bar. On January  
12 28, the Bar culminated a five-years' work looking at new  
13 facilities, and we moved into a new Bar center in Tigard.  
14 That was the work of five different boards of the Bar and  
15 five different Presidents.

16 The Lake Oswego facility that we were in from  
17 1986, that we bought for \$2 million, sold for \$8 million,  
18 that strong return made sure that when we purchased our  
19 new building, that there would be no increase in  
20 membership dues to pay for that.

21 The building, which I hope you've all had a  
22 chance to visit, allowed us to bring back the Professional  
23 Liability Fund, their operations into our facility, and to  
24 make sure that in the future we won't have to splinter off  
25 other Bar operations, such as discipline, CLE or member

1 services or admissions. We're going to remain in one  
2 house together, as one Bar, we hope for the next 20 years.

3 The facility was built by Opus Northwest.  
4 Originally we leased it from Opus with a lease-purchase  
5 option. We exercised that option. In fact, this week  
6 we're closing the purchase of the building. So we will  
7 take title to the building in the next few days.

8 At closing, I'm happy to report Opus Northwest  
9 will remain liable under a master lease for any unused  
10 space, and given real estate projections in the I-5  
11 corridor, we're confident that there will be no increase  
12 in Bar dues because of that facility, for at least the  
13 four years remaining under the master lease, and we hope  
14 for the next 15 years in the future as the space is leased  
15 up.

16 We should be very proud that we did this as a  
17 Bar, and we hope that the facility will meet our  
18 expectations. And special appreciation goes to Albert  
19 Menashe, our past President, and to Ward Greene, who  
20 worked so hard to do that. Let's give them a hand.

21 (Applause.)

22 PRESIDENT YUGLER: Another major focus for  
23 the Bar this year has been conducting a national search  
24 for a new executive director. Karen Garst has been our  
25 executive director for the past 13 years. We love Karen.

1 She's been a great executive director. She's served us  
2 very well over 13 years, and she announced her retirement  
3 effective December 31, 2008. I think Karen deserves a  
4 round of applause.

5 (Applause.)

6 PRESIDENT YUGLER: I'm pleased to announce  
7 we also hired a new executive director, which may not  
8 surprise you. We had a search committee, and we are  
9 pleased to announce that Teresa Schmid, who currently is  
10 the executive director of the Arizona State Bar, will be  
11 joining us this November and officially taking the reins  
12 on January 1.

13 Teresa has been an Oregon State Bar member for  
14 28 years. She went to law school at Lewis and Clark in  
15 1980, graduated with me, and went on to work in the  
16 regulatory area. She briefly worked for the Oregon State  
17 Bar in the discipline area and then went to California,  
18 spent ten years in management as -- getting her Ph.D.  
19 right now, and she has an impressive command of the  
20 challenges that face our profession. She's well prepared  
21 to guide our membership in these times, and we'll be  
22 welcoming her in the next few months.

23 I am also pleased to report that we will not be  
24 having an increase in OSB membership fees for 2009. We  
25 don't expect an increase in membership fees for your Bar

1 dues for 2010. In fact, you may have realized this:  
2 We're on a dues cycle about every four or five years. So  
3 we expect maybe in 2010 to be asking for an increase and  
4 2011 for Bar operations. I want to emphasize that  
5 because, again, the Bar facility, there is no dues  
6 increase because of that.

7 I also want to point out that this year the  
8 policy and governance committee of the Bar has approved a  
9 redistricting plan for the Board of Governors and for the  
10 House of Delegates regions. We're going to be adding two  
11 new lawyers to the Board of Governors and create a new  
12 region of the Bar that will be composed exclusively of  
13 Clackamas County. This will require a legislative change,  
14 and we'll be presenting that in the 2009 legislature.

15 Also with respect to Bar governance, in March of  
16 this year the Supreme Court approved a revision to the  
17 MCLE rules, changing the name of the elimination-of-bias  
18 requirement to access to justice, and changing those  
19 requirements of three credits to three credits every other  
20 reporting period.

21 This was the result of a compromise. This  
22 compromise arose because of matters that came before the  
23 House of Delegates and went on to be the subject of a vote  
24 through a membership petition presented by Gary George.  
25 And I want to thank Gary George and members of the

1 diversity section for working so hard this year to reach a  
2 compromise on this issue. And we hope that Bar membership  
3 will appreciate that this is the result of a compromise.  
4 The court has approved those rules.

5 This also is the 30th anniversary of the  
6 Professional Liability Fund. Oregon remains the only  
7 state in the country with mandatory malpractice insurance.  
8 Think about that. This year the PLF hosted the National  
9 Association of Bar-Related Insurance Companies, and as you  
10 listen to other Bars, travel to other Bars, you realize  
11 they're still struggling with whether or not attorneys  
12 should be insured or should not be insured and for how  
13 much, whether they should disclose that or not.

14 We don't have those problems. We have a unique  
15 and highly successful fund that protects the public,  
16 protects lawyers, and makes sure that there is sufficient  
17 funds present in the event of malpractice. And the PLF is  
18 in a unique position because it's able to coordinate and  
19 reduce claims through its attorney-assistance programs and  
20 its office management programs.

21 I'm pleased to report that the assessments for  
22 2009 for the Professional Liability Fund will remain at  
23 \$3,200 per active lawyer, just as it was last year. The  
24 PLF's healthy, and despite a loss from investment returns  
25 this past year and an increase in claims frequency, it is

1 reported to us that the reserves of the PLF continue to  
2 grow. They now stand at 4.6 million, towards a goal of  
3 9 million.

4 And this year I asked the Professional Liability  
5 Fund to review the \$300,000 limitation that we have had on  
6 our coverage for 20 years. It's remained at a \$300,000  
7 limit. The PLF undertook a very thorough and exhaustive  
8 study of that limit, and after thoughtful consideration,  
9 examining the reasons for that limitation and the history,  
10 determined -- and this may surprise you -- 90 percent of  
11 all claims are within the \$300,000 limit. We believe the  
12 limit should currently remain in place and is adequate at  
13 the moment.

14 The PLF and the Bar also worked with a special  
15 task force this year consisting of SLAC and OAAP to better  
16 coordinate the attorney-assistance programs. We have two.  
17 We have one in the PLF, and we have one that's part of  
18 discipline, which is SLAC, and they, through a task force  
19 report this year, are going to provide more efficient  
20 delivery of professional counseling services.

21 Also on admissions, this year Albert Menashe  
22 chaired an admissions task force, looking at whether there  
23 ought to be changes in the Bar exam. Those  
24 recommendations are before the Board of Governors. It  
25 might surprise you to learn that we admit each year

1 between 800 and 1,000 new lawyers and that almost 50  
2 percent of the active members of the Oregon State Bar have  
3 been less -- in practice less than ten years.

4 Youth is coming, and the Bar is well prepared to  
5 meet the challenges, the generational challenges, we hear  
6 so much about.

7 Our Bar is also unique in that we're part of a  
8 five-state reciprocity compact between Washington, Idaho,  
9 Utah, Oregon, and Alaska. This year we added Alaska, and  
10 I think we're at the forefront of the idea that borders to  
11 practice are coming down. We should be proud of that.

12 This year at the Bar we've hosted many open  
13 houses. We've hosted a Rule of Law Conference. We --  
14 this week, here in Bend, President-Elect Gerry Gaydos  
15 hosted a Futures Conference, which was brought together to  
16 bring together Bar leaders and members from across the  
17 state to discuss the challenges for the future of our  
18 profession and to help us prioritize those over the next  
19 ten years.

20 We hosted ABA President Bill Newcomb. We  
21 created an advisory board of OSB past presidents. There  
22 have been numerous events. I've met with almost every  
23 local bar, bar officers, traveled the state this year.  
24 Been blessed to attend many specialty bars' events, OWLS,  
25 OMLA, OTLA, and this year made an effort to meet with as

1 many tribal courts as we can. We've been able to meet  
2 with three or four tribal courts this year, and I hope  
3 before the end of the year to add tribal courts to our  
4 network of connections, because we do have a shared  
5 interest and concern for the practice of law.

6 Two years ago the House of Delegates approved a  
7 renewal of a \$30-per-member assessment. This year we had  
8 a successful OLIO program, and this year with the help of  
9 the diversity section, the affirmative action committee,  
10 and minority bars, we hired Frank Garcia as our diversity  
11 program administrator.

12 The Bar continues to work hard to improve our  
13 commitment to diversity. We need to make sure that our  
14 Bar reflects the public, so that members of the public  
15 have confidence in our profession and in the legitimacy of  
16 the rule of law.

17 This year also I'm pleased to report that one  
18 year ago, at this meeting of the House of Delegates, you  
19 approved a resolution calling on the Board of Governors to  
20 oppose Initiative 51 and Initiative 53. Initiative 51  
21 would have put a cap on attorneys' fees in contingent fee  
22 cases, and Initiative 53 would have created basically  
23 mandatory penalties for so-called frivolous litigation.

24 I'm pleased that the Bar worked with the  
25 Campaign Against One-Sided Measures, and neither of those

1 measures qualified for the ballot. So we will not face  
2 those challenges this year.

3 (Applause.)

4 PRESIDENT YUGLER: But I need to warn you  
5 that the threat is not gone. The initiative proponents  
6 have threatened to refile those measures for 2010, and I  
7 call on the House to remain vigilant in the year ahead  
8 should those measures be refiled.

9 Finally, I'm pleased to report that our  
10 relationship with the Bench I think is excellent. This  
11 year I've had the pleasure to work with our Chief Justice,  
12 with Chief Judge David Brewer. There's a task force of  
13 our Bar and the Chief to implement the Oregon eCourts  
14 program.

15 We've worked with the Chief to make sure that  
16 the Oregon Public Officials Compensation Commission is  
17 staffed and implemented, so we don't face the challenges  
18 that we have over the last few years for inadequate  
19 judicial salaries. And their report was delivered just a  
20 few weeks ago, calling for further increases in judicial  
21 salaries so that we can continue to attract and maintain  
22 the best and brightest on our Bench.

23 We need to make sure that the court, the Bar,  
24 and the public are prepared to move forward into the  
25 future. eCourts is part of that, adequate salaries is

1 part of that, and I think the Bar is at the forefront of  
2 being a full partner with the Bench and making sure that  
3 our profession is as prepared as possible for the future.

4 That concludes my report. I just want to tell  
5 you that my year is not over. There's still a few more  
6 months to go, and I really am thankful for the confidence  
7 you have put in me as your President. You have a great  
8 Board of Governors who works diligently every month to  
9 make sure that we remain self-governing and that we can be  
10 proud to be lawyers representing our clients.

11 Thank you very much.

12 (Applause.)

13 PRESIDENT YUGLER: Before I move to discuss  
14 the agenda, I'd like to call on Chief Justice David Brewer  
15 to provide us with some comments. Our Chief Justice is, I  
16 think, with Justice Ruth Bader Ginsburg this morning in  
17 Portland, and I want to thank Chief Justice David Brewer  
18 for joining us this morning.

19 HON. DAVID BREWER: Good morning. I bring  
20 you greetings from the Chief, who would, frankly, give  
21 anything to be here with this group today. He asked me to  
22 pass on to you his strong belief that the partnership with  
23 the Oregon State Bar is the most important relationship  
24 that our Oregon judicial branch has, with any of its  
25 external stakeholders.

1           He is at Willamette University this morning in  
2 meetings that include Ruth Bader Ginsburg, and so he had  
3 planned to do that for some time and can't join you and  
4 has asked me to be here with you today. And I'm very  
5 honored to be here.

6           I want to congratulate you, before I give you a  
7 few remarks that I think reflects some of the Chief's  
8 projects and goals in the years to come on the Futures  
9 Conference that you held yesterday. I had the privilege  
10 of attending and participating and giving part of a panel  
11 report on the future of the courts, from our perspective,  
12 and I was very, very impressed with the organization of  
13 that program, the subject matter of it and, most  
14 importantly, as Gerry Gaydos described it, the energy, the  
15 creativity, and passion that I saw in all segments of the  
16 Bar who were represented in that very important  
17 conference.

18           I congratulate you on your forward-looking  
19 approach to what is out in front of us, because the  
20 challenges have never been greater; likewise, the  
21 opportunities have never been greater for all of us.

22           Yesterday I had the privilege of passing on my  
23 own personal view of some of the challenges we face, the  
24 opportunities we face as a branch in the future, and the  
25 four things I talked about -- I'm not going to repeat them

1 today, because I want to talk from the Chief's perspective  
2 today -- involve technology, workload challenges,  
3 performance measurement, especially judicial  
4 accountability, a piece of that, and the crucial legacy  
5 that the courts have to deliver fair and impartial  
6 justice.

7 And those are interconnected themes, and you'll  
8 hear a little bit of that in the next few minutes as I go  
9 through some of the projects and challenges the Chief  
10 asked me to discuss with you today.

11 But I agree with Rick: The partnership between  
12 the Bench and Bar in Oregon has never been stronger. Our  
13 communication, which is the prime mover behind any  
14 partnership, has never been better. And it's absolutely  
15 critical that we help you, not just with our hand out for  
16 your support, but in any way that this organization feels  
17 that the Bench can also fulfill its part of that  
18 partnership, because it has to be bilateral to work, and  
19 we're very, very keenly aware of that.

20 I'd like to focus on several key partnerships --  
21 Rick alluded to a couple of them; I'll be brief -- between  
22 the Bench and the Bar that are critical to our progress in  
23 the coming years. The first, as Rick alluded to, is  
24 technology. You've heard about the eCourt project that  
25 the Chief is rolling out. It's the most ambitious single

1 project that the Oregon Judicial Department has engaged in  
2 I think in its history, in terms of both its scope of the  
3 action plan, frankly, and the budget that's involved too.

4 And we have a history in our public sector, in  
5 Oregon and across the nation, of not doing these projects  
6 well. And one of the things that we're bound and  
7 determined to do is not to repeat some of the mistakes  
8 reflected in that history, but go forward very, very  
9 purposefully.

10 We've got a five-year plan to build a statewide  
11 courthouse that's accessible to all. We call it eCourt,  
12 and it's a web-based courthouse. It will be the one place  
13 where the public can conduct its business with any court  
14 throughout the state 24/7, from throughout the world,  
15 through the use of the web. Much of the groundwork for  
16 this plan was laid last year, and I just want to mention a  
17 couple of the initiatives.

18 First is the web portal. This is the door that  
19 will provide a common and consistent electronic access  
20 point to all of the state's Circuit Courts. Not to make  
21 them all plain vanilla, but, again, to have the same look  
22 and feel and basic information protocols that are being  
23 shared around the state.

24 We'll add new service deliveries to the portal  
25 over the next several years. These will enable our court

1 users to file documents electronically, pay fees and fines  
2 over the Internet, and have online access to case  
3 information and public records. They'll be made possible  
4 by using electronic content management, e-filing systems.

5 The Supreme Court's pilot project for e-filing  
6 and e-payment was rolled out a month and a half ago. It's  
7 had several users. Early reports are that the Bar  
8 training is working well. We do want your feedback on  
9 that because the Court of Appeals is the next rollout for  
10 both e-payment and e-filing. And we're planning to have  
11 first modules of document management done by next March.

12 This will be an absolutely critical advance in  
13 our court for getting its work done. We'll be able to go  
14 paperless sooner rather than later, eliminate all the  
15 archaic file-transfer problems we've got, including the  
16 loss of threaded information that doesn't end up getting  
17 published.

18 One of the most important things in your law  
19 firm and in our courts is to maintain institutional  
20 knowledge, have it properly keyed, indexed, and threaded.  
21 This is something, because we run on a demand field in  
22 terms of our workload in the court system, that I'm  
23 excited about as we move forward.

24 Rick mentioned to you we've got a policy law and  
25 standards committee. One of the biggest challenges in the

1 electronic court protocol is maintaining confidentiality,  
2 having the right walls of access for information. The law  
3 policy and standards committee will be working with the  
4 Bar very, very closely to ensure that Oregon laws and our  
5 policies and branch support the move to paperless and  
6 electronic court environment.

7 We drafted Uniform Trial Court Rules for filing  
8 documents electronically. They're now available for  
9 public review and comment, and as I said, the committee is  
10 currently addressing confidentiality issues relating to  
11 online access for court records. And we are looking very  
12 closely at adding a number of modules at the appellate  
13 level that I think will really be exciting over the next  
14 year or two. It's going to come out in chunks. I think  
15 that's the only right way to do it.

16 Ultimately, what we're going to be trying to  
17 train our judges to do is to substitute those wheelbarrows  
18 of briefs that we're used to reading for a zip drive. And  
19 if you can imagine the cultural change that that's going  
20 to involve, well, you know what we're up against. So,  
21 technology group.

22 Public officials compensation. You heard what  
23 Rick said. I had the privilege of participating in the  
24 process that led to the report that just came out, and it  
25 is public. The commission itself is recommending that

1 judges in the branch receive the median salary of the 12  
2 contiguous western states, which would be a substantial  
3 increase for our judges across the board.

4 I've always been one the judges who has been  
5 most reluctant to talk about this, because I think it's  
6 always risky for judges to actually talk about salary  
7 issues. It isn't personally an issue for me, but it is an  
8 issue for the branch, it's an issue for the public, and  
9 it's an issue for you because if we're not attracting the  
10 best lawyers to the Bench because the opportunity cost is  
11 too great to come into public service -- as you've got  
12 kids going to college and all the other expenses we face  
13 as we reach the most productive phase of our economic  
14 lives -- we are not going to have quality public justice  
15 in this state. And so the Bar's support has been  
16 absolutely critical in moving this ahead.

17 Since we've got unfortunate economic forecasts  
18 coming out right now, and we're hearing things from  
19 legislative fiscal suggesting that we're going to be  
20 struggling, unless the forecast improves over the next six  
21 months, or four months actually, to even maintain  
22 essential budget levels, it's even more important that our  
23 legislators understand that this committee's  
24 recommendations matter and, if at all possible, it needs  
25 to be implemented in this session. And our hope is that

1 'it will be.

2           Again, without the Bar's support, this never  
3 would have happened. We would have never gotten this far.  
4 We are eternally grateful.

5           Court facilities. I was a trial judge in Lane  
6 County for six years. As you know, this is another one of  
7 the Chief's huge initiatives. For the first time ever he  
8 got public funding, over a million dollars last session,  
9 to do a study on courthouse facilities across the state.  
10 We have 27 judicial districts in Oregon. We have 27  
11 separate, different, unique iterations of the same  
12 problem, because each of those counties and judicial  
13 districts involves a delicate partnership with the county  
14 government.

15           And there is no one-size-fits-all solution for  
16 this, but I can tell you this: We've got courthouses  
17 around the state that are converted hospital facilities,  
18 that were never suited to a public justice facility.  
19 We've got courthouses around the state where you still see  
20 remnants of asbestos abatement going on, where there's not  
21 adequate maintenance, where there are dust bunnies and  
22 broken chairs in the jury rooms.

23           And the most poignant example of how this  
24 problem shapes up for you and for the public in Oregon is  
25 a reminder I had, when I was getting ready as a trial

1 judge to try a really exciting, complex civil case about  
2 ten years ago in Lane County. Let me tell you what  
3 happened.

4           Lawyers will go nameless. I don't think either  
5 of them are in this room. But it wasn't one of those  
6 last-minute courthouse settlements that you often see when  
7 you give somebody a gentle nudge and, you know, say, "Hey,  
8 you know, I heard opening statements. What do you think?"  
9 It wasn't one of those things at all.

10           But after the lawyers had surveyed the jury room  
11 in a very, very critical case, they settled the case.  
12 Later one of them came and told me, he said, "Judge, would  
13 you like to know why we settled that case? It's because  
14 we were concerned, among other things, about having the  
15 jury for three weeks sit in this little cubicle, with all  
16 these dust bunnies and crap hanging out of the ceiling and  
17 these broken chairs, and wonder if what they're doing was  
18 important enough to amount to public justice."

19           And we got problems like that in courthouses  
20 around the state. If we don't show respect for the  
21 facilities where we do justice, people won't believe  
22 justice is done in those facilities. And although we've  
23 got some very nice courthouses around the state, we have  
24 many, many different challenges.

25           And the Chief has gone all over the state to

1 visit county boards of commissioners, Union and Wallowa  
2 county most recently, where there's a huge challenge, and  
3 is meeting with people and is engaging in a process of  
4 local solutions. This all goes back to the early '80s,  
5 with what was thought to be the legislative compromise at  
6 that time that gave the funding of the court operations to  
7 the state, but left the ownership of the facilities with  
8 the county.

9 That sort of divided ownership and operation has  
10 challenges in the best of situations, but it has been  
11 extremely problematic. We need to find a win-win  
12 solution, county by county, across the state. Right along  
13 with technology, that is the big challenge that we've got  
14 going forward.

15 Real quickly a couple of other things, and then  
16 I'll sit down. We talked yesterday some about the risks  
17 of erosion of civil justice in this state. As you know,  
18 the jury trial is declining on the civil side especially,  
19 but really on the criminal side too around the state.  
20 We've got a bunch of young lawyers now who have less fire  
21 in their bellies for the idea of trying their case to a  
22 jury and for that whole -- the importance of that whole  
23 issue of public participation and validation of our  
24 justice system.

25 Those of us who tried a bunch of jury trials

1 earlier in our careers understand the zeal that you feel  
2 for that part of the process. ADRs have been great. I've  
3 been one of the earliest, strongest advocates for ADR, but  
4 we've got to watch and make sure the pendulum doesn't  
5 swing so far in that direction that people feel that they  
6 can't get into court and try cases anymore.

7 Our judges need to be hospitable to trials.  
8 They can't bully people to settle cases. They've got to  
9 be able, willing, and ready to try cases. We've got some  
10 people coming to the Bench who haven't even watched voir  
11 dire done before. And so we've got a situation now where  
12 we're at great risk of losing especially civil justice in  
13 that public participation and imprint on the process.

14 There are several groups that are really working  
15 hard on this problem. I want to encourage the Oregon  
16 State Bar to take a good, hard look at it. Judge Janice  
17 Wilson in Portland, the Multnomah County Bar Association,  
18 several of you here are involved in a jury trial project  
19 up there, trying to figure out what kinds of solutions we  
20 can do to reduce the expense and the delay, because those  
21 are the two biggest drivers in the system.

22 The American College of Trial Lawyers -- there  
23 may be some people on that team here today -- are looking  
24 at three possible approaches and are thinking of drafting  
25 Uniform Trial Court Rules that the Chief can look at that

1 would make some options available to make jury trials  
2 quicker and less expensive. One of them is a trial  
3 de novo project, kind of like a little bit of the old  
4 district court, where you go in and try something to a  
5 six-person jury real quick, and then you can get a trial  
6 de novo if you need it, on the theory that you probably  
7 wouldn't once the jury spoke.

8 Another would be a fast track, where you agree  
9 to limit some motion practice and agree to limit some  
10 discovery and, in exchange for that, you get a quicker  
11 trial date.

12 A third thing that's being done is civil lawyers  
13 who can't get into a courtroom around the state now are  
14 volunteering with DAs' offices and PDs' offices to help  
15 try misdemeanors. So you get a win-win. Many of those  
16 DAs and PDs don't have enough lawyers to try the  
17 misdemeanor cases, and many civil lawyers can't get  
18 experience in a courtroom.

19 I raise those issues briefly. The Chief cares  
20 deeply about them. We can't get the public to support us  
21 if they don't trust us. They don't trust us unless we  
22 hold the window back and involve them. And jury  
23 participation is the number one way to do it.

24 I tried, as a judge and lawyer, hundreds of jury  
25 trials, and I can count on the fingers of one hand where

1 the jury went south. There's something magical about what  
2 they do, and we're at risk of losing that.

3 Finally, I want to mention the strategic  
4 planning process that the Chief's got going, and I want to  
5 solicit your input and support for that. All of you have  
6 heard of the Justice 20/20 Vision for Oregon courts. That  
7 was adopted in 2000. State planned elements with some  
8 priorities that were adopted in 2006, and a number of  
9 initiatives are under way in connection with that.

10 We have to, just like you, engage in purposeful,  
11 strategic planning, where the process is critical but it  
12 doesn't become the product. And that's what we're trying  
13 to do right now. We're in the process of adopting a  
14 2009-2014 strategic plan, which we hope to do by December  
15 of this year. Committee's been meeting since July. It's  
16 on the fast track. It's going to have us look at  
17 important demographic and environmental factors, including  
18 access to information.

19 The demographic issues in our society in Oregon  
20 and around the country, both an aging society and  
21 population, increased non-English speakers in the courts  
22 and interpreter use, immigration, and a matter of bringing  
23 justice to all and respecting cultural diversity. Also,  
24 drug and alcoholic epidemics, specialty courts, court  
25 governments, caseload growth and complexity, and business

1 continuity, all of those factors are environmental factors  
2 that we're taking into account as we move forward with  
3 this strategic planning process.

4 As I mentioned, in Oregon, funding for the  
5 courts is always a delicate matter. We depend on the  
6 income tax virtually exclusively and the general fund, and  
7 the economic forecasts right now are not good. We're at a  
8 critical point where a number of projects relating to tech  
9 and facilities and strategic planning need to move  
10 forward. It's going to be all the more critical that we  
11 work hand in glove, communicate in real time with the Bar  
12 about the Bench's needs and your needs as it relates to  
13 public justice over the next biennium.

14 We look at Ballot Measure 61. We look at Ballot  
15 Measure 57. Those have real -- that's the Mannix issue.  
16 Those have real consequences to our system if those pass  
17 because they will add enormous costs to our criminal  
18 justice system. We hope the Bar will continue to be part  
19 of the very critical conversation on the initiatives that  
20 are in bloom this November.

21 Rick, I've taken more than my ten minutes. I  
22 apologize to all of you for that. Last thing I'll say to  
23 you is this: I was a little embarrassed yesterday when I  
24 came in because I'm kind of like Elmer Fudd, and I was  
25 underdressed. I said to my panel -- everybody was all

1 dressed up, and I looked like I just came in with my lunch  
2 bucket. But I knew when I came here before you today, if  
3 I didn't wear a coat and tie, somebody would tell Paul  
4 DeMuniz, and he would be very disappointed in me.

5 So thank you very much, and I really enjoyed  
6 being with you today.

7 (Applause.)

8 PRESIDENT YUGLER: Thank you. I'm now  
9 going to call on Ward Greene, who chairs our budget and  
10 finance committee, to provide a report on the Board of  
11 Governors' budget finance committee and on our leadership  
12 report.

13 MR. WARD GREENE: Actually, I'm pleased to  
14 be here mainly because I can tell you what Rick has  
15 already mentioned, and that is that the Bar is still in  
16 good shape. There will be no dues increase this year, no  
17 dues increase next year. We are closing on the building  
18 next week. The financing's in place, and the master  
19 lease, as Rick mentioned, will assure us that Opus will  
20 continue to pay for the unused space, at least for another  
21 four years. And with any luck, we'll have tenants who  
22 will stay and the Bar will continue to enjoy its new  
23 space. Budget's in good shape.

24 I don't have anything else to offer,  
25 Mr. President, unless there's something else you want me

1 to comment on.

2 PRESIDENT YUGLER: I think that's the  
3 briefest I've ever heard you.

4 (Laughter and applause.)

5 PRESIDENT YUGLER: I'm told we're still  
6 waiting for two people for a quorum. So I'm going to ask  
7 that people take a moment, get some coffee, and we can  
8 reconnoiter in just a few minutes.

9 (Recess from 10:46 to 11:04 a.m.)

10 PRESIDENT YUGLER: I see some folks still  
11 out there. Got a few more stragglers.

12 Okay. Thank you. Ladies and gentlemen, first  
13 of all, I thank all of you who have come to Central Oregon  
14 to attend the House of Delegates ought to be applauded for  
15 your effort. We remain --

16 (Applause.)

17 PRESIDENT YUGLER: I'm disappointed to  
18 report that we are still two short of a quorum, and I'm  
19 advised that we cannot conduct business absent a quorum  
20 and that any effort to debate the resolutions or to -- to  
21 vote in favor or oppose would have no binding effect, and  
22 that even if we were to proceed in that manner,  
23 ratification is not something that is really in the cards.

24 I think this has happened once before, not with  
25 the House of Delegates format, but with the Town Hall. I

1 think Judy Henry was President, and that year, following  
2 the failure of a quorum, there was a business meeting put  
3 together in Portland to conduct the business of the Bar,  
4 and if I remember, that was well-attended because of the  
5 disappointment and I think -- I don't want to call it a  
6 crisis, but I think embarrassment that occurred as a  
7 result of the failure to muster a quorum.

8 I think every year we try to do something new  
9 with the House of Delegates to keep it a vital force in  
10 our governance, and I think history has shown that the  
11 Town Hall format has pluses and minuses and the House of  
12 Delegates does. As you can see on your agenda this year,  
13 we were going to try to address some of the difficulties  
14 we have with the two resolutions. One was to provide that  
15 the ex officio members of the House of Delegates could  
16 appoint a delegate in their absence, but the elected  
17 delegates could not, as a means to encourage greater  
18 attendance.

19 Each year I've watched presidents struggle, hold  
20 their breath to see whether or not there would be a  
21 quorum, and presidents pray that no one would call a  
22 question to see whether a quorum remained. I think that  
23 the failure today to muster a quorum is an indication that  
24 more work needs to be done to deal with our -- our  
25 governance issue.

1           There is a resolution Danny had on the table  
2           that would have reduced the quorum to 50 percent of the, I  
3           think, elected members plus one. And, frankly, I'll speak  
4           for myself alone, and that is if we need to reduce a  
5           quorum down to 50 people or so, that says something. It  
6           says that we really need to reexamine the structure of the  
7           House.

8           And I want to tell you also I think that the  
9           House is necessary. I think it's shown, with what's  
10          happened with the military advertising, the elimination of  
11          bias and some other things, that I think the Board of  
12          Governors does an excellent job of providing policy,  
13          governance, and direction for the Bar and really running  
14          our profession.

15          But, you know, we're all lawyers, and we know  
16          that there needs to be a check and balance, and the House  
17          is one way to do that. We have member resolutions as  
18          another way to do that. I think it is essential that  
19          there be a component that provides direct input for  
20          membership beyond the Board of Governors.

21          I'll pledge to you that the Board will discuss  
22          the way in which to respond to our inability to muster a  
23          quorum today, and we have one solution here and another  
24          solution that Danny presented, and we will try to present,  
25          as soon as we can, some additional means to deal with a --

1 really a problem.

2 So I want to thank you personally on behalf of  
3 the entire board for coming, because we cannot conduct  
4 business.

5 Janet? I'll entertain any member comment that  
6 anyone wants to make, and I'll recognize anyone.

7 Gary?

8 MR. GARY GEORGEFF: Thank you,  
9 Mr. President. Gary Georgeff, elected delegate, out of  
10 state, residing in British Columbia.

11 I have a suggestion here. Can't be a motion,  
12 can't have any binding effect, but in light of what's  
13 happened, we do have two resolutions, and I'm going to  
14 make the suggestion that we salvage some of this time.  
15 Collectively, I don't know how many thousands of dollars  
16 of attorney time we have here at this moment, but could we  
17 salvage it and discuss the Board of Governors' resolution  
18 on designating alternate delegates for ex officio members?  
19 And we can discuss Mr. Lang's resolution?

20 And that the intent would be that after that  
21 discussion, some members of the House of Delegates may  
22 themselves present a petition to the Board of Governors  
23 for one or either of these, or perhaps for a membership  
24 vote.

25 Mr. Browning -- my experience is with membership

1 petitions, as you know. Mr. Browning reminded me that --  
2 I think the House of Delegates can do that too. We can't  
3 do it here, but if we can get enough members together, we  
4 can submit something to the Board. It wouldn't take very  
5 long if we just limit the discussion to those two  
6 resolutions. So, that's my suggestion.

7 PRESIDENT YUGLER: Thank you, Gary.

8 MR. ROBERT LeCHEVALLIER: Rob LeChevallier,  
9 elected delegate from Region 6.

10 I think also it would be helpful to find out,  
11 maybe by voting, to find out how many elected delegates  
12 are here versus nonelected delegates, just to determine  
13 whether we have -- whether we have a majority of the  
14 elected delegates.

15 PRESIDENT YUGLER: I think we -- well, we  
16 can proceed in that fashion. I am not opposed to having a  
17 general discussion, but the difficulty is that without a  
18 quorum, then it is nothing other than a general  
19 discussion. If people wanted to, for a test vote, to  
20 push -- maybe we can bring up a test question, Jared: 1/A  
21 if you are elected and 1/B if you are ex officio. Maybe  
22 we can do that and just satisfy curiosity. I know we can  
23 figure it out in the back. This might be a quick way to  
24 answer that question.

25 We're going to have -- press one for if you are

1 elected, and press two if you're ex officio.

2 Tell me when you got that on there, Jared.

3 I can't hear you, Jared. Okay. "Sort of" is  
4 close enough.

5 All right. So we're going to use this as a test  
6 question, and the question is not to vote to suspend the  
7 rules. The question I'm going to present is that if you  
8 are an elected member of the House of Delegates, please  
9 press one; and if you are an ex officio member of the  
10 House of Delegates, please press two; and if you don't  
11 know if you're ex officio or elected member, press three,  
12 because you don't even know why you're here.

13 (Laughter.)

14 PRESIDENT YUGLER: Okay. When I say  
15 "three," everyone push their button, and let's see what we  
16 got here.

17 Okay. So in answer to Rob's question, there are  
18 82 elected members here out of -- I think there are about  
19 110, and there are 25 ex officio members here, and I'm  
20 guessing at least 15 or 16 are members of the Board of  
21 Governors. And there's one abstain.

22 (Laughter.)

23 PRESIDENT YUGLER: But we do have 108  
24 responses, which shows you we are two short of a quorum,  
25 because we need 110 for a quorum.

1 Gary, why don't I do this: You know, people  
2 have come a long way, and I do not want to waste anybody's  
3 time. I think there are two guideposts on here as  
4 potential solutions, and I do agree that it may be worth  
5 discussing, and maybe as just an advisory vote to the  
6 Board, the two resolutions pertaining to the House of  
7 Delegates governance. So I'll ask you to --

8 UNIDENTIFIED SPEAKER: Rick, can I just ask  
9 a question that I don't know the answer to.

10 PRESIDENT YUGLER: Yes, Janet.

11 UNIDENTIFIED SPEAKER: Since we do not have  
12 a quorum, do we not meet or do anything for another year?

13 PRESIDENT YUGLER: No. We can call a  
14 special meeting. And I'm going to discuss with the Board  
15 of Governors, number one, whether to call a special  
16 meeting. If so, when and where; and two, whether the  
17 preference is to wait or not.

18 So, Teresa?

19 MS. TERESA WENZEL: Please remember to  
20 return your voting devices. 75 bucks for anybody who does  
21 not. Thank you.

22 PRESIDENT YUGLER: Yes, when we're done.

23 Okay. Why don't I do this: Since we are not --  
24 don't have a quorum, we can't conduct business, I want to  
25 provide a few minutes for people who would want to speak

1 in favor of the Board of Governors resolution number  
2 three, which is item number ten on your --

3 UNIDENTIFIED SPEAKER: Can I just ask one  
4 question?

5 PRESIDENT YUGLER: Yes.

6 UNIDENTIFIED SPEAKER: Can we get the exact  
7 number of ex officio who actually could be here and the  
8 exact number of elected delegates so we know, since we're  
9 discussing specifically allowing ex officio and there are  
10 25 here, it would be nice to know how many there actually  
11 are.

12 PRESIDENT YUGLER: We can give you an exact  
13 number, but there are approximately 50-50, Janet.

14 UNIDENTIFIED SPEAKER: I'm Mary.

15 PRESIDENT YUGLER: Mary. I'm sorry. All  
16 right. There are approximately 110 ex officio members and  
17 approximately 110 elected delegates. But we'll get you  
18 the exact numbers.

19 I don't want to, by the way, hold people,  
20 because we are officially going to adjourn the meeting, so  
21 I don't want to hold you if you want to go. But if you do  
22 go, please drop your voting thing off.

23 But maybe I can do this: As to item number ten  
24 on the agenda, who believe that we ought to have  
25 designees -- maybe, Jared, if you could bring up that

1 question -- who believe that we ought to allow ex officio  
2 members have a designee. Get that one up there. It would  
3 be number nine.

4 Okay. Why don't we do this. This is just an  
5 advisory vote for us, and the resolution that's described  
6 in your packet, we're not going to take time to debate  
7 this because this is just an advisory vote, and we're not  
8 conducting business. But those who believe that it would  
9 be advisable to allow ex officio members to appoint a  
10 delegate in their stead, press one. And if you're opposed  
11 and think that ex officio members ought not be able to --  
12 or we ought not change it so that ex officio members can  
13 have a designee in their absence, press two. And if you  
14 really don't know, press three.

15 (Vote taken.)

16 PRESIDENT YUGLER: I know some folks left.  
17 That's fine.

18 So that's good news. All right.

19 Now, let's consider Danny's resolution. Danny,  
20 why don't I just give you a minute to describe your  
21 resolution. And again, I'm not going to ask for any  
22 debate. This is the resolution item number 16 on the  
23 agenda, delegate resolution number five. Why don't you  
24 describe it.

25 MR. DANNY LANG: Thank you, Mr. President.

1           Fellow delegates, members of the Board of  
2   Governors, I appreciate this opportunity to try to salvage  
3   a little bit from our meeting today. I saw this -- I had  
4   a concern for this going back a couple of years ago, and  
5   so I authored a measure which is in the -- in the list  
6   here, and I thought the best way to do it would simply  
7   have its item -- agenda item 16, House of Delegates  
8   resolution No. 5.

9           And the concept is that we would use the 110  
10   elected delegates as the base, if you will, and 50 percent  
11   of those plus one could constitute a quorum. Had this  
12   been previously adopted, if this was our rule, we'd be  
13   proceeding right now, because we had 82 elected delegates  
14   electronically indicate they were present here. In fact,  
15   I think we got to 108, because we could count. Under my  
16   proposal, you'd also count those ex officios that are  
17   present, and for a minimum you would look towards the  
18   elected delegates.

19           This is the House of Delegates, and so I think  
20   there's nothing impure and there's nothing surreptitious  
21   and no secret agenda here. We'd just simply have 50  
22   percent plus one..

23           Now, I'm going to suggest that one of the  
24   problems that led to this today is somewhat of a lack of  
25   communication and cross-pollinization, and so I did have

1 another item which was that we have an executive  
2 committee, maybe a presiding delegate from each region  
3 that could have gone around and made sure that those  
4 delegates that are absent knew the meeting was on,  
5 reminder, and just keep the interest, keep things going so  
6 we have maybe some carpooling: It wouldn't have taken  
7 much. I think if we had had an executive committee, we  
8 would have had two or three more people here today.

9 So I'm going to ask you to pass my resolution.  
10 I don't see this as an alternative to the Bar -- or the  
11 Board of Governors' resolution. I like them both. So,  
12 that's it from a delegate. Thank you, from the region.

13 PRESIDENT YUGLER: Okay. As I said, I'm  
14 not going to really have a debate on this as an advisory.  
15 I do want Tim Gerking on the Board to discuss with you --  
16 or summarize for you the Board's discussion about this  
17 resolution, and then again we'll just ask for an advisory  
18 vote here.

19 MR. TIMOTHY GERKING: Good morning. I'm a  
20 fourth year member of the Board of Governors, and I'm  
21 chair of the policy and governance committee that I'm  
22 pleased to be a part of for the last two years. And I  
23 will say this: That over that period of time, the Board  
24 has carefully considered this problem of obtaining a  
25 quorum at your annual meeting, and we have been attempting

1 to address that problem.

2 Last year we passed the mileage reimbursement,  
3 which we thought would be an incentive for the HOD members  
4 to come to their annual meeting. This year we had this  
5 resolution that's already been discussed and approved by  
6 you, even though it doesn't count, and we thought that  
7 that would be helpful.

8 We're also studying other possible means of  
9 attracting a quorum. One was to have a semiannual meeting  
10 of the House of Delegates that would perhaps be scheduled  
11 in the springtime at the Bar center, probably, in order to  
12 develop some collaboration and communication between the  
13 HOD and the Board of Governors, and to perhaps develop and  
14 instill some energy in this whole process.

15 Another possibility would be to simply have all  
16 of our House of Delegates meetings take place in a more  
17 centralized location, not geographically, but maybe  
18 centralized for the majority of the HOD members, which  
19 would be at the Bar center in Tigard. Those are -- those  
20 are possible solutions that we're still working on, but  
21 this solution that Danny has suggested we don't think is  
22 appropriate.

23 I mean, we have a membership of 16,000 members,  
24 and to conduct business with only 50 is really -- is  
25 really not representative and just dilutes the whole

1 process of the way we conduct business as a Bar. And I  
2 would echo the comments that Rick made previously, that  
3 the solution that Danny has developed -- which is a good  
4 effort by Danny, and we appreciate it -- but it's just not  
5 the right way to solve this problem.

6 PRESIDENT YUGLER: Thank you.

7 Okay. Now, again, just for the enjoyment of the  
8 Board of Governors -- not that we -- if you are in favor  
9 of Danny's resolution, press one; if you are opposed,  
10 press two; if you don't know or want to abstain, press  
11 three. And trust me when I say we -- the Board of  
12 Governors takes to heart everything that this body does.  
13 So, think carefully and press your button.

14 (Vote taken.)

15 PRESIDENT YUGLER: Okay. With that, I want  
16 to pledge to you again that the Board will discuss, meet,  
17 and propose some additional solutions. With that, I want  
18 to thank you again for making the effort, for coming, and  
19 adjourn this meeting.

20 (The meeting was adjourned at 11:25 a.m.,  
21 after which proceedings continued on  
22 Friday, November 7, 2008, at 1:30 p.m., at  
23 the Oregon State Bar, Tigard, Oregon, as  
24 follows:)

25

1                   PRESIDENT YUGLER: I'm informed that we  
2     have a quorum, so I'm going to call the meeting to order.  
3     I'm Rick Yugler, President of the Oregon State Bar for 41  
4     days. And I want to thank you all for attending, and to  
5     108 of you, thank you all for attending again.

6                   I want to welcome some folks. First, I just  
7     want to make a few announcements before we start. I just,  
8     once again, want to recognize our executive director,  
9     Karen Garst, who's on the final leg of 13 years with us.

10                   (Applause.)

11                   PRESIDENT YUGLER: And I want to introduce  
12     Karen's successor, Teresa Schmid, who's --

13                   (Applause.)

14                   PRESIDENT YUGLER: I hope everybody gets an  
15     opportunity to spend some time with Teresa, introduce  
16     yourselves, and I'm sure over the course of the next few  
17     months and years we'll get ample opportunity to meet  
18     Teresa. She's great. Welcome to the Oregon State Bar.

19                   And I also want to thank Gretia Capri and Robin  
20     Nodland of the Oregon Court Reporters Association for  
21     being with us once again.

22                   (Applause.)

23                   PRESIDENT YUGLER: A few reminders. In  
24     your packet you have a mileage expense reimbursement form  
25     in yellow. You have 30 days to present that if you want.

1 your mileage reimbursed.

2 And I wanted to just briefly go through a few of  
3 the procedures that are on your green sheet, which is the  
4 parliamentary procedure that we're going to be using. I  
5 want to remind you that only HOD members may invoke the  
6 HOD rules or parliamentary rules and vote, but any member  
7 of the Oregon State Bar can speak pro or con.

8 When speaking, therefore, please identify your  
9 name, the city you come from, and the HOD region, if  
10 you're an elected delegate, or ex officio delegate, just  
11 state that you're a HOD member. Proponents will have five  
12 minutes to present their resolution, and there will be  
13 three minutes for each speaker, pro and con, after that,  
14 and one minute for the presenter to close.

15 Proposed amendments must be presented in  
16 writing, as well as any new items that may be added to the  
17 agenda once we finalize the agenda. There's a pink form  
18 if you want to add something. It needs to be in writing,  
19 and that's there for your convenience.

20 And a reminder: In moving to close debate,  
21 which is often called "calling for the question," it does  
22 require a delegate to make a proper motion and to be  
23 seconded. It's not debatable and will require two-thirds  
24 vote to close debate before we can move to a main motion.

25 Now, we do have the fancy electronic voting

1 system. So, everyone, if you have one of these, please  
2 take it out because we're going to have a test question  
3 and see if these things work. The instructions are in  
4 your packet, but the main thing you need to know about  
5 this handy-dandy electronic voting system is you may not  
6 leave with these things in your pocket. We know who you  
7 are because everyone who picked one up has a number  
8 attached to his or her name, and if we don't get it back,  
9 there's a \$75 charge. So please make sure to return these  
10 when you leave.

11 Secondly, each vote will be entered into an  
12 electronic database that can be viewed, as needed, for  
13 verification. And the buttons are really pretty simple.  
14 It's worked out pretty well. Use 1/A for yes, 2/B for no,  
15 and 3/C for abstaining. The other buttons will not  
16 register your vote.

17 But remember, the last button you press will  
18 register your vote. So if at first you make a mistake and  
19 you press yes, before I say, "The votes are going to be  
20 tallied," you can press no, because the last button you  
21 press before the votes are tallied is the one that's going  
22 to count. So even if you press the same number, if you  
23 press 1/A three, four, or five times, because you're  
24 worried about it being registered, it's only going to  
25 register that. The last button you press is the one

1 that's going to count.

2 When the votes have been recorded, you'll see a  
3 green light on your device. After you've pressed your  
4 button, if it flashes orange in your little hand, then it  
5 means that your vote was not recorded and you need to  
6 press it again.

7 So we're going to have a test question, and I'm  
8 going to ask you to press 1/A if you think that we will  
9 get through our agenda in under 60 minutes, press 2/B if  
10 you think it will take 90 minutes, and 3/C if you think  
11 we're going to be here for two hours. So please record  
12 your votes.

13 (Vote taken.)

14 PRESIDENT YUGLER: Oh, don't vote yet. I'm  
15 sorry. I have to follow instructions.

16 Okay. Here we go. Number one: Chocolate,  
17 vanilla, or both. So question -- so 1/A if you think  
18 we're going to be here in under an hour, 2/B if you think  
19 90 minutes, and 3/C if you think two hours. So let's  
20 record our votes.

21 UNIDENTIFIED SPEAKER: How many times can  
22 you vote?

23 PRESIDENT YUGLER: You can only vote once.  
24 It's the last time you press.

25 UNIDENTIFIED SPEAKER: Is it really

1 chocolate, vanilla, or both?

2 PRESIDENT YUGLER: Well, it's the test  
3 question. As you can see, we have 125 responses, so we do  
4 have a quorum. No doubt about that.

5 All right. So anyone who hasn't pressed their  
6 button, now's your last opportunity, and we can now close  
7 that question and see what the result is.

8 Oh, my gosh. All right. Well, we're evenly  
9 divided. I'm not sure if that's a good sign or a bad  
10 sign, but we're going to find out.

11 All right. Now, the first order of business  
12 that we did not get to when we last met was to finalize  
13 the agenda, to adopt a final meeting agenda. And  
14 everybody has in their packet, of course, the agenda that  
15 was printed and timely delivered to everybody.

16 And just to summarize the agenda, there are  
17 eight items -- items number eight through 19. Board of  
18 Governors resolutions are items number one through four --  
19 excuse me. They're on there as items eight, nine, ten,  
20 and 11. But those will be Board of Governors resolutions  
21 number one through four. That's followed by eight  
22 different resolutions from delegates from the House, and  
23 item number 20 was excluded.

24 And the reason item number 20 was excluded, I  
25 would like to explain, is because BOG bylaw 3.4 permits

1 the Board of Governors to exclude any items outside of the  
2 limitations set forth in Keller v. State of California,  
3 and House of Delegates rule 5.6 provides that any excluded  
4 item may be added back only by overriding the vote of the  
5 Board of Governors.

6 So at this time we have an agenda, with items  
7 number eight through 19, and we have excluded item number  
8 20, and I am asking at this time whether we'll have a  
9 motion for adoption of the agenda or to add or delete  
10 items from the agenda.

11 MS. MICHELLE ING: Mr. Yugler.

12 PRESIDENT YUGLER: Yes, Ms. Ing, I'll  
13 recognize you.

14 MS. MICHELLE ING: Michelle Ing from Salem,  
15 elected delegate from Region 6.

16 I move to suspend the rules. I have an agenda  
17 item to add. It is -- the item I want to add does not --  
18 does not prejudice the body. It is a topic that came up  
19 at our Futures Conference regarding out-of-state attorneys  
20 practicing in Oregon without a license through -- through  
21 openings in the arbitration rules. And I think that this  
22 body should consider that additional agenda item, and I  
23 request that this -- I request for a suspension of the  
24 rules, sir.

25 PRESIDENT YUGLER: All right. A motion to

1 suspend the rules to add an item that was not submitted  
2 within the 45-day time frame for submitting motions  
3 requires a two-thirds vote and is nondebatable. So at  
4 this time do you have a second for your motion?

5 MR. DANNY LANG: I will second.

6 PRESIDENT YUGLER: Mr. Lang has seconded  
7 your motion.

8 All right. So the first item to vote on is --  
9 well, actually, the item is going to require suspension of  
10 the rules to add this to the agenda. So, nondebatable.

11 MS. MICHELLE ING: I move to suspend the  
12 rules, sir.

13 PRESIDENT YUGLER: Done that.

14 MS. MICHELLE ING: Okay. And nondebatable.

15 PRESIDENT YUGLER: It's been seconded. So  
16 all in favor of suspending the rules to add Ms. Ing's  
17 agenda item, and after which, if this does pass, then she  
18 can present her motion to actually add it to the agenda  
19 and actually describe the motion. But in favor of  
20 suspending the rules, in favor of her presenting her  
21 motion to suspend, press 1/A if you're in favor, 1/B if  
22 you're against -- 2/B, excuse me -- 2/B if you're against,  
23 and 3/C if you wish to abstain. And do not vote yet. Now  
24 vote.

25 (Vote taken.)

1 PRESIDENT YUGLER: Okay. Can we vote,  
2 Jared?

3 UNIDENTIFIED SPEAKER: Wait a second.

4 PRESIDENT YUGLER: Jared, can we vote on  
5 this? Oh, we're going to vote again.

6 UNIDENTIFIED SPEAKER: It's resetting.

7 PRESIDENT YUGLER: Okay. Okay. All right.  
8 Vote now.

9 (Vote taken.)

10 PRESIDENT YUGLER: We have 123 responses.

11 All right. Let's tally the votes, because I don't vote  
12 unless there's a tie. And the results, 76. I say that is  
13 more than two-thirds, wouldn't you, Ms. -- no? 66.  
14 What's two thirds -- oh, two-thirds of those present.  
15 Okay.

16 UNIDENTIFIED SPEAKER: It would have to be  
17 83.

18 PRESIDENT YUGLER: Motion fails. All  
19 right. Thankfully, someone can do math.

20 (Laughter.)

21 PRESIDENT YUGLER: All right. Now, let's  
22 turn to the first -- I do need a motion to adopt the  
23 agenda as otherwise printed.

24 MR. DENNIS KARNOPP: So moved.

25 PRESIDENT YUGLER: Mr. Karnopp has moved.

1 MR. GERRY GAYDOS: Seconded.

2 PRESIDENT YUGLER: And Mr. Gaydos has  
3 seconded.

4 All right. Again, nondebatabable motion. All in  
5 favor of adopting and approving the final agenda, press  
6 yes -- number one for yes, number two for no.

7 (Vote taken.)

8 PRESIDENT YUGLER: Okay. All right. Let's  
9 see the total.

10 All right. That carries. Two people -- we have  
11 an agenda. Thank you very much, everybody.

12 The first item on the agenda that we have just  
13 approved is item number eight, in-memoriam resolution, and  
14 the chair will recognize Mr. Gaydos.

15 MR. GERRY GAYDOS: If you haven't opened  
16 your packet, if you could, and look at this sheet, I ask  
17 you to look at that sheet as we do a little in memoriam.

18 I ask you to review those names, for we're not  
19 going to read each of them, and I want you to take a  
20 moment to slow down, to take a deep breath, to remember  
21 the members of the Bar and Bench, the lives and commitment  
22 of those who have passed during this last year.

23 This is a moment, although much too short, one  
24 that causes us, in addition to remembering, to reflect on  
25 what each contributed to our profession and to the Oregon

1 State Bar. This is the moment to celebrate the face that  
2 each put on the rule of law. Each of those who have  
3 passed made the rule of law a reality to their clients, to  
4 their communities. Each brought honor to themselves and  
5 their profession.

6 This is a moment to celebrate professionalism of  
7 each, the statesmanship of each, and that sense that the  
8 rule of law is important in our communities. Our Bar and  
9 our state is far better for all those lives well lived. I  
10 ask you to stand in a moment of silence and prayer.

11 (Pause.)

12 MR. GERRY GAYDOS: Thank you.

13 I ask you to reflect, as you leave today, on  
14 what each of these individuals meant to their communities,  
15 their partners, and their families. And when you return  
16 to your busy lives, I ask you not to forget and to  
17 remember to celebrate and to commit to assisting all those  
18 who need legal services in their memory. Thank you.

19 PRESIDENT YUGLER: Was there a second to  
20 Mr. Gaydos's resolution?

21 MR. STEPHEN PIUCCI: Second.

22 PRESIDENT YUGLER: Mr. Piucci.

23 I'm going to ask for unanimous consent to  
24 Mr. Gaydos's resolution. Are there any objections?

25 Motion carries. Thank you, Mr. Gaydos.

1           The next item is item number nine, and this is  
2 to be presented by Mr. Tim Gerking. Tim?

3           MR. TIMOTHY GERKING: This is BOG  
4 resolution number two. The Board of Governors is asking  
5 the House of Delegates to approve resolution number two to  
6 allow for the continuous and uninterrupted provision of  
7 legal services in the event of a catastrophe or major  
8 disaster in Oregon, or in another jurisdiction, that  
9 impacts the provision of legal services.

10           This is in response to the disruption of legal  
11 services that occurred in the Gulf Coast -- or the Gulf  
12 region as a result of the hurricanes, and it's consistent  
13 with an ABA model court rule that was passed by the  
14 American Bar Association House of Delegates in 2007.

15           There are two situations where this might arise.  
16 One is a disaster that occurs in Oregon, where Oregon  
17 residents or displaced persons from another jurisdiction  
18 who come to Oregon are in need of legal services; and the  
19 second situation might occur if there's a disaster in  
20 another jurisdiction that causes the temporary  
21 displacement of lawyers from that jurisdiction to Oregon.

22           In the first situation, in the event of a  
23 disaster here in Oregon, it must -- the disaster must be  
24 an actually declared emergency by the governor's office.  
25 The lawyer who is seeking to practice here in Oregon must

1 do so on a temporary basis, and the services must be on a  
2 pro bono basis pursuant to an established pro bono  
3 program.

4 In the second situation, where we've got  
5 displaced lawyers coming to the state of Oregon, that must  
6 also be pursuant to a declaration of an emergency in the  
7 affected state. It must also be -- the provision of legal  
8 services must also be on a temporary basis, and that  
9 lawyer's practice must be limited to services that arise  
10 out of or are reasonably related to the services he or she  
11 provided in the affected jurisdiction.

12 So I would move that this resolution be adopted.

13 MS. THERESA WRIGHT: Second.

14 PRESIDENT YUGLER: Ms. Wright seconded it.  
15 Want to speak further?

16 MR. TIMOTHY GERKING: No.

17 PRESIDENT YUGLER: All right. At this time  
18 Mr. Gerking's resolution, item number nine, Board of  
19 Governors resolution number two, is open to debate. If  
20 you want to speak pro or con, please step up to either of  
21 the microphones.

22 Don't see anyone who wants to -- see one member  
23 there.

24 MR. TIMOTHY ZIMMERMAN: Tim Zimmerman,  
25 region four, elected delegate. I move to close debate.

1                   PRESIDENT YUGLER: Okay. There is no  
2 debate.

3                   (Laughter.)

4                   PRESIDENT YUGLER: So we will move to the  
5 question. And all in favor of Mr. Gerking's resolution --  
6 if we have that up on the board, please -- press 1/A; all  
7 against, please press 2/B; and if you abstain, please  
8 press 3/C at this time.

9                   (Vote taken.)

10                  PRESIDENT YUGLER: All right. We have  
11 120 -- more people are showing. Look at that. 120 people  
12 here, not including the chair. That's great. Okay. 131  
13 people.

14                  All right. So let's see the tally.

15                  Motion passes 122 to six, with three  
16 abstentions. Thank you very much.

17                  Mr. Gerking, you also have the floor for item  
18 number ten, Board of Governors resolution number three.

19                  MR. TIMOTHY GERKING: We're asking the  
20 House of Delegates to approve Board of Governors  
21 resolution number three to amend House of Delegates rule  
22 of procedure 3.1. And this resolution is intended to make  
23 it easier to obtain a quorum for the annual HOD meeting.

24                  In recent years, including this one, we've had  
25 some attendance problems with -- for our annual meeting,

1 and it's always been kind of dicey as to whether we  
2 actually achieve a quorum. And that's primarily because  
3 the folks who are members of the HOD in an ex officio  
4 status, namely, the section chairs and also the local  
5 county bar presidents, don't always come en masse.

6 In fact, of the five groups who are members of  
7 the -- who are members of the HOD -- and that would be the  
8 folks who are elected, the public members who come from  
9 each -- who are appointed and come from each BOG region,  
10 the members of the Board of Governors, and then the  
11 ex officio members, who are the section chairs and local  
12 bar presidents, those last two categories attend -- attend  
13 the least often.

14 So this rule change is hopefully -- well, the  
15 rule change is to allow section chairs and local county  
16 bar presidents to designate someone to appear in their --  
17 appear in their place in the event they cannot be there,  
18 and we're hoping, by this rule change, we'll have  
19 increased participation from those ex officio members. So  
20 that's -- thank you.

21 MR. WARD GREENE: Second.

22 PRESIDENT YUGLER: Mr. Greene seconded the  
23 motion.

24 MR. PETER MOZENA: Before stating the  
25 question, I would like to ask Mr. Gerking if he would

1 agree to change his motion slightly, and instead of having  
2 "or otherwise," which is somewhat vague, perhaps we can  
3 give more direction to the local bars and the sections by  
4 stating, instead of "or otherwise," strike "or otherwise"  
5 and insert, "or by a resolution adopted by that  
6 organization's governing board or committee."

7 Mr. Gerking, would you accept that as a  
8 modification?

9 MR. TIMOTHY GERKING: Could you state that  
10 again?

11 MR. PETER MOZENA: Yes. Strike the words  
12 "or otherwise" and insert "or by a resolution adopted by  
13 that organization's governing board or committee."

14 PRESIDENT YUGLER: Well, this is an  
15 amendment. You're moving to amend?

16 MR. PETER MOZENA: Point of order. I  
17 believe I have the right, under parliamentary procedure,  
18 to ask the moving party if he will modify it, and if he  
19 chooses to, it's totally up to Mr. Gerking if he will  
20 proceed.

21 MR. TIMOTHY GERKING: That will be fine.

22 PRESIDENT YUGLER: Thank you.

23 MR. WARD GREENE: I agree as well.

24 PRESIDENT YUGLER: Yes. Could you write  
25 down your

1           Okay. Ms. Garst, if you could hand me the  
2 amended resolution.

3           Okay. The amended motion, which both the  
4 proponent and seconder have accepted, is to change the  
5 resolution to read delegates -- an amendment to HOD rule  
6 procedure, 3.1, to state that: Delegates shall be  
7 selected as provided in the Bar Act and bylaws and  
8 policies of the State Bar. There shall be no alternate  
9 delegates except that a section or local bar association  
10 may designate an alternate delegate, provided the  
11 alternate delegate is a person duly authorized by the  
12 organization's bylaws, or by resolution adopted by that  
13 organization's governing board or committee.

14           Have I correctly stated the amendment?

15           Oh. "To act in the section chair's or bar  
16 president's stead." There we go.

17           All right. Now, those who want to speak pro or  
18 con, in favor of the resolution as amended.

19                   MR. BRIAN THOMPSON: Brian Thompson, Lane  
20 County Bar Association President.

21           I don't know how much this rule might assist in  
22 Lane County. We just didn't get notice of this in time.  
23 Speaking of the bar presidents back, notice of these  
24 meetings was not given to the bar presidents -- I see  
25 heads nodding -- was not given to us in time to adjust our

1 schedules. I was at Cub Scouts. I was a Cub Scouts  
2 leader, I had to be there, could not get another party in  
3 that time, and that has been a recurring problem for the  
4 bar presidents that I have spoken to.

5 So I don't think this will fix the problem,  
6 because I couldn't call a meeting in time after it got  
7 done. That's my comment.

8 PRESIDENT YUGLER: Thank you.

9 Recognize someone from the pro microphone.

10 MR. JONATHAN LEVY: I'm Jonathan Levy,  
11 Portland. I'm the state chair of -- I support this. I  
12 could not attend the original meeting because of a family  
13 conflict. My section took this seriously. We voted to  
14 name an alternate, but then we learned that the rules of  
15 this body prohibited that person from appearing. Thanks.

16 MR. JOHN TYNER: John Tyner. There should  
17 be an "other" microphone. Oh, there it is.

18 PRESIDENT YUGLER: Tyner, you are  
19 recognized from the "other" microphone.

20 MR. JOHN TYNER: Is there another one here?

21 Was it the intent of the author of this  
22 amendment to increase the flexibility for the  
23 associations? And the question I have: Would additional  
24 language limit the flexibility of the organizations, and  
25 would that be the general intent? Mr. Gerking?

1 MR. TIMOTHY GERKING: Well, I think the  
2 intent of the resolution would be --

3 PRESIDENT YUGLER: Tim, I'll have you step  
4 up there by the mic. Go to the pro microphone, I suppose.

5 MR. TIMOTHY GERKING: Where's the pro?

6 PRESIDENT YUGLER: Next one. One more  
7 back.

8 MR. TIMOTHY GERKING: Well, I don't know.  
9 I don't think the amendment would overly restrict the  
10 intent of the -- the intent of the proposal. Provides a  
11 little more definition for it, so that's why I would  
12 support it.

13 MR. JOHN TYNER: I would move to eliminate  
14 the new motion because I think it does limit the  
15 flexibility of the organization. So as a con, I'd make  
16 that motion.

17 UNIDENTIFIED SPEAKER: I second it.

18 PRESIDENT YUGLER: Okay. Well, now it's  
19 going to get confusing because the proponent and the  
20 seconder has accepted the amendment. So this is a motion  
21 to amend.

22 MS. MARY OVERGAARD: It's a motion to amend  
23 to restore the original language.

24 PRESIDENT YUGLER: That's correct. It's  
25 been seconded, and we can debate whether to amend to go

1 back to the original language.

2 All right. So that is the current motion, to  
3 delete the amendment and go back to the original language.  
4 Anyone want to speak pro or con? Peter?

5 MR. PETER MOZENA: Well, "otherwise," the  
6 problem with the "or otherwise," it just gives no  
7 assistance at all to the sections or to the local bars.  
8 All the alternate language that has been accepted by  
9 Mr. Gerking does is it gives -- it give the opportunity  
10 for the local bars and the sections to know how to name  
11 that alternate.

12 If you leave the "or otherwise" in, what that  
13 does is perhaps would give an extra opportunity. The only  
14 extra opportunity it would give to the local bars and  
15 sections is to perhaps have the chair or the bar president  
16 appoint someone. Now, that might be some additional  
17 flexibility, but, you know, keeping with sort of a  
18 democratic model that you want the governing board or  
19 section to have, at least it is something that is agreed  
20 to by that governing board or committee.

21 It seems to me it's just a more democratic way  
22 to do it, to get an alternate in that is at least  
23 acceptable to that governing board or committee. And it  
24 gives some definition to the people on what that "or  
25 otherwise" means.

1           I think if you're going to want some additional  
2 way of doing it, then you should say so. I think we live  
3 with vagueness as an enemy to the law, and I think  
4 removing the vagueness is a good thing in making it clear.

5           PRESIDENT YUGLER: All right. Thank you,  
6 Peter.

7           John?

8           MR. JOHN BAHOFNER: John Bachofner, elected  
9 delegate from out of state.

10          With respect to my colleague, I don't  
11 necessarily read it that way. I think the "or otherwise"  
12 relates to the previous -- previous language that they're  
13 duly authorized. If they're otherwise duly authorized,  
14 whether it's through the bylaws or some other format, then  
15 they're going to be authorized.

16          The change you've made limits it to two  
17 different options: Either the bylaws or by resolution.  
18 So the amendment that's proposed now would make greater  
19 flexibility for the organizations. So I'd support it for  
20 that reason.

21          MR. PETER GLAZER: I didn't intend to  
22 speak. I'm Peter Glazer, the President of Clackamas  
23 County Bar Association. This is my first and probably  
24 only HOD meeting ever.

25          Let me tell you what goes on in Clackamas

1 County. We don't have bylaws. We don't have a board. We  
2 have four officers, and they are self-perpetuating. They  
3 appoint or I have in the past appointed, and I was last  
4 year appointed by last year's president.

5 If you use "or otherwise," I agree with what  
6 John Bachofner said: You have the duly authorized  
7 qualifier, but if you use the amended language, we would  
8 not be able to appoint somebody.

9 PRESIDENT YUGLER: Peter, I'll recognize  
10 someone from the con microphone.

11 MR. TOM KRANOVICH: Tom Kranovich, elected  
12 delegate from region six, and winner of the Peter Glazer  
13 look-alike contest.

14 (Laughter.)

15 MR. TOM KRANOVICH: Also a past President  
16 of the Clackamas County Bar Association.

17 I really believe that we do need this limiting  
18 language so that rogue bar associations, like mine, follow  
19 some kind of process in getting delegates to this august  
20 body.

21 PRESIDENT YUGLER: All right. Thank you.  
22 You guys just switched seats. How are we going to figure  
23 this one out?

24 Pro microphone.

25 MS. JOAN KELSEY: Joan Kelsey. I'm chair

1 of the real estate section and region four, and I live in  
2 Tillamook.

3 I was very conflicted of the original date for  
4 this meeting and waited until the last possible moment,  
5 which was, in my mind, five days before the meeting, to  
6 send in the -- my RSVP that I couldn't make it due to a  
7 conflict. It would have been extremely useful for me to  
8 be able to pick up the telephone, having been previously  
9 authorized by my section in a meeting without a  
10 resolution, especially if it was -- we normally don't  
11 conduct things by resolution. It's motions. And we have  
12 very specific minutes that track what goes on in those  
13 meetings.

14 So, just as a clarification, a resolution is not  
15 something I'm familiar with in the work that we do. It  
16 would have been really -- very wonderful for me to be able  
17 to pick up the telephone and simply appoint one of the  
18 officers of the real estate section to appear in my stead,  
19 and there were people who were willing to do that.

20 So I guess I would support the original  
21 language, because I understand the "or otherwise" to allow  
22 us to have an alternative to requiring a vote of the  
23 entire section to amend the bylaws, because we might not  
24 be able to do that in time, but to simply be able to  
25 produce a delegate to participate in this meeting, if

1 that's the point of it. Thank you.

2 PRESIDENT YUGLER: Okay. Is there anyone  
3 else who wishes to speak pro or con to the present motion,  
4 which is to return to the original language of the  
5 resolution?

6 MR. FREDERIC CANN: Frederic Cann. I think  
7 it's region five, Multnomah County.

8 You know, we observe national politics and state  
9 politics and conventions, and one of the greatest -- one  
10 of the concerns from time to time is credentialing. Now,  
11 I realize this body here doesn't have that much power, but  
12 still, when we have contested matters, it probably is  
13 important that we have a clear credentialing process. And  
14 the "or otherwise," where a body -- member of a body can  
15 simply call up another member and appoint that member  
16 really creates serious credentialing problems.

17 PRESIDENT YUGLER: Okay. Thank you, Fred.  
18 Anyone else want to speak at a pro microphone?  
19 Rob?

20 MR. ROBERT LeCHEVALLIER: Rob LeChevallier,  
21 elected delegate, region six.

22 I kind of agree with some other speakers, that I  
23 think we should know -- have some process, and if there's  
24 a problem of a last-minute appointment, you could always  
25 have a resolution in advance. At any time the chair

1 cannot attend, they can appoint another member of the  
2 board.

3 So you could authorize it by resolution in  
4 advance. Otherwise, how do you know who has authority to  
5 speak for the section or for the bar association? So it  
6 could be done in advance for a period of years, you know,  
7 a couple years, that whenever the chair can't attend, they  
8 can appoint someone. So I still -- I don't think you  
9 would be -- would be restricted from an appointment if  
10 your -- if your board agreed with that.

11 PRESIDENT YUGLER: Okay. Is there anyone  
12 else who'd like to speak pro or con?

13 All right. Not seeing anyone at the  
14 microphones, the present motion is to restore the original  
15 language. If you're in favor of that motion, please press  
16 1/A; if you're opposed, please press 2/B; and if you wish  
17 to abstain, 3/C.

18 (Vote taken.)

19 PRESIDENT YUGLER: Okay. 131. Anyone  
20 hasn't voted? Last chance.

21 Let's see the tally. And the motion carries to  
22 restore the original language. All right.

23 So now we're back to the original language. In  
24 your book, which is found on page 5 of your book -- and  
25 I'm not going to state the original language because it's

1 printed and it's easy to find.

2 Now, all in -- anyone who wants to speak to the  
3 original motion, as to the original language, please come  
4 to the pro or con microphone. Mr. Greene?

5 MR. WARD GREENE: Thank you. I'm Ward  
6 Green. I'm a member of the Board of Governors.

7 I just wanted speak in favor of it, because I  
8 think the intent originally was each of these  
9 organizations or sections would have a voice, and I think  
10 really this clarifies what was intended originally, and  
11 that is that if the President for some reason or the  
12 section chair or the -- whoever it was who was designated  
13 ex officio couldn't attend, that they would appoint  
14 someone in their stead.

15 And again we're having trouble with attendance.  
16 So it just seemed like a good idea, a good way to keep the  
17 local bars involved and keep the sections involved.

18 PRESIDENT YUGLER: Mr. Greene.

19 Anyone else want to speak pro or con to the  
20 original language, which is now before us as a main  
21 motion?

22 All right. Not seeing anyone else, it is time  
23 to vote. If you're in favor of the original resolution,  
24 which is found on page 5, which is Board of Governors  
25 resolution number three, please press 1/A if you're in

1 favor, 2/B if you're opposed, and 3/C if you desire to  
2 abstain.

3 More people. Okay.

4 (Vote taken.)

5 PRESIDENT YUGLER: All right. If you  
6 haven't pressed your button, last chance.

7 Let's see the tally, Jared. The motion carries  
8 123 to one. Very good. Congratulations, everyone.

9 Next item of business is item number 11, and  
10 again the chair recognizes Mr. Gerking.

11 MR. TIMOTHY GERKING: I'm not sure why I'm  
12 having all the fun here. This is BOG resolution number  
13 four. We're asking the House of Delegates to approve this  
14 resolution to amend a rule of professional -- rule of  
15 professional conduct 1.6, subsection B, so it can be  
16 submitted to the Supreme Court for its approval.

17 1.6 is a rule providing that lawyers keep all  
18 client matters confidential unless the client provides  
19 informed consent. Subsection B currently contains six  
20 exceptions to that rule, and this resolution would create  
21 a seventh exception: For allowing a lawyer who is subject  
22 to a diversion agreement or is under probation or is  
23 subject to a conditional reinstatement or conditional  
24 admission to share client confidences with the Bar's  
25 monitoring or supervising attorney.

1           And we also have an amendment to that resolution  
2           that would make it clear that the supervising or the  
3           monitoring lawyer would have the same responsibilities to  
4           keep that information confidential as the client's lawyer  
5           has, except to provide information to -- except to carry  
6           out his or her obligations pursuant to that agreement that  
7           he or she is working under. So I think we first have to  
8           deal with the amendment.

9           PRESIDENT YUGLER: All right. The initial  
10          motion is for adoption of the amendment to RPC 1.6(b)(7),  
11          which is on page 6 of your materials. Is there a second?

12          MR. BRIAN THOMPSON: Second.

13          PRESIDENT YUGLER: Identify yourself,  
14          please.

15          MR. BRIAN THOMPSON: Brian Thompson, Lane  
16          County.

17          PRESIDENT YUGLER: Thank you, Mr. Thompson.

18          And Mr. Gerking also moved to amend the  
19          resolution that's found on page 6 with language that  
20          should have been handed out and found in your packet.  
21          Ms. Stevens has it. And it contains the additional  
22          sentence, and I'll read it for our record. The amended  
23          language in subsection C would provide that: "A lawyer  
24          may reveal information relating to the representation of a  
25          client to the extent the lawyer reasonably believes

1 necessary: to comply with the terms of a diversion  
2 agreement, probation, conditional reinstatement or  
3 conditional admission pursuant to BR 2.10, BR 6.2, BR 8.7  
4 or Rule for Admission Rule 6.15."

5 Here's the amended -- amending language to that:  
6 "A lawyer serving as a monitor of another lawyer on  
7 diversion, probation, conditional reinstatement or  
8 conditional admission shall have the same responsibilities  
9 as the monitored lawyer to preserve information relating  
10 to the representation of the monitored lawyer's clients,  
11 except to the extent reasonably necessary to carry out the  
12 monitoring lawyer's responsibilities under the terms of  
13 the diversion, probation, conditional reinstatement or  
14 conditional admission and in any proceeding relating  
15 thereto."

16 Mr. Gerking's second motion. Is there a second  
17 to that?

18 MS. THERESA WRIGHT: Second.

19 PRESIDENT YUGLER: I'll recognize  
20 Ms. Wright. Ms. Wright seconded it.

21 Now, is there anyone who wishes to speak pro or  
22 con to this resolution? To the amendment?

23 All right. Hearing none, all in favor of the  
24 amendment press 1; if you're opposed, press 2/B; if you're  
25 going to abstain, press 3/C.

1 (Vote taken.)

2 PRESIDENT YUGLER: Still have 131 votes.

3 All right.

4 Let's see the tally, please. That carries.

5 Now, speaking to the main motion as amended, if  
6 anyone desires to speak pro or con to the amendment to RPC  
7 1.6(b)(7) as amended? I see none.

8 So if we can vote on the main resolution for  
9 adoption of RPC 1.6(b)(7) as amended. Got a big stop sign  
10 there.

11 Okay. You can vote at this time. Press one for  
12 yes, two for no, and three if you wish to abstain.

13 (Vote taken.)

14 PRESIDENT YUGLER: Okay. There are 128  
15 votes. There were three more. If you haven't voted,  
16 please do so at this time.

17 All right. Let's see the tally. Passes 120 to  
18 eight. Thank you very much.

19 The next item is item number 12, which is  
20 delegate resolution number one, and I'll recognize  
21 Mr. Lang. I'm going to have you present up here, and then  
22 I'll take the podium. Okay?

23 MR. DANNY LANG: Okay. I think you left  
24 your -- do I get to vote twice?

25 Mr. President, members of the Board of

1     Governors, fellow delegates, Danny Lang, elected region  
2     three delegate, former President of the Douglas County Bar  
3     Association.

4             This is a relatively simple policy matter. In  
5     view of our national -- excuse me -- our national interest  
6     in sustainability, and for those of you that have  
7     environmental concerns about carbon emissions, what this  
8     basically seeks to do is reduce or eliminate unnecessary  
9     travel, trips to the courthouse. It will reduce parking,  
10    clearing security, and travel on the highways. It also  
11    would be efficient for practicing attorneys to be able to  
12    know that they could make routine appearances via either  
13    videoconferencing or teleconferencing.

14            And I have actually been in some discussions  
15    with one of the committees. I think it was the UTCR  
16    committee, and I've been asked to write a proposed draft  
17    that would effectively -- UTCR 5.050, and 4.050 in the  
18    criminal cases.

19            So this is simply an idea that we start looking  
20    at ways to -- as lawyers to conserve energy, do our part  
21    in avoiding the balance-of-payments problems, the  
22    dependence on imported oil, and be simply also more  
23    efficient. The present president of the Douglas Bar  
24    Association, Randy Rubin, and I were discussing this, and  
25    he indicated that, gee, just even leaving his office and

1 going a mile or two over to the courthouse and parking and  
2 going in, when he could handle a routine motion at the  
3 option -- there would be rules set out.

4 No one's going to preclude -- this does not  
5 intend to preclude appearing or, in those cases where  
6 testimony or credibility must be judged. This is simply a  
7 policy matter saying that whenever possible, we need to  
8 ask that the Board of Delegates and the Bar consider the  
9 optional use of conferencing, of modern technology, to --  
10 rather than having a required physical appearances.

11 We have some matters where people have -- I've  
12 actually had people travel all the way from San Diego,  
13 catch a flight, come into Eugene, rent a car, and then the  
14 matter is continued. So it would also be -- for those  
15 three-minute-type matters, it would certainly be  
16 appropriate, especially when you know a matter is going to  
17 be continued, rather than having to drive from Salem to  
18 Multnomah County Courthouse and so forth.

19 This is a policy matter, and I will say that  
20 it's been well debated. I was invited by the  
21 environmental and natural resources section after I  
22 submitted this agenda item, and they debated it, they had  
23 considerable hearing on it, and they voted to support this  
24 resolution.

25 So thank you, Mr. President. Thank you,

1 colleagues.

2 PRESIDENT YUGLER: Is there a second to  
3 Mr. Lang's motion?

4 MR. THOMAS CUTSFORTH: Second.

5 PRESIDENT YUGLER: Please identify  
6 yourself.

7 MR. THOMAS CUTSFORTH: Tom Cutsforth.

8 PRESIDENT YUGLER: Thank you,  
9 Mr. Cutsforth.

10 Anyone wishing to speak pro or con, the  
11 microphones are open. Mr. Cutsforth, the pro microphone.

12 MR. THOMAS CUTSFORTH: I'm Tom Cutsforth,  
13 region one, elected delegate.

14 This is a very important matter to us. It's 110  
15 miles for our Circuit Court judge to come from Hood River  
16 to Fossil, Oregon. It's 90 miles to get to Condon,  
17 Oregon. I am the only civil attorney in the two counties  
18 and, therefore, any other attorney would have to travel at  
19 least that distance.

20 We also have the largest of the largest windmill  
21 productions in the state of Oregon, and probably in the  
22 western hemisphere. We have a thousand huge wind  
23 turbines. You ought to come see it. But anyway, I  
24 support sustainability, and this just makes good sense.  
25 Thank you.

1 PRESIDENT YUGLER: Thank you.

2 Con microphone, please identify yourself.

3 MR. CHRISTOPHER LARSEN: Chris Larsen,  
4 elected delegate for region five. I'm also a Multnomah  
5 County pro item judge.

6 I never really thought that I'd be coming to the  
7 con microphone on this, but I would like for the  
8 membership to consider a couple things. The last two  
9 paragraphs of this, in terms of allowing the optional use  
10 of videoconferencing and telephonic appearances, even for  
11 large counties such as Multnomah County, this presents a  
12 huge issue in terms of costs and actually the ability to  
13 actually carry something like this out.

14 I am absolutely, 100 percent supportive of  
15 encouraging sustainability and would wonder if the  
16 proponent of this measure, Mr. Lang, would support  
17 striking the last two paragraphs and just having the  
18 members encourage the Board to recommend or implement  
19 policies and procedures intended to enhance  
20 sustainability, period, and give this some more thought.

21 I think this has a lot more ramifications,  
22 especially in the criminal context, where you have  
23 constitutional right to counsel to appear. It seems to me  
24 to be maybe moving too quickly with a general policy of  
25 supporting sustainability.

1                   PRESIDENT YUGLER: Okay. Other speakers at  
2 the pro and con microphone?

3                   MR. JOHN TYNER: I feel like apologizing.  
4 I came here to sleep through this meeting, frankly,  
5 instead of speaking twice, but --

6                   PRESIDENT YUGLER: Please state your name.

7                   MR. JOHN TYNER: John Tyner, district four.  
8                   In the criminal field you show up for a  
9 three-minute thing and wait two hours to do it, plus I  
10 travel a lot of areas around here. Almost all  
11 arraignments outside the metropolitan area, including  
12 Clackamas County, are done by videoconferencing from a  
13 jail. And Mr. Cutsforth, and I tried a case out in Fossil  
14 some years ago, and I know exactly what it's like to drive  
15 240 miles round trip for a ten-minute hearing.

16                   But the point is: This is where we're going.  
17 We're seeing electronic filings in federal court, and some  
18 parts of the state are just inaccessible. I understand  
19 the problem Multnomah County has, but I think we're  
20 getting to the point where maybe driving shouldn't be the  
21 necessary first thing. And almost every part of my  
22 business, we have videoconferencing capacity in our  
23 conference room, and we do that quite often. I think the  
24 technology should be there. This is a nice push in the  
25 right direction. Anyone who litigates quite a lot

1 probably appreciates that.

2 In the criminal context, if in custody,  
3 defendants are not required to actually be physically  
4 present but can do it by videoconferencing. I think  
5 there's less onerous ways of ensuring constitutional  
6 protection that we can devise for attorneys.

7 PRESIDENT YUGLER: Thank you, Mr. Tyner.

8 Anyone else wish to speak pro or con?

9 Ms. Hoffman.

10 MR. JANET HOFFMAN: Thank you. I'm Janet  
11 Hoffman from region five, an elected delegate.

12 I didn't think I was going to urge a con on  
13 this, but Mr. Tyner raised some issues that I think are  
14 really serious, and that is I've appeared at court  
15 appearances or arraignments where it's been allowed for  
16 counsel to appear by phone, but the client has to  
17 physically appear in order to satisfy rules or orders by  
18 the court to appear at arraignment, status conferences,  
19 and other matters.

20 And I don't think there's anything more pathetic  
21 than a client standing there all alone in front of a judge  
22 and having the lawyer be on the telephone. And I don't  
23 think we should move to assist that, encourage lawyers not  
24 to stand side by side with their clients. So that if  
25 we're going to get into a situation where you can appear

1 by phone, I think it needs to be thought through and it  
2 needs to be done where lawyers and clients are together  
3 in, for example, the lawyer's office and judges allow  
4 that, or where it doesn't apply to criminal cases.

5 So that I would urge that what we do is consider  
6 the matter, but not jump into it simply because it's  
7 politically correct.

8 PRESIDENT YUGLER: Okay. Someone at the  
9 pro microphone.

10 MR. ROBERT BERNARD: I'm Robert Bernard  
11 from region five. I'm an appointed member of the public.

12 I'm mindful of the logistics matters that go  
13 into installing a -- an alternative means of representing  
14 your clients in court beyond physically being there. I've  
15 had to do this back in Colorado before we moved here. And  
16 I know the logistics behind doing that are severe, but I  
17 know it can be done, and I'm quite aware -- what this is  
18 saying, we're encouraging implementation of alternative  
19 means of representation in terms of being there on site.  
20 And I support this very much. It's a great use of our  
21 resources. It can occur, and the rules and parameters  
22 that will establish this in detail will allow us how to  
23 get this accomplished.

24 The one aspect that I'm uncomfortable with, as  
25 the member of the public who has implemented this type of

1 thing in another jurisdiction, is the limitation that says  
2 25 miles from court. I'm reading that to say, as a  
3 layman, you got to be 25 miles away or further.

4 It's removing it? Oh, it's removing it. Okay.  
5 Thank you for clarifying it for me.

6 I encourage us to develop this positively,  
7 because it does give us a chance to proceed ahead with  
8 parameters to get this accomplished. Thank you.

9 PRESIDENT YUGLER: Tom.

10 MR. THOMAS CHRIST: I'm Tom Christ, an  
11 elected delegate from Portland, Oregon. And like the  
12 prior speaker, I'm a pro tem judge for 18 years hearing  
13 motions, and I share the concerns of the prior speaker  
14 that Multnomah County, at least, does not have the  
15 technology to accommodate this sort of a rule change.

16 I sit in whatever courtroom is available, and so  
17 I think in 18 years I've been in every one in Multnomah  
18 County, and they do not have the means to accommodate  
19 telephonic arguments, especially if there are more than  
20 two parties to it. It just can't be done.

21 So to the extent that this resolution is calling  
22 for a rule change that would make this mandatory I think  
23 is a bad idea. If the intent of the resolution is simply  
24 to encourage funding so that Multnomah County and other  
25 counties can acquire the technology necessary for this,

1 that would be a good thing. But I'm concerned that the  
2 resolution goes even farther than that, and I would oppose  
3 it for that reason. Thank you.

4 PRESIDENT YUGLER: Mr. Christ, thank you.  
5 Mr. Hinkle?

6 MR. CHARLES HINKLE: I'm Charlie Hinkle, an  
7 elected delegate from region five in Portland.

8 This resolution calls upon this House to  
9 encourage funding for optional use of videoconferencing  
10 and expanding the optional telephone appearances by  
11 counsel. There's nothing mandatory about it. This is a  
12 step in the right direction. Those who are concerned  
13 about the Multnomah County Courthouse should welcome this  
14 because the courthouse is going to collapse in the next  
15 earthquake, we're told.

16 (Laughter.)

17 MR. CHARLES HINKLE: And I, for one, would  
18 much rather be sitting in front of a video camera in my --

19 (Laughter.)

20 MR. CHARLES HINKLE: -- in my office when  
21 that happens. The other point that I'd like to make is  
22 that there's nothing in this resolution that trumps the  
23 constitution. The constitution takes precedence over  
24 this, and anyone who is concerned about constitutional  
25 rights of criminal defendants or anybody else should be --

1 be assured that nothing that this House does and nothing  
2 that any local judge does in terms of encouraging video  
3 conference -- conferencing will or can ever compromise the  
4 constitutional rights of criminal defendants or anyone  
5 else to appear personally in court.

6           Again, I stress that this is encouraging  
7 optional uses. Telephonic appearances, when I've had to  
8 appear in court in Astoria, it's been a wonderful, welcome  
9 relief not to drive down there, although I love Astoria.  
10 We all have to be more conscious I think of our use of  
11 natural resources, and this is a very, very modest step.  
12 And I encourage the House to support it.

13           PRESIDENT YUGLER: Thank you.

14           Anyone else who wishes to speak, who hasn't?

15           MR. THOMAS CHRIST: I'm still Tom Christ,  
16 and I'd like to respond to Charlie's comments. Option  
17 doesn't mean option of the court to provide it if  
18 requested. Option of the rule means that if you want to  
19 appear by telephone, you have a right to appear by  
20 telephone if you're more than 25 miles away. And  
21 Multnomah County, at least, can't accommodate that. Thank  
22 you.

23           PRESIDENT YUGLER: Anyone else wanting to  
24 speak pro or con? I'll give Mr. Lang one minute to wrap  
25 up. But there are no other speakers, so we'll close

1 debate, Mr. Lang.

2 MR. DANNY LANG: Thank you. I think the  
3 debate was appropriate, and again, echoing one of the last  
4 pro speakers, there's nothing intended here to limit  
5 anyone's right or limit appearing. It's simply on those  
6 routine matters that right now require two weeks' advance  
7 notice or request in notice to -- if you're more than --  
8 and you can only do it if you're more than 25 miles away.  
9 I'm referring to the civil rule, and which I'm not  
10 changing. That would be done by committee, so on, as  
11 other people mentioned for implementation. This is just a  
12 policy matter.

13 But right now, basically if you're within 25  
14 miles of a courthouse, even if you've talked to opposing  
15 counsel, you're going to go down there and set the matter  
16 over, you still have to physically appear. That seems  
17 pretty wasteful of your time, our time, billing our  
18 clients for that kind of time, and burning up the  
19 highways, tires, traffic safety, parking, congestion. And  
20 so for sustainability reasons, this is just -- as the last  
21 pro speaker mentioned, this is an optional, and it's  
22 encouraging funding for the future, recognizing if they  
23 don't have the equipment, they don't have it yet.

24 But let's encourage going modern. We just had a  
25 Futures Conference. This is in line with that. Thank you

1 very much, Mr. President.

2 PRESIDENT YUGLER: Thank you, Mr. Lang.

3 Now, at this time, to vote on Mr. Lang's  
4 resolution number one, House of Delegates resolution  
5 number one, to encourage sustainability, press 1/A if  
6 you're in favor, 2/B if you're opposed, or 3/C if you  
7 don't know or wish to abstain.

8 (Vote taken.)

9 PRESIDENT YUGLER: Still have 131 people  
10 voting. All right. If we can see the tally. That passes  
11 103 to 25 to three. Thank you very much, Mr. Lang.

12 Just as a matter of procedure, I just want to  
13 point out that allowing Mr. Lang and any proponent to take  
14 the podium to present, and not out of any disrespect to  
15 Mr. Lang, but after he presents, I'm asking him to then  
16 speak from the floor just so I can run the meeting a  
17 little easier.

18 Mr. Lang, your next resolution?

19 MR. DANNY LANG: All right. Am I invited  
20 to use the podium again for my next one?

21 PRESIDENT YUGLER: Yes, you are.

22 MR. DANNY LANG: Okay. Danny Lang, region  
23 three, elected delegate.

24 Agenda item 13 suggests that it's time that the  
25 state bar, that we take a look at whether or not we're

1 going to be involved in certification of paralegal  
2 programs; in other words, how people become legal  
3 assistants, legal technicians, and paralegals in  
4 particular, or if at present anyone can raise their hand  
5 anywhere and say, "I'm a paralegal in Oregon," and say  
6 that to a member of the public. And they can do that  
7 because there is no certification of training programs --  
8 in other words, as to what constitutes a certificated  
9 paralegal -- and there are no ethical or background checks  
10 required, and there is no competency certification.

11 For those of us who have had private practices,  
12 we've all had hiring and staffing privileges in which  
13 we've hired someone and about the second day realized that  
14 when we asked them to get a proof of service, they asked  
15 if it was Army or Navy, and we realized that we had a  
16 problem, that this person may not be qualified as a true  
17 paralegal as they said they were on the application.

18 Now, this isn't saying we should -- we, the  
19 Oregon State Bar -- should regulate or delegate this  
20 matter. It's just saying we need to study it. The legal  
21 field, both the Washington State Bar and the Oregon State  
22 Bar, have done studies that show that 80 percent of the  
23 civil litigation needs remain unmet. They're going to be  
24 met by somebody out there. They're being met by the TV  
25 ads, Legal Zoom.

1           The paralegals themselves are well organized.  
2       There are representatives here today, I understand, in the  
3       audience from the Oregon Paralegal Association and from  
4       the Pacific Northwest Paralegal Association. They have  
5       contacted me about this motion.

6           Nationally, there is a very fine magazine -- I  
7       actually subscribe to it -- called Legal Assistant Today.  
8       And so we need to decide if we're going to be involved in  
9       assuring quality control with regard to these people  
10      working for us or, if they are going to be providing  
11      limited services, scrivener services, which is more in the  
12      nature of a legal technician.

13           So because the world is moving on, the Internet  
14      provides documents -- and I attended the Futures  
15      Conference. I have a fascinating packet here that was  
16      handed out as a vendor packet, offering offshore  
17      lawyering, yes, via satellite to India, at 90 percent cost  
18      savings -- that's 90 percent less than you're earning --  
19      to offshore legal services.

20           Now, maybe if we're more efficient, we can  
21      charge lower rates to our corporate and business clients,  
22      our individual clients, and be more efficient and use  
23      paralegals that we know of are certified and properly  
24      trained by programs such as the one inaugurated at the  
25      Douglas County Umpqua Community College, which has a

1 two-year paralegal certification program.

2 At present, there's no ABA certification --  
3 paralegal certification program approved in Oregon. That  
4 may be coming, but it's time, I think, that we take a  
5 look, one way or the other, as to whether or not we're  
6 going to want to affiliate with these various paralegal  
7 professional associations, whether or not we're going to  
8 want to have something to say about the content of what is  
9 a certified paralegal, and get involved with, when we hire  
10 people, knowing that they have a certain level of  
11 competency, so when we delegate functions to them, we're  
12 not malpracticing.

13 Also, it's my understanding, from information  
14 provided by these entities, that in some states, in some  
15 cases, judges will actually award attorney fees and will  
16 recognize in your billing for attorney fees paralegal  
17 services if they were certified paralegals. So it  
18 actually can be a revenue enhancer if you have certified  
19 people and if a judge says, "I want to know what they did  
20 on the case, and I want to know if they were really  
21 certified paralegals for competency."

22 When I go in a hospital or Rick goes in a  
23 hospital and we see somebody in a white coat, we assume  
24 that that person's an RN if it says "nurse," and, you  
25 know, it would be amazing if they weren't, and, you know,

1 they did a complete exam and you found out that they were  
2 the janitor.

3 So I think it's time that we start looking at  
4 who are these people, what's going on out there, and we  
5 would have a better quality control to deliver to people  
6 in Oregon, because when I say "paralegal," people -- I  
7 think a lot of the public thinks, well, that must be part  
8 of the Bar, or they're in your office, they're a  
9 paralegal. So.

10 I think it's time that we have some sort of  
11 study as to whether or not it's the Oregon State Bar gets  
12 involved in this, or these other entities will go to the  
13 legislature and set up their own licensing and their own  
14 parallel bodies to the Oregon State Bar. I'm not  
15 advocating one or the other; I'm just saying maybe we need  
16 to study it at this time. Thank you. And I'll go to my  
17 seat.

18 PRESIDENT YUGLER: Thank you. That's how  
19 it's going to work.

20 All right. Mr. Lang's resolution is on page 7.  
21 And is there someone to second Mr. Lang's resolution?

22 MR. THOMAS CUTSFORTH: I'll second it.

23 PRESIDENT YUGLER: Mr. Cutsforth.

24 All right. Okay. It's been seconded. And now  
25 the pro and con microphones are open. Anyone wishes to

1 speak for or against Mr. Lang's resolution, now is the  
2 time.

3 Mr. Dazer.

4 MR. NICHOLAS DAZER: Thank you. Nick  
5 Dazer, elected region five delegate.

6 This just seems a little unnecessary to me. If  
7 it's in terms of protecting the public from unqualified  
8 staff at my law office, I bear responsibility ultimately  
9 for everything that's done for that client. So, in terms  
10 of protecting the public, I think that's already covered.  
11 I choose who I hire and whether or not they stay. Well,  
12 to some extent.

13 (Laughter.)

14 PRESIDENT YUGLER: Mr. Dazer is at  
15 Bullivant Houser.

16 MR. NICHOLAS DAZER: Yes. Thank you.  
17 There's a committee for that too.

18 But I think the historical perspective on the  
19 other time that this was tried is particularly helpful,  
20 because it was abandoned for lack of helpfulness, and I  
21 just -- I think this is unnecessary, and we should vote  
22 no.

23 PRESIDENT YUGLER: Thank you, Mr. Dazer.

24 MR. FREDERIC CANN: This is Mr. Cann,  
25 Frederic Cann, region five.

1 I'm on the unlawful practice of law committee  
2 also. Paralegals unlawfully practicing law is a question  
3 that we address once a month. We meet once a month.  
4 There is a great need for more access to justice, and I am  
5 not necessarily in favor of certification of paralegals,  
6 but the issue certainly should be studied. It has been  
7 studied to great depth in Washington state. It is very  
8 controversial up there.

9 The thing we should do is study it so that we  
10 have an answer so that we can say whether or not  
11 paralegals, whatever they are, have a role in the legal  
12 system in this state with clarity. So I'm in favor of the  
13 motion.

14 PRESIDENT YUGLER: Thank you, Mr. Cann.

15 Mary?

16 MS. MARY CRAWFORD: I'd like to talk pro,  
17 but I can't get to any microphone. So...

18 PRESIDENT YUGLER: We got you covered.

19 MS. MARY CRAWFORD: Oh, thank you.

20 My name is Mary Crawford. I'm the chair of the  
21 diversity committee, and I'd like to sort of look at this  
22 through a different frame of mind in terms of, if we study  
23 this and develop a relationship with the providers of the  
24 people that are going to be the pipeline for some people  
25 that have interest in the legal field, it might be a

1 potential pipeline for diversity within the legal  
2 community and help us with people that are interested in  
3 becoming lawyers and members of the Bar.

4 So I think establishing a relationship with the  
5 people that provide the education could be a tool for us.  
6 So I'm speaking for this proposal in -- in using it as a  
7 tool, I think.

8 PRESIDENT YUGLER: Thank you, Mary.

9 Any other people want to speak pro, con?  
10 Someone in the back.

11 MS. HEATHER VAN METER: Heather Van Meter  
12 from region five.

13 Just two points. There are already professional  
14 paralegal certification programs. They're administered  
15 through tests and continuing education requirements from  
16 paralegal associations. Our paralegals in our office,  
17 some of them have the certifications. There already  
18 exists -- the same exact thing that we're talking about  
19 already exists. And so spending time and resources on it  
20 doesn't make a lot of sense.

21 Additionally, I've prosecuted unlawful-practice-  
22 of-law cases for the Bar, including one ongoing one, and I  
23 think from that standpoint, this is a very, very bad idea.  
24 We have people that already hold themselves out as  
25 certified paralegal/lawyer types that charge for their

1 services, that are unlawfully practicing law that we are  
2 prosecuting, and we spend lots and lots of resources doing  
3 that as a Bar, and I don't think we want to get into some  
4 Bar-certification program that exacerbates that problem.

5 PRESIDENT YUGLER: Thank you,  
6 Ms. Van Meter.

7 Anyone else wish to speak pro or con?

8 All right. I don't see anyone else who wishes  
9 to speak. So let's proceed to vote on Mr. Lang's  
10 resolution, which is on page 7. And if you're in favor of  
11 Mr. Lang's resolution, please press 1/A; if you're  
12 opposed, 2/B; and if you want to abstain, 3/C.

13 (Vote taken.)

14 PRESIDENT YUGLER: Okay. Last opportunity  
15 to vote. There's 129 responses. We've had 131. We still  
16 have a quorum. I just want to point that out.

17 130. All right. Anyone else?

18 All right. At this time let's see a tally.

19 Mr. Lang, your motion fails. All right.

20 Next item is item number 14 on the agenda, which  
21 is House of Delegates resolution number three. Mr. Lang,  
22 this is yours again. Please feel free to speak from  
23 there.

24 MR. DANNY LANG: Danny Lang, region three,  
25 elected delegate, presenter.

1           Recently there were two measures, ballot  
2 measures, for mandatory sentences on the ballot, and it  
3 has occurred that I think there's been an intrusion upon  
4 judicial discretion with regard to our judges in Oregon,  
5 and so part of this is intended that we communicate to the  
6 public -- it's really a public information function.

7           There was a letter that's in your packet that  
8 was actually sent by Nancy Cozine, staff counsel with the  
9 Office of the State Court Administrator, to Karen Garst.  
10 So I got into the -- the letter was in response to my  
11 agenda item prior to the September 13th scheduled HOD  
12 meeting.

13           I did speak with one of the legislative analysts  
14 that works with the legislative fiscal office, and, first  
15 of all, they do prepare extensive analysis, which is set  
16 forth in the bottom of her letter. However, that's an  
17 in-gross-type figure -- in other words, \$10 million or  
18 \$100 million or \$200 million -- and that's really for  
19 internal use within government agencies or the  
20 legislature.

21           When the people go to the ballot box and vote,  
22 they have no idea what it means if somebody steals an  
23 extra slice of pizza, and they're going to wind up serving  
24 six years of some mandatory sentence that may cost the  
25 taxpayers 180 or 200 thousand dollars. So simply as an

1 informational tool, it wouldn't be that difficult.

2 No, it's not sent to juries. The back page of  
3 this letter, I think, has a lot of misconceptions. It  
4 talks about would a jury be told about it? No, there's  
5 nothing to do with juries. This is simply that if a judge  
6 was wishing to add, for informational purposes, we would  
7 have public information on a case-by-case basis, so that  
8 the public would have a better feel next time they vote, a  
9 more informed electorate.

10 And I think it also preserves -- it may not add  
11 any discretion or power to our judges, but I think it  
12 helps to be in force, that our judges have an important  
13 function. So I'm supporting this, and I brought this to  
14 support the judiciary.

15 We had a Ballot Measure 40 a few years ago that  
16 was sought to have some perhaps adverse impacts on the  
17 judiciary, and we see these mandatory measures, and it  
18 concerns me that a Circuit Court judge may become like the  
19 people at the front counter at McDonald's that push Big  
20 Mac, large fries, and a Coke when it comes to sentencing.

21 So at least if the cost was added to the  
22 number -- in other words, if the cost is 4,000 a month for  
23 incarceration and somebody is going to have a sentence of  
24 50 months, then that \$200,000 would simply be made known,  
25 made public, and the media could pick it up. And we'd see

1 it on a case-by-case basis and county by county, rather  
2 than somebody putting a ballot measure out there. And one  
3 of these ballot measures, The Oregonian I believe came out  
4 and said it was going to cost \$1.1 billion.

5 How can we relate to a billion dollars? I know  
6 Rick's math wasn't that good earlier today. So, I can't  
7 relate to a billion dollars. I think if we get a little  
8 more data here -- I don't expect that this will probably  
9 pass, but I think that it's -- you know, it's change.  
10 It's like somebody once proposed sliced bread.

11 And, again, because there are no other states  
12 that do this doesn't mean we in Oregon can't be on the  
13 forefront. We passed the bottle bill, good or bad. We've  
14 got the doctor-assisted suicide, good or bad. I think we  
15 had one of the early marijuana law bills.

16 And so I think this would be an interesting  
17 approach to having a better informed electorate, better  
18 informed taxpayers to know the impact of sentencing as  
19 compared to alternatives to sentencing, programs to avoid  
20 recidivism, and rehabilitation programs, those costs  
21 compared to the costs of simply putting somebody in a  
22 state, barred hotel 24/7. It's an informational measure  
23 only. Thank you.

24 PRESIDENT YUGLER: Mr. Lang's resolution is  
25 before you. Is there a second for Mr. Lang's resolution?

1 MS. MICHELLE ING: Michelle Ing. I second  
2 the motion.

3 PRESIDENT YUGLER: Okay, Michelle.

4 Now is the time, if you want to speak for or  
5 against Mr. Lang's resolution. Please step forward to the  
6 pro or con microphone.

7 MR. BRIAN THOMPSON: Brian Thompson, Lane  
8 County Bar.

9 I object in general to this. It's a deeply  
10 political matter. It's not a matter for the bar  
11 association to study incarceration costs. That's budget  
12 and legislation. That belongs to -- it's a legislative  
13 matter. It's just not our bailiwick. We shouldn't be  
14 spending our funds on this. Improvement of the judiciary,  
15 educating the judiciary, all the stuff to go along with  
16 it, great. This is just really a political matter, and I  
17 don't think -- where it's appropriate for us to vote on it  
18 at this time.

19 PRESIDENT YUGLER: Thank you.

20 Mr. Cutsforth.

21 MR. THOMAS CUTSFORTH: Tom Cutsforth,  
22 region one, elected delegate.

23 I have to concur with what the previous speaker  
24 said. I also have to wonder if the Portland bar can't do  
25 telephones, if Multnomah County can't do video, how on

1 earth is a judge going to sit here and do this? I'm all  
2 in favor of the electronic courtroom, but we're asking  
3 people to do something that should be done by the  
4 executive department of the State of Oregon.

5 PRESIDENT YUGLER: Thank you, Tom.

6 Anyone at a pro microphone? I don't see anyone.  
7 Ms. Johnson.

8 MS. KELLIE JOHNSON: Thank you. Kellie  
9 Johnson, Board of Governors representative, Portland,  
10 region five.

11 On behalf of the Board of Governors, we oppose  
12 this resolution. While the spirit of the resolution is  
13 understood, the actual practical effect is a  
14 cost-and-time-encumbering process itself that would be  
15 unnecessarily duplicitous and not address the real  
16 problem, which is the lack of funding and the increased  
17 need for both treatment and incarceration space for  
18 defendants and inmates.

19 I believe it would already burden criminal  
20 Circuit Courts. It assumes that we have the time, the  
21 manpower, and the technology capacity to have this  
22 information readily available to courts on a case-by-case  
23 basis. I don't think it's the most effective way to  
24 educate our community, if that's the purpose.

25 And the bottom line, as a district attorney

1 myself, in the criminal justice system daily judges, DAs,  
2 and defense attorneys know very well the costs associated  
3 with incarceration and are already engaged in the type of  
4 triage required to handle the increase in offenders and  
5 the lack of funding and the space.

6 So, we need a new courthouse. We need  
7 technology. There's lots of things we could spend our  
8 money on. But this part I don't think is broke. We don't  
9 need to fix it.

10 PRESIDENT YUGLER: Thank you, Ms. Johnson.

11 Anyone else wish to speak? Anyone at a pro  
12 microphone?

13 All right. Well, not seeing anyone else at a  
14 microphone, I think it's time to vote on Mr. Lang's  
15 resolution number three, which is item number 14 on your  
16 agenda. If you're in favor of Mr. Lang's resolution,  
17 press 1/A; if you're opposed, 2/B; if you want to abstain,  
18 3/C.

19 (Vote taken.)

20 PRESIDENT YUGLER: I see 125 responses,  
21 126. Anyone else who wishes to vote, now's your  
22 opportunity.

23 Sold, 127. Okay. All right. Let's see the  
24 tallies, Jared.

25 All right. Mr. Lang, your motion fails. 111 is

1     against, 13 in favor, three abstained.

2             The next item is item number 15 on the agenda.  
3     Mr. Lang, this is your delegate resolution number four  
4     pertaining to a House of Delegates executive committee.  
5     And the podium's yours again.

6             MR. DANNY LANG: Danny Lang, region three,  
7     elected delegate and presenter of this item.

8             There's been much discussion in 2008 regarding  
9     the House of Delegates, and that discussion was really  
10    intensified by what I call as our unfortunate train wreck  
11    at Bend, when we didn't have a quorum. So I think one of  
12    the problems is that there probably isn't sufficient  
13    interest, or maybe the way the House of Delegates operates  
14    isn't meeting its goal, which was to help the Board of  
15    Governors on certain defined matters and to bring new  
16    matters before the Board of Delegates.

17            So the problem, as I see it, is that we're  
18    amorphous. We're like little amoebas in a pond, "we"  
19    being delegates. And, you know, there's just a single,  
20    once a year -- like the fireflies that come out the end of  
21    June and blink a few times and they're gone.

22            So if we're going to get more thought and be  
23    able to have discussion between regions and discussion on  
24    the types of agenda items that I have proposed this  
25    year -- it's pretty lonely up here, and I'd really like to

1 have some of you have some more agenda items. But I think  
2 if we had an executive committee, we could generate more  
3 interest and we could work more closely with the Board of  
4 Governors.

5 One of the other ideas would have been to have  
6 two meetings a year of the House of Delegates, but that  
7 involves more mileage and more costs. Actually, we did  
8 have two meetings this year, if you think about it.

9 (Laughter.)

10 MR. DANNY LANG: But -- so if we had an  
11 executive committee that could, by regions, call people up  
12 and remind the delegates from that region and discuss  
13 matters of interest and coordinate more closely with local  
14 bar associations. I think this is a no-cost item. We  
15 could have volunteers appointed by the Board of Governors  
16 to be some sort of principal delegate or on the House of  
17 Delegates committee, and then we'd have a better voice and  
18 a better coordination with the Board of Delegates and  
19 among our fellow delegates.

20 So I look at this as something like, again,  
21 slicing bread, and I think it merits your consideration,  
22 your favorable vote. Thank you.

23 PRESIDENT YUGLER: Mr. Lang's resolution  
24 number four, which is found at the top of page 8, is there  
25 a second to Mr. Lang's resolution?

1 MS. PAULA JENSEN: Second.

2 PRESIDENT YUGLER: Please state your name.

3 MS. PAULA JENSEN: Paula Jensen.

4 PRESIDENT YUGLER: Okay, Ms. Jensen.

5 It's been seconded.

6 Anyone want to speak at the pro or con  
7 microphone, they are open. Mr. Karnopp, I'll recognize  
8 you first --

9 MR. DENNIS KARNOPP: Thank you.

10 PRESIDENT YUGLER: -- since you're so spry  
11 in getting there.

12 MR. DENNIS KARNOPP: Dennis Karnopp, region  
13 one delegate.

14 And I was not going to talk about anything  
15 because I got an elk tag and I got to get over to far  
16 eastern Oregon. So let's move this along.

17 But in spite of that, I think I've attended  
18 every House of Delegates meeting this Bar has had, and I  
19 had the honor of chairing the first one in Medford. And  
20 at that meeting, when it first started, a lawyer,  
21 delegate, got up, and he wanted to challenge me chairing  
22 the meeting because the House of Delegates hadn't voted on  
23 who the officers should be. Fortunately, I was saved by  
24 the statute, which said the President of the Oregon State  
25 Bar was the chairman of the House of Delegates meeting.

1 So I went ahead and chaired that meeting.

2 But I just want to point out that we don't need  
3 an executive committee here. I mean, Mr. Lang, he's got  
4 four or five resolutions here. He has the opportunity,  
5 and every lawyer has the opportunity, to present whatever  
6 they want. It's just a layer of further bureaucracy, it  
7 seems to me. And I, for one, am pleased with the House --  
8 I mean with the Board of Governors and the meetings that  
9 we have via telephone, and there's nothing to stop any  
10 individual lawyer from pursuing, along with other lawyers,  
11 any proposal they want to. Thank you.

12 PRESIDENT YUGLER: Thank you, Mr. Karnopp.

13 Anyone at the pro microphone? Mr. Georgeff.

14 MR. GARY GEORGEFF: Thank you, Mr. Yugler,  
15 President Yugler. Gary Georgeff, elected delegate out of  
16 state, residing in Rossland, British Columbia.

17 I really appreciate Danny Lang's enthusiasm.  
18 I'm not kidding about that. I consider him a friend, and  
19 we've made common cause on some things before. And I know  
20 it becomes lonely up there. For those who remember the  
21 2005 meeting, which had my motion go into defeat, and then  
22 a successful initiative petition, and then two years of  
23 working out how we were going to handle the elimination of  
24 bias, which didn't get solved until you, President Yugler,  
25 took a hand. So I know what it's like.

1           But I'm going to vote against this one, and also  
2   on the next one, and to --

3           (Laughter.)

4           MR. GARY GEORGEFF: -- to borrow --

5           UNIDENTIFIED SPEAKER: Mr. President, would  
6   that be a point of order?

7           MR. GARY GEORGEFF: -- to borrow a line  
8   from Ronald Reagan, to paraphrase -- and that may be risky  
9   in light of the election results this week -- we really  
10   don't need more government, and that's why I'm going to  
11   vote against this one.

12           PRESIDENT YUGLER: Mr. Williamson. And  
13   then --

14           MR. CHARLES WILLIAMSON: In my opinion, the  
15   Board of Governors is our executive committee. I think  
16   they've done a good job at going out and having regional  
17   meetings. We've had the listserv for better  
18   communication. To establish another body that the Bar  
19   staff has to report to isn't a no-cost item. This would  
20   create sort of a hydra-headed Bar, which we don't need.  
21   Thank you.

22           PRESIDENT YUGLER: Thank you.

23           I'll take one more from the con microphone and  
24   then -- in the back.

25           MS. ROBIN POPE: Hi, Robin Pope. And I'm

1 not a member of the House of Delegates. I'm a private  
2 attorney, sole practitioner from Beaverton.

3 PRESIDENT YUGLER: Okay.

4 MS. ROBIN POPE: And I'm a former President  
5 of the Washington County Bar. And some of us out in  
6 Washington County, we feel that it's already -- because of  
7 the House of Delegates, most attorneys in Oregon are more  
8 removed from the Bar than ever before, and I know that  
9 we're welcome to come here, but there is already  
10 separation. And it seems like by adding this extra layer,  
11 it's just adding layers onto an onion, and it's going to  
12 get harder and harder to peel them, and we don't want you  
13 to do that. Thank you.

14 PRESIDENT YUGLER: Thank you.

15 Last comment.

16 MR. JONATHAN LEVY: I'm Jonathan Levy,  
17 Portland, chair of the estate planning section.

18 I was a member of the first House of Delegates  
19 and chair -- I'm sorry -- chair of the computer section  
20 when I was practicing in a different area. And I'd like  
21 to second the comments just before. I think that we have  
22 lost something intangible by centralizing the  
23 administration and having moved away from the town meeting  
24 forum that we used to have when we met every year or every  
25 other year in Seaside, or wherever the meetings were.

1           I'm not proposing an amendment, but I think we  
2    need to consider what we're losing by centralizing. I  
3    think it was a better Bar when we had the Town Hall  
4    meeting. It was less fractured, it was more collegial, it  
5    was more cohesive, and there was less of a sense of us  
6    versus them between the practicing lawyers and the, quote,  
7    Bar, the headquarters.

8           And I'm not suggesting that we amend this  
9    proposal to go back to the house of -- to the Town Hall,  
10   but -- which I'd like to do, but this is a step in the  
11   wrong direction.

12                   PRESIDENT YUGLER: Thank you.

13                   At this time --

14                   MR. DANNY LANG: Could I have it for one  
15   minute?

16                   PRESIDENT YUGLER: Oh, I'm sorry. Sure,  
17   Mr. Lang. I forgot. I apologize.

18                   MR. DANNY LANG: Thank you for your  
19   comments. Picking up on the last speaker, Mr. Levy, this  
20   is not to centralize; it's really the other way around.  
21   It's to have someone in each region that would then,  
22   during the off season, before this meeting, maybe go  
23   around to the local bars and meet with local bars and  
24   local sections and basically a coordinator. So we'd be  
25   going back a little bit to more local input.

1           This is anything but more centralization, and  
2 these people aren't going to have an office or rented  
3 space or staff. They're just among us who would volunteer  
4 within our region to serve as a coordinator and be able to  
5 better work with the Board of Governors. It's not  
6 we/they, and it's to get actually more grassroots, more  
7 local enthusiasm, interest, and communications. That's  
8 what it is. Thank you.

9           PRESIDENT YUGLER: Thank you. All right.  
10 Mr. Lang, thank you very much.

11           Time to vote on resolution number four. And I  
12 think we know the drill. One for yes, two for no, and  
13 three to abstain.

14           (Vote taken.)

15           PRESIDENT YUGLER: All right. 127  
16 responses. Last opportunity to vote.

17           Okay. Let's see the tally, please. Fails 112  
18 to 13 to two.

19           Okay. Mr. Lang, the last resolution you have is  
20 House of Delegates resolution number five, which is on  
21 page 8 of your materials.

22           MR. DANNY LANG: Danny Lang, region three,  
23 elected delegate, in case any of you forgot.

24           (Laughter.)

25           MR. DANNY LANG: First of all, I do have --

1 and I've already pre-sent it to the Board of Governors.  
2 There's a protocol here. I did move to amend, amending my  
3 agenda item, my proposed resolution. And I'll give the  
4 written amendment to President Yugler.

5 And the amendment is simply to make the new  
6 number for the quorum to be 70 percent instead of 50  
7 percent of the number of elected delegate positions, and  
8 we can count both elected delegates and the ex officios,  
9 because at Bend, when our meeting failed, there was an  
10 informal discussion off the record, and the Board of  
11 Governors was concerned that 50 percent was too low. I  
12 agree with them.

13 So I've gone to 70 percent, which at Bend we  
14 would have made it because we needed 110 votes. We would  
15 have -- we had 82. This would have been 70 percent of the  
16 elected, would be -- 77 plus one would have been 78, and  
17 we had 82 people there.

18 Earlier today we had a proposal to authorize, in  
19 essence, alternates, and that still doesn't address the  
20 quorum, per se. So I think it's time that we put in black  
21 and white a quorum number. And I think this is a workable  
22 number, so I'm moving to amend in response to the Board of  
23 Governors' suggestion. So I'm going to 70 percent plus  
24 one as the amendment.

25 PRESIDENT YUGLER: Okay. Maybe I can

1 handle it this way: The original motion, which is at a 50  
2 percent amount, to define the quorum at 50 percent plus  
3 one, is on page 8 of your materials. And then Mr. Lang  
4 wants to amend that -- or do you want to withdraw the  
5 original one and substitute your amended motion?

6 MR. DANNY LANG: I'm willing to do that as  
7 long as that doesn't offend the 45-day rule of getting the  
8 item on the agenda. So if the parliamentarian will allow  
9 that as a more expedient method of getting it on the  
10 agenda, that's fine.

11 PRESIDENT YUGLER: Okay. I'll do it this  
12 way, then. First of all, is there a second to the  
13 original motion?

14 MS. DIANE GRUBER: I second.

15 PRESIDENT YUGLER: Okay. Ms. Gruber  
16 seconded. Before I have debate on that, we'll consider  
17 Mr. Lang's remarks a motion to amend the original  
18 resolution, to change it from 50 percent plus one to 70  
19 percent plus one.

20 Is there a motion -- which is a motion. Is  
21 there a second to his amendment to change it to 70 percent  
22 plus one?

23 MR. THOMAS CUTSFORTH: I'll second it.

24 PRESIDENT YUGLER: Mr. Cutsforth. Okay.

25 All right. Now it's time for debate on the

1 amended motion, which is in your packet, which is to  
2 redefine the quorum for the House of Delegates to 70  
3 percent plus one of the number of elected delegate  
4 positions. Anyone speaking pro or con?

5 MR. BRIAN THOMPSON: Brian Thompson, Lane  
6 County Bar President, con.

7 Again, I'll restate what I said previously: The  
8 issue in Lane County has been communication from the Bar  
9 as to date and time. It has not been an unwillingness to  
10 attend. The prior resolution which passed in our case  
11 probably will not help, and this will not either. We  
12 would like to participate. We need more time to get a  
13 Saturday off so we're not leading Cub Scouts or soccer  
14 games around and get coverage for it.

15 It doesn't address the fundamental problem,  
16 which seems to be systemic in the staff or the procedure  
17 put in place for the staff to execute, whatever it is,  
18 more likely the procedure, and this just doesn't address  
19 the underlying problem of getting at least delegates from  
20 Lane County to come. Thank you.

21 MR. GARY GEORGEFF: Point of order?

22 PRESIDENT YUGLER: Yes.

23 MR. GARY GEORGEFF: We're just talking  
24 about the motion to amend?

25 PRESIDENT YUGLER: To amend, that's

1 correct. We're just right now talking about amending it,  
2 not to the substance of an amended motion yet.

3 So anyone else wishing at this time to speak to  
4 the amendment, not to the substance of the amendment, but  
5 to the fact of the amendment, step up. Mr. LeChevallier.

6 MR. ROBERT LeCHEVALLIER: I guess this  
7 would be another -- Rob LeChevallier.

8 I don't understand the "one." Why 70 percent  
9 plus one? Why not just 70 percent?

10 PRESIDENT YUGLER: Mr. Bachofner, you want  
11 to get to the mic?

12 MR. JOHN BAHOFNER: I think that was based  
13 on a 50 plus one, meaning greater than -- you have to have  
14 a majority, at least. So 70 plus one is probably based on  
15 just keeping the "plus one" in there.

16 (Laughter.)

17 PRESIDENT YUGLER: There you go. All  
18 right. What we're doing -- thank you.

19 What we're doing right now is just voting on the  
20 amendment. So if anyone else wants to speak pro or con to  
21 amending Mr. Lang's original resolution, and then we can  
22 vote on the substance of that.

23 So at this time if you're about ready on the  
24 motion to amend, if you are in favor of amending his  
25 motion so we can then proceed to vote on the substance of

1 whether or not there ought to be 70 plus one, say yes. If  
2 you are against the amendment and want to proceed to the  
3 original motion, which is 50 plus one, which would be the  
4 next step here, you'd vote two.

5 (Vote taken.)

6 PRESIDENT YUGLER: Okay. 125 responses.  
7 Anyone else who's not voted?

8 127. Okay. See the tally.

9 Okay. So your motion passes 70 to 47 to ten.  
10 So now we're going to proceed to vote on the amended  
11 motion, which is whether the quorum requirement ought to  
12 be changed to provide that a quorum is satisfied by 70  
13 percent plus one of the number of elected delegates.

14 Yes. Anyone wishing to speak pro or con to the  
15 substance of that motion? And someone's going to the  
16 "other." Mr. Gerking is going to the con microphone.  
17 That's my guess.

18 MR. TIMOTHY GERKING: Tim Gerking, Board of  
19 Governors.

20 I'm speaking on behalf of the board to oppose  
21 this resolution because we believe that this resolution  
22 would further -- well, it really -- reducing the quorum  
23 would reduce the representational nature of this body,  
24 would reduce the significance of what we do here.

25 Currently there are 200 members -- 219 members

1 of the House of Delegates. So we need a quorum of 110.  
2 This resolution will change that, instead of -- because  
3 there are approximately a hundred members, elected  
4 members, through the House of Delegates, and if I  
5 understand this resolution, we would now only -- if it was  
6 passed, we would now only need -- we would then only need  
7 75 elected members to be present and voting. So that  
8 would reduce -- that would just reduce the number of  
9 people who need to be here to vote, and it would not --  
10 this meeting would not be as significant as it is now.

11 The Board of Governors, over the past several  
12 years, has studied ways to improve attendance at the -- at  
13 these meetings, and to assure that there is a quorum at  
14 every meeting we have passed mileage reimbursement, and  
15 we've just allowed the ex officio members to designate  
16 alternates. We're considering other options, biannual  
17 meetings, to improve communication between the HOD and the  
18 BOG, and I believe that is -- we believe that is a healthy  
19 possibility.

20 And there are other things: having one location  
21 for HOD meetings, which would be the Bar center, or maybe  
22 in Eugene instead of having the meetings in distant  
23 locations. So there are ways to achieve this quorum. And  
24 I think we should all congratulate ourselves for having a  
25 very representational meeting today. I think we've got

1 131 people here, and that's more than I can recall ever.  
2 At least my four years on the Board of Governors, we've  
3 never had that many. And I think part of that is because  
4 this meeting is here at the Bar center. And thanks again  
5 for being here.

6 PRESIDENT YUGLER: Thank you, Mr. Gerking.  
7 Mr. Cutsforth from the "other" podium.

8 MR. THOMAS CUTSFORTH: Thank you. I'm  
9 afraid that this may have an unintended consequence. What  
10 if we only have 70 elected members but we have 112 members  
11 present?

12 I think there's an unintended consequence here  
13 that wasn't provided for in the resolution, and I believe  
14 I can't really support the resolution for that matter.  
15 But I'm not at a con; I just would like someone to address  
16 that, if that's true. Thank you.

17 PRESIDENT YUGLER: Maybe Mr. Lang will do  
18 that in a minute. Mr. Georgeff.

19 MR. GARY GEORGEFF: Thank you, President  
20 Yugler. Gary Georgeff, elected delegate, residing in  
21 Rossland, British Columbia.

22 I want to vote against this one for several  
23 reasons. Point one, I think it's premature because we  
24 haven't seen how the board-resolution fix that we just  
25 adopted plays out. And I'm not sure, but I think it may

1 take a statutory change to change the meaning of a quorum  
2 that radically.

3 Also, the numbers are too small. I mean, I will  
4 agree 70 percent plus one is better than the 50 percent  
5 plus one, which Mr. Lang originally had, but we're still  
6 talking only about something like 76 members of the OSB,  
7 and the whole Board of Governors already counts as part of  
8 that to make a quorum.

9 Also, the history on this. I'm sorry my friend  
10 Bob Browning and fellow HOD delegate isn't here today.  
11 It's not his fault. He had something scheduled before,  
12 and he just couldn't change it on this rescheduled  
13 meeting. But I've talked to him about the history of the  
14 way the elected delegate versus the Bar President, section  
15 chair thing came up. And my understanding is it was  
16 carefully thought out at the time.

17 Obviously, elected delegates mostly go by  
18 population, but the theory was we can put out section  
19 chairs, county bar presidents so that we can get some more  
20 regional representation at the meetings.

21 And if we look back at the statistics, the  
22 elected delegates don't do that bad. We get at least more  
23 than half of them in the meetings. We do not -- we've  
24 been having the problems with the section chairs, the bar  
25 presidents, the ex officio members. So we want to

1 encourage them to be here. We don't want to have them  
2 still not showing up. So we should have a minimum  
3 tinkering, I think.

4 The Board of Governors' resolution number three  
5 which we just adopted I think is a good fix. And so, you  
6 know, if that doesn't work and we play that out and  
7 democracy seems to be dying from lack of interest, then  
8 maybe we do some other things, like completely restructure  
9 the House of Delegates or maybe abandon the House of  
10 Delegates and go to everything done on Web sites,  
11 electronic voting, or maybe we go back to Town Hall  
12 meetings.

13 But let's try the Board of Governors' fix first.  
14 To use an analogy, to sum up, which at least Mr. Karnopp  
15 is going to appreciate, I think: Just because we had one  
16 failed meeting and our horse came up lame doesn't mean we  
17 shoot the horse and get another one. We put new shoes  
18 back on. We'll saddle 'er up and ride 'er out and see if  
19 it works next time. Thank you.

20 PRESIDENT YUGLER: Giddy up. Okay.

21 (Laughter.)

22 PRESIDENT YUGLER: I'm going to take two  
23 more comments, then --

24 MS. MARY OVERGAARD: You can't close  
25 debate, Mr. President.

1 PRESIDENT YUGLER: Is there someone --

2 UNIDENTIFIED SPEAKER: We've been standing  
3 here for quite a bit.

4 PRESIDENT YUGLER: Oh, you have.

5 UNIDENTIFIED SPEAKER: Long before --

6 MS. MARY OVERGAARD: You can't close  
7 debate.

8 PRESIDENT YUGLER: I can't see if you're at  
9 the microphone back there or just standing by the wall.

10 UNIDENTIFIED SPEAKER: This side of the  
11 room is at the microphone.

12 PRESIDENT YUGLER: I apologize.

13 MR. TIMOTHY ZIMMERMAN: Tim Zimmerman,  
14 region four, elected delegate.

15 I guess I kind of want to mirror some of what  
16 Gary Georgeff had just said, in that we've already passed  
17 a resolution asking for the section heads to appoint  
18 somebody. I think that's the fix we need. I think that  
19 if we reduce our quorum, we are discouraging participation  
20 rather than encouraging it, and I urge this body to vote  
21 against it.

22 PRESIDENT YUGLER: Thank you.

23 Anybody at a pro microphone? We have an  
24 "other." Okay.

25 MS. DENISE SOTO: Denise Soto, and I'm

1 President of the Linn County -- Linn County Bar  
2 Association. And I'm at "other" because I'm not sure what  
3 the solution really is. Is there anyone here representing  
4 Benton County?

5 UNIDENTIFIED SPEAKER: Here.

6 MS. DENISE SOTO: Excellent. I'm not sure  
7 if the Benton County Bar Association is really existing,  
8 and the Linn County Bar Association is hanging on by  
9 threads. There are 3.5 people doing everything for the  
10 entire county. And so I think part of the problem is --  
11 is we didn't get House of Delegates training 101 in law  
12 school, and so when I moved into the presidency, I had no  
13 idea that I was a delegate. I was just organizing the  
14 association, trying to breathe life back into it.

15 So part of the problem could be ignorance and  
16 lack of support in the smaller counties. Thank you.

17 PRESIDENT YUGLER: Thank you.

18 I see someone at the pro microphone.

19 MR. WILLIAM HABERLACH: Yes. I'm Bill  
20 Haberlach, an elected delegate from Medford. I think it's  
21 region three, and I call for the question to terminate  
22 debate.

23 MR. SHAWN LINDSAY: I second it. Shawn  
24 Lindsay.

25 PRESIDENT YUGLER: Motion to close debate

1 is nondebatabable and requires two-thirds, as I remember.

2 Mr. Westwood nodded his head. He's still with us.

3 (Laughter.)

4 PRESIDENT YUGLER: All right. Jared, the  
5 motion is to close debate, otherwise known as calling for  
6 the question. We're going to need two-thirds. Someone is  
7 going to need to do the math when we get the total.

8 (Laughter.)

9 PRESIDENT YUGLER: All right. Wait a  
10 second here. Okay. If you wish to close debate on the  
11 subject, please press one. If you don't want to close  
12 debate, press two. If you want to abstain, press three.

13 (Vote taken.)

14 PRESIDENT YUGLER: 112.

15 MS. KAREN GARST: I calculated on 127. Did  
16 we have 127?

17 PRESIDENT YUGLER: Hold on a second. There  
18 are 113 responses. Anyone who has not voted on closing  
19 debate and would like to.

20 Wait a minute. 117, 18. Must be all the  
21 abstentions coming in. 119. All right.

22 Anyone else wanting to vote on this? Now's your  
23 chance. Okay. Let's see the tally.

24 Okay.

25 (Laughter.)

1 UNIDENTIFIED SPEAKER: Thanks for  
2 disenfranchising regular members of the Bar.

3 PRESIDENT YUGLER: Debate is closed. Let's  
4 move to the question. Thank you very much.

5 All right. Now we're going to vote on  
6 Mr. Lang's resolution, and he has one minute to close.

7 MR. DANNY LANG: This motion is so that we  
8 don't have another train wreck. It's designed that there  
9 are enough safeguards, I think, that we wouldn't have any  
10 loss of democracy by going to 70 percent of the elected  
11 delegates, and there was uncertainty expressed by the lady  
12 at the "other" microphone and by the gentleman at the Lane  
13 County Bar that we don't know how the use of alternates is  
14 going to work. And if we don't pass this motion, then  
15 we're -- as I understand it, we're still at 110 needed.

16 I was at the 2005 as an ex officio delegate, and  
17 I think we delayed the meeting waiting for people to  
18 arrive. That's when I said this could happen, and I  
19 apologize it took me two years to get around to writing  
20 the motion, the agenda item. And the irony of it was that  
21 my motion or agenda item was on for Bend, and then the  
22 train wreck before we got to vote on it.

23 I don't know what the cost of that was, but a  
24 few people have worked it out as an estimate. That was  
25 about \$40,000 of our dues money that was unproductive,

1 notwithstanding all of your time, staff time, and all the  
2 resources that were committed.

3 So I welcome -- this is another motion intended  
4 to complement the Board of Governors, not in opposition,  
5 and it's nice that we have the alternatives, but this I  
6 think is a numerical fix. Its time has come so we don't  
7 wake up and have in '09 or '11 another possible train  
8 wreck. This is just good insurance. Thank you very much.  
9 Thank you.

10 PRESIDENT YUGLER: Okay. Just a reminder,  
11 we're voting on Mr. Lang's amended motion to change the  
12 quorum requirements, the substance of the motion, which  
13 would change the quorum requirement to 70 plus one of the  
14 number of elected delegates, and you can vote now.

15 (Vote taken.)

16 PRESIDENT YUGLER: 126 responses. If  
17 anyone else wants to vote, now is your opportunity. Any  
18 other votes? Okay. The tally, please.

19 All right. Mr. Lang, your motion fails 97 to 27  
20 to two.

21 The next item on the agenda is delegate  
22 resolution number six. Mr. Duvall, give you the podium.  
23 This resolution is found on page 8 and 9 of your book.

24 MR. HUBERT DUVAL: Thank you. Hugh  
25 Duvall, region two, elected delegate.

1           This resolution directs the Bar to continue in  
2   its work toward fair compensation for appointed counsel.  
3   Right now private attorneys willing to represent indigent  
4   defendants are being paid, in most cases, \$45 per hour. I  
5   emphasize "those still willing to do so." This is  
6   unacceptable, and this resolution deserves our support.  
7   Thank you.

8           PRESIDENT YUGLER: Is there a second to  
9   Mr. Duvall's motion?

10          MR. JOHN TYNER: Second.

11          PRESIDENT YUGLER: John, Mr. Tyner beat you  
12   to it. Mr. Tyner's second.

13          And this time the motion is open for discussion,  
14   pro and con.

15          No discussion? All right. At this time we can  
16   proceed to vote on resolution number six. If you're in  
17   favor, press one. If you're opposed, two. If you wish to  
18   abstain, three.

19          (Vote taken.)

20          PRESIDENT YUGLER: Okay. 113 responses.  
21   Anyone else wanting to vote, now's your opportunity. 114.

22          Okay. See the tally. Motion passes 108 to  
23   eight. Thank you, Mr. Duvall.

24          Next motion is Mr. Kent's, House of Delegates  
25   resolution number seven. Mr. Kent?

1 MR. CHRISTOPHER KENT: Thank you, Rick.  
2 Chris Kent, region five, Board of Bar Governors.

3 If you bothered to read through the packet, you  
4 may be wondering why there is resolution number 18 and 19,  
5 which seem virtually identical. Yes, you're right, they  
6 are, with the exception of the one I have is paragraph 4,  
7 which says, in addition to the one proposed by Dennis  
8 Karnopp, adds one other category of folks, which is in  
9 paragraph 4: Actively participate in and support the  
10 fundraising efforts of those nonprofit, low-income legal  
11 service providers in Oregon that are not supported by the  
12 Campaign for Equal Justice.

13 It's meant to include other organizations such  
14 as St. Andrew Legal Clinic and other organizations that  
15 provide nonprofit legal services.

16 So, Mr. Karnopp and I -- we met and decided that  
17 his resolution should go forward. So I'm going to ask  
18 that mine be withdrawn by unanimous consents. We -- Mr.  
19 Karnopp is going to allow, I think when it's his turn, to  
20 amend his to add that paragraph four. You may wonder why  
21 we're doing it that way. We decided to do it that way  
22 because, frankly, Dennis is a former bar president and has  
23 been to every HOD meeting. He has a snazzy --

24 (Laughter and applause.)

25 MR. CHRISTOPHER KENT: And that's the third

1 reason: And a snazzy background section. So I'd ask the  
2 President to ask this be withdrawn by unanimous consent.

3 PRESIDENT YUGLER: First I need a second.

4 MS. THERESA WRIGHT: Second.

5 PRESIDENT YUGLER: A lot of seconds.

6 Terry -- Ms. Wright spoke up first, seconded. And I'll  
7 ask for unanimous consent to withdraw the motion. Any  
8 opposition?

9 Hearing no opposition, that carries. Thank you.

10 Now, Mr. Karnopp, the last item on the formal  
11 agenda is delegate resolution number eight.

12 MR. DENNIS KARNOPP: Thank you very much,  
13 Mr. President. I'm Dennis Karnopp. I'm a delegate  
14 from -- let's see -- region one. That's Bend.

15 Actually, there was a blue sheet handed out,  
16 which has the amendment on it that combines these two, and  
17 let me apologize. I said, well, you go ahead and do it.  
18 He said, oh, you know, you're old. You got gray hair.  
19 You might go ahead and take this shot, if you get it. So  
20 I've lived this long, to the end of this meeting, and I  
21 very much want to support this.

22 And in all seriousness, we all understand what's  
23 going on in the country and with the economy. I think  
24 that makes it even more serious for the problems that  
25 those who can't afford to pay for legal services will

1 have. And I assume this body, everyone here, has read  
2 this resolution before, and I would offer the resolution  
3 with the amendment as shown on this sheet.

4 MR. CHRISTOPHER KENT: Second.

5 PRESIDENT YUGLER: Mr. Kent seconded.

6 Do you wish to speak to the body of the motion?

7 MR. DENNIS KARNOPP: No.

8 PRESIDENT YUGLER: All right. Let's get  
9 out of here.

10 All right. Resolution -- anyone want to speak  
11 pro or con to the delegate resolution? All right.

12 Mr. Harnden? All right.

13 MR. EDWIN HARNDEN: I just -- I don't want  
14 to let it go by without at least one pro speaker, although  
15 I think everyone in the room probably is pro on this.  
16 This is the one year -- and each year seems to grow the  
17 population of people that need these services, but I think  
18 this is the one resolution that impacts every single  
19 lawyer throughout the state, and every lawyer that I know  
20 throughout the state supports the legal aid services,  
21 supports all of the other nonprofits that provide this.

22 And it's the one thing that we're -- one of  
23 those things that we're known for throughout the state  
24 that doesn't apply to just Portland or to just Bend or any  
25 other section of the state, but applies to all of us. So

1 I would encourage everyone to vote yes.

2 PRESIDENT YUGLER: Thank you, Mr. Harnden.

3 Anyone else wish to speak for or against the  
4 motion?

5 All right. At this time if you're in favor of  
6 resolution number eight, please press one. Oh.

7 UNIDENTIFIED SPEAKER: Don't we have to  
8 vote on the amendment?

9 PRESIDENT YUGLER: You're absolutely right.  
10 I thought there was unanimous consent to withdraw. You're  
11 correct.

12 All right. So the first thing we need to vote  
13 on -- first of all, I'll ask if there's unanimous consent  
14 to the amendment. If there's any objection to the  
15 amendment, please speak.

16 Okay. Hearing none, that will carry. Thank  
17 you.

18 And now we can move to the substance of the  
19 motion. And if you're in favor of the substance of the  
20 motion, please press one. If you're opposed, press two.  
21 And if you want to abstain, press three.

22 (Computer audio.)

23 PRESIDENT YUGLER: Command is vote yes.  
24 How did that happen?

25 (Vote taken.)

1                   PRESIDENT YUGLER: All right. Anyone else  
2 wanting to vote? 123 responses so far. Okay. All right.

3                   See the tally, please.

4                   118 in favor, two opposed, and three  
5 abstentions. The motion carries.

6                   Now, at this time I just want to point out that  
7 anyone at the beginning of the meeting that pushed C,  
8 saying that we would take two hours, is correct, and  
9 there's a cookie outside for you.

10                  (Laughter.)

11                  PRESIDENT YUGLER: We have finished one  
12 minute under. I do need a motion to adjourn, but before  
13 doing that I just wanted say two things, if I may.

14                  First of all, thank you to everyone for coming.  
15 This is an example of how we can be a self-governing  
16 profession. I think that's important.

17                  Secondly, thank you to Danny Lang for bringing  
18 to the floor many resolutions. In years past, there have  
19 been delegate resolutions that have failed, that the board  
20 has acted on, nevertheless, and worked on, and I want to  
21 thank you for that. And it's been a privilege to preside  
22 and to serve this year. And I'll entertain a motion to  
23 adjourn.

24                  MR. JOHN BAHOFNER: Actually -- John  
25 Bachofner, out-of-state delegate -- before we do so, I

1 would suggest that this body give a round of applause in  
2 respect for Karen Garst, who is retiring. This will be  
3 her last HOD meeting.

4 (Applause.)

5 MR. JOHN BAHOFNER: Thank you for your hard  
6 work.

7 Now I move to adjourn.

8 PRESIDENT YUGLER: Thank you. Is there a  
9 second?

10 UNIDENTIFIED SPEAKER: Second.

11 PRESIDENT YUGLER: Anyone opposed?

12 Unanimous consent. It passes. Thank you.

13 (MEETING ADJOURNED AT 3:31 P.M.)

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## CERTIFICATE

I, Robin L. Nodland, an Oregon Certified Shorthand Reporter, a Registered Diplomate Reporter, and a Certified Realtime Reporter, do hereby certify that I reported in stenotype the proceedings had upon the hearing of this matter, previously captioned herein, before President Rick Yugler; that I transcribed my stenotype notes through computer-aided transcription; and that the foregoing transcript constitutes a full, true and accurate record of all proceedings had during the hearing of said matter, and of the whole thereof.

Witness my hand at Portland, Oregon, this 8th day of December, 2008.



Oregon CSR No. 90-0056









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