OREGON STATE BAR

2005 HOUSE OF DELEGATES MEETING

Salem Conference Center

200 Commercial Street SE

Salem, Oregon

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

P R O C E E D I N G S

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

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

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

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

(Laughter.)

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

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

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

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

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

MS. COOK: Thanks, George.

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

(Applause.)

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

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

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

(Applause.)

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

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

(Applause.)

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

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

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

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

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

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

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

MR. BROWNING: Second.

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

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

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

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

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

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

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

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

MR. McLOUGHLIN: Second.

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

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

Those who believe the filing deadline for

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

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

(Vote taken.)

MS. COOK: All those opposed.

(Vote taken.)

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

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

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

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

MS. COOK: There are.

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

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

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

MR. HUMMELL: Madame Chair.

MS. COOK: Please.

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

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

MR. HUMMELL: Great. Thank you.

MS. COOK: Thank you.

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

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

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

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

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

MS. COOK: No.

(Laughter.)

MR. BACHOFNER: Thank you.

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

We have one more person at the other.

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

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

(Vote taken.)

MS. COOK: All those opposed.

(Vote taken.)

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

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

MS. COOK: Mr. Lang.

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

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

UNIDENTIFIED SPEAKER: Second.

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

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

All those in favor of adding the resolution on the

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

(Vote taken.)

MS. COOK: All those opposed.

(Vote taken.)

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

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

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

MR. HILTON: Second.

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

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

consideration at that time.

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

(Vote taken.)

MS. COOK: All those opposed.

(Vote taken.)

MS. COOK: The motion to suspend does not pass. Absent another motion to suspend --

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

MS. COOK: Is there a second?

MR. DEGUC: Seconded.

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

of the agenda.

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

(Vote taken.)

MS. COOK: All those opposed.

(Vote taken.)

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

Is there another motion to suspend? Mr. Williamson.

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

MS. COOK: Is there a second?

MR. KRANOVICH: Second.

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

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

(Vote taken.)

MS. COOK: All those opposed.

(Vote taken.)

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

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

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

(Vote taken and counted.)

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

(Vote taken and counted.)

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

MR. YUGLER: So moved.

MR. ANDREWS: Second.

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

MR. ANDREWS: Second.

MS. COOK: All those in favor.

DELEGATES: Aye.

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

(Vote taken.)

MS. COOK: Any opposed? Thank you.

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

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

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

(Standing ovation.)

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

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

In talking to several of you before, I thought I

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

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

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

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

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

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

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

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

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

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

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

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

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

(Room darkened.)

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

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

(Applause.)

MS. COOK: We'll proceed in just a moment. Somebody wants to get the budget report in the dark.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Any questions?

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

MS. COOK: Is there a second?

MR. LANG: Second.

MS. GRUBER: I have one question.

MR. HILTON: Yes.

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

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

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

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

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

Mr. Christ.

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

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

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

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

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

MS. COOK: Ms. Eyerman.

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

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

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

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

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

MS. COOK: Thank you, Ms. Eyerman.

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

Three minutes for each -- Mr. Paulson.

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

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

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

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

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

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

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

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

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

MS. COOK: Thank you, Mr. Paulson.

The other mic.

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

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

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

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

MS. COOK: The pro microphone.

MR. BROWNING: Bob Browning, elected delegate from

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

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

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

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

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

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

MS. COOK: Thank you, Mr. Browning.

At the other mic in the back.

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

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

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

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

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

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

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

MS. COOK: Is there a second?

MR. HUMMELL: Second.

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

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

Mr. Hennings.

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

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

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

difficult to do.

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

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

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

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

MS. COOK: At the other microphone, please.

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

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

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

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

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

MR. HILTON: Depending on your vote next year.

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

MS. EYERMAN: May I respond to this?

MS. COOK: Ms. Eyerman, please.

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

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

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

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

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

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

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

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

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

My question regarding the $50 increase is what

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

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

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

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

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

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

MS. COOK: Thank you, Mr. Andrews.

Mr. Williamson is at the other mic.

MR. WILLIAMSON: Call for the question.

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

MULTIPLE SPEAKERS: Second.

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

MR. HILTON: I have to get my cards.

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

(Vote taken.)

MS. COOK: Any opposed?

(Vote taken.)

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

MR. HILTON: I waive my close.

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

(Vote taken.)

MS. COOK: All those opposed.

(Vote taken.)

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

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

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

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

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

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

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

Is there a second?

MS. HOHENGARTEN: Second.

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

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

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

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

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

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

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

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

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

MS. COOK: Any further discussion?

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

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

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

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

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

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

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

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

MS. COOK: Thank you.

Mr. Haberlach.

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

(Laughter.)

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

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

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

MS. COOK: Is there a second?

MR. OLSEN: Second.

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

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

MR. RIEMER: So that is really the motion now. Mr. Williamson, were you moving to divide that?

MR. WILLIAMSON: Yes.

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

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

Any discussion about bifurcating this issue?

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

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

(Vote taken.)

MS. COOK: All those opposed.

(Vote taken.)

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

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

(Vote taken and counted.)

MS. COOK: Okay. Thank you.

All those opposed to dividing this resolution,

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

(Vote taken and counted.)

MS. COOK: The motion to bifurcate passes.

Any -- go ahead.

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

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

MR. RIEMER: So that would be the motion.

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

MS. GRUBER: Second.

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

MS. COOK: At the con mic.

MR. OLSEN: Arden Olsen, Region 2 delegate.

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

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

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

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

MS. COOK: Any further discussion?

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

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

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

No idea if we can fix this or not.

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

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

All those in favor, please raise your placards.

(Vote taken.)

MS. COOK: All those opposed.

(Vote taken.)

MS. COOK: That resolution fails.

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

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

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

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

(Vote taken.)

MS. COOK: Any opposed?

(Vote taken.)

MS. COOK: That motion passes.

Thank you, Mr. Lang.

MR. LANG: Thank you.

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

and then we'll get a second.

MS. HENKELS: I think it --

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

MS. HENKELS: I'll practice projection.

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

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

MS. HENKELS: I see. Thank you.

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

MS. COOK: Is there a second?

MS. HENKELS: No. 9.

MR. PORRAS: Second.

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

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

Thank you, Region 3, for the discussions that we

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

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

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

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

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

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

MS. COOK: Thank you, Ms. Henkels.

Any discussion?

MR. GEORGEFF: Gary Georgeff from Region 3 --

MS. COOK: Mr. Georgeff.

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

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

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

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

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

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

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

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

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

MS. COOK: Thank you. Any further discussion?

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

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

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

MS. COOK: Thank you.

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

(Vote taken.)

MS. COOK: All those opposed.

(Vote taken.)

MS. COOK: The resolution carries. Thank you.

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

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

MS. COOK: Is there a second?

MR. HUMMELL: Second.

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

Ms. Henkels, five minutes.

MS. HENKELS: Thank you, Madame Chair.

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

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

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

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

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

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

you very much for your vote in favor.

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

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

MR. HILTON: At the other mic.

MS. COOK: The "other" other mic.

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

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

MS. COOK: Thank you.

Gentleman at the other mic.

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

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

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

MS. COOK: Thank you. Any additional discussions?

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

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

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

(Vote taken.)

MS. COOK: All those opposed.

(Vote taken.)

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

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

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

(Vote taken and counted.)

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

(Vote taken and counted.)

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

DELEGATES: No.

MS. COOK: Bunch of goodwill.

(Laughter.)

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

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

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

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

MR. LANG: I'm sorry. Hello.

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

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

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

UNIDENTIFIED SPEAKER: Second.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

MS. COOK: Thank you, Mr. Lang.

Any further discussion?

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

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

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

MR. LANG: Yes.

MS. COOK: Is that correct?

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

MS. COOK: Correct. Yes.

MR. JOHNSON: Thank you very much, Madame

President.

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

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

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

MS. COOK: Thank you. Mr. Yugler.

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

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

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

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

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

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

MS. COOK: Thank you, Mr. Yugler.

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

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

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

MS. COOK: Thank you. Mr. Jordan.

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

MS. COOK: Yes, it is.

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

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

MS. COOK: Thank you.

Any further discussion? Mr. Paulson.

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

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

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

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

Any further discussion?

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

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

MS. COOK: Excuse me. Please.

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

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

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

And so I realize the political consideration. I

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

MS. COOK: Thank you, Mr. Lang.

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

(Vote taken.)

MS. COOK: All those opposed.

(Vote taken.)

MS. COOK: The resolution fails.

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

I'll recognize Mr. Gerking.

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

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

Thank you.

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

MR. MENASHE: Second.

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

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

MR. GERKING: My apologies.

UNIDENTIFIED SPEAKER: And Judge Crookham.

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

Any others?

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

Honorable Charles S. Crookham.

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

MR. GERKING: Thank you.

MS. COOK: Any further discussion?

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

(Vote taken.)

MS. COOK: Any opposed?

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

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

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

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

MS. COOK: Is there a second?

MR. YUGLER: Second.

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

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

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

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

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

Really it's a clarification of the Choice of Law

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

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

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

MS. COOK: Thank you. Any discussion?

UNIDENTIFIED SPEAKER: Second.

MS. COOK: Mr. LeChevallier.

MR. LECHEVALLIER: Robert LeChevallier, delegate from Region 6. We have lawyers in our firm that are licensed in both Oregon and Washington, and they are required to have trust accounts in both states even though we don't have an office in Washington, and I just -- I guess this is more of a question for the Bar. With reciprocity happening, we have more and more attorneys that are licensed in multiple states, and it would seem like to me this trust account needs to be worked out among the Bars of the various states so we don't have to have the administrative expense of having multiple accounts, you know, for the occasional client that happens in the state of Washington.

So I'm not opposed to the resolution, but I just think it's creating more burden on the lawyers and law firms, that we need to try to reduce that burden.

MS. COOK: Thank you. Any further discussion?

Mr. Georgeff at the con mic.

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

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

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

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

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

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

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

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

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

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

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

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

MS. COOK: Thank you, Mr. Riemer.

Any further discussion?

I recognize Mr. Comstock, one minute to close.

MR. COMSTOCK: I would waive the one minute.

MS. COOK: All those in favor of adopting the

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

(Vote taken.)

MS. COOK: All those opposed.

(Vote taken.)

MS. COOK: Thank you. The resolution passes.

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

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

MS. COOK: Is there a second?

MR. CARTER: Second.

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

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

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

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

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

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

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

MR. PAULSON: Lauren Paulson, not a delegate.

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

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

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

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

MR. BROWNING: Madame President, point of order.

MS. COOK: Yes, Mr. Browning.

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

MS. COOK: Thank you, Mr. Browning.

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

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

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

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

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

MR. PAULSON: I have one more sentence.

MS. COOK: Let's proceed.

MR. PAULSON: I have one more sentence.

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

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

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

Any further discussion?

Mr. Gaydos has one minute to close.

MR. GAYDOS: I just recommend passage.

MS. COOK: Thank you.

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

(Vote taken.)

All those opposed.

(Vote taken.)

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

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

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

MR. COMSTOCK: Second.

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

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

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

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

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

(Laughter.)

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

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

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

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

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

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

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

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

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

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

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

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

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

MR. HUMMELL: Madame Chair.

MS. COOK: Yes.

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

MS. COOK: Thank you.

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

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

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

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

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

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

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

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

equal opportunity to see the materials.

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

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

MR. BROWNING: I'm sorry.

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

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

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

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

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

MS. COOK: Thank you, Mr. Browning.

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

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

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

Mr. Haberlach at the other microphone, please.

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

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

MS. COOK: Go ahead, Mr. Yugler.

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

MR. HABERLACH: Oh, come on, Rick.

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

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

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

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

MS. COOK: Thank you, Mr. Haberlach.

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

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

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

MS. COOK: Any further discussion?

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

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

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

(Vote taken.)

Ms. COOK: All those opposed.

(Vote taken.)

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

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

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

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

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

MR. HUMMELL: Second.

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

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

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

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

with the steam locomotive.

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

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

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

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

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

MR. LANG: Yes, that's correct.

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

Any discussion? At the con mic.

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

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

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

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

MS. COOK: Thank you, Mr. Hamlin.

Any additional discussion?

Mr. Lang, you have one minute to close.

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

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

(Vote taken.)

MS. COOK: All those opposed.

(Vote taken.)

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

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

(Vote taken and counted.)

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

(Vote taken and counted.)

MS. COOK: The resolution as amended fails.

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

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

(Laughter.)

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

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

MR. GEORGEFF: I second.

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

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

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

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

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

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

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

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

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

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

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

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

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

Yes, at the con mic.

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

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

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

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

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

MS. COOK: Thank you, Mr. Deguc.

Mr. Tongue, con mic.

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

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

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

MS. COOK: Thank you, Mr. Tongue.

At the other microphone.

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

MS. COOK: Thank you. Go ahead.

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

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

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

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

microphone.

MR. BACHOFNER: Elected delegate from out of state.

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

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

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

MS. COOK: Thank you, Mr. Bachofner.

At the pro mic.

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

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

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

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

MS. COOK: Thank you, Mr. Wilde.

I'll recognize the delegate at the other microphone.

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

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

forth. So there's the uniformity there.

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

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

(Laughter.)

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

MR. CHENEY: Jim Cheney, elected delegate from Eugene.

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

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

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

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

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

MS. COOK: Thank you.

Recognize the delegate at the other con microphone.

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

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

There is no cost savings and there certainly isn't

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

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

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

MS. COOK: Thanks, Ms. VanMeter.

Mr. Siegel at the other microphone.

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

MS. COOK: Thank you.

Mr. Newberger.

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

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

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

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

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

MS. COOK: Thank you. Any further discussion?

Mr. Lang, one minute to close, please.

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

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

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

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

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

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

(Vote taken.)

MS. COOK: All those opposed.

(Vote taken.)

MS. COOK: The resolution fails.

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

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

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

Is there a second?

MR. GERKING: Second.

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

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

MS. COOK: Thank you. Any further discussion?

Ms. Fabien.

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

Board.

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

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

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

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

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

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

MR. LEZAK: I know when to waive.

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

All those in favor of adopting agenda item 19 as

printed in your agenda, please raise your --

DELEGATES: 18.

MS. COOK: 18, excuse me.

(Vote taken.)

MS. COOK: All those opposed.

(Vote taken.)

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

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

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

MS. COOK: Please.

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

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

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

(Count taken.)

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

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

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

UNIDENTIFIED SPEAKER: We can't hear you.

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

MS. COOK: Absolutely.

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

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

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

UNIDENTIFIED SPEAKER: Second.

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

I recognize Mr. Georgeff for five minutes.

MR. GEORGEFF: Thank you, President Madame, members

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

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

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

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

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

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

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

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

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

In preparing for this topic, I gave a lot of

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

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

I have a little bit longer.

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

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

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

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

MS. COOK: Thank you, Mr. Georgeff.

Any discussion? Mr. Lopez at the con microphone.

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

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

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

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

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

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

MS. COOK: Thank you, Mr. Lopez.

Ms. Gruber at the con mic.

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

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

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

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

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

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

nothing more, nothing less.

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

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

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

MS. GRUBER: And Oregon Defense Attorneys Association.

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

MS. COOK: Thank you, Ms. Gruber.

MS. GRUBER: Of course not.

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

Mr. Wilde at the con mic.

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

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

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

MS. COOK: Thank you, Mr. Wilde.

Mr. Yugler at the other con microphone.

MR. YUGLER: Thank you, Madame Chair. Rick Yugler. I speak at the moment as just a member of this body and not a representative of the Board.

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

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

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

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

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

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

MS. COOK: Thank you, Mr. Yugler.

I'll recognize the delegate at the pro microphone.

MS. REYNOLDS: Dawn Reynolds from Polk County.

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

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

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

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

MS. COOK: Thank you, Ms. Reynolds.

Mr. Porras at the con mic.

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

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

We further the professional development and

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

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

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

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

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

MS. COOK: Thank you, Mr. Porras.

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

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

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

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

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

REPORTER: Excuse me. I can't hear.

UNIDENTIFIED SPEAKER: You have to speak a little louder.

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

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

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

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

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

(Laughter.)

This is just purely negative.

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

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

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

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

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

I'll recognize the delegate at the con microphone.

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

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

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

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

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

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

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

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

people, and they are very important things.

MS. COOK: Thank you.

Mr. Van Atta at the other microphone.

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

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

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

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

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

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

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

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

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

I'll recognize the delegate at this pro microphone.

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

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

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

MS. COOK: Thank you.

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

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

shy about going to the pro or con.

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

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

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

MS. COOK: Thank you, Mr. Siegel.

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

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

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

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

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

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

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

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

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

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

MS. COOK: Next minute and 45 seconds.

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

(Laughter.)

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

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

MS. COOK: Thank you, sir.

Ms. Meadows at the con mic. I recognize Ms. Meadows at the con mic.

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

Ms. Meadows.

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

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

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

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

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

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

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

MS. COOK: Thank you.

I'll recognize the delegate at the other microphone.

MR. DUVALL: Hugh Duvall out of Eugene. I would call the question.

MS. COOK: That needs a second.

MULTIPLE SPEAKERS: Second.

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

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

All those in favor of terminating debate, please

raise your placard.

(Vote taken.)

MS. COOK: Any opposed?

(Vote taken.)

MS. COOK: Debate is terminated.

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

MR. GEORGEFF: Thank you, Madame President.

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

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

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

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

MR. McLAUGHLIN: Point of order.

MS. COOK: Yes, sir.

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

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

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

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

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

MR. GEORGEFF: That is absolutely correct.

MS. COOK: Okay. Thank you.

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

(Vote taken.)

MS. COOK: All those opposed.

(Vote taken.)

MS. COOK: Resolution does not pass.

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

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

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

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

Is there a second?

MULTIPLE SPEAKERS: Second.

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

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

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

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

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

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

I really want to address my fellow liberals, and I know there are many here, people of goodwill who like the message of eliminating bias but perhaps can see the wisdom that this should be put to a vote of the membership. I want you to think about something. When this program was imposed, it seemed like a good idea on the -- to the people who wanted to do it. And the political tide in this country may change, and it is changing. I look into the future, I see the blues face continue to turn red and perhaps the next time around what it's going to be is somebody wanting you to take a course on biblical values, family values, creationism. You may laugh at that, you might even sneer, saying the Constitution will protect you. And does the Constitution do that?

Didn't we just have a president who adopted a national day of prayer, which seems to this agnostic to violate the Establishment Clause, without a murmur.

Don't we have an attorney general who believes that torture is okay?

We have right to speedy trial and have a U.S. citizen in the Navy brig for three years.

What about search and seizure after the Patriot Act?

And did you really believe Justice John Roberts when he said, "I don't remember joining the Federalist Society, and I have an open mind about Roe v. Wade," or words to that effect.

My point is your Constitution is only as good as the honest will of the people who support it, and when the shoe is on the other foot and somebody else wants to impose a political program on you that you object to, are you going to be able to say, "When it was my turn, my turn to help control the decision, I voted in a principled way, and the principled way was to let the membership decide." That's what my question is to those people. Thank you.

MS. COOK: Thank you, Mr. Georgeff. Any discussion?

Mr. Lopez at the con microphone.

MR. LOPEZ: Very briefly. I want to congratulate this delegation for its leadership on the last amendment that went down. I ask you to consider that you are leaders, and you have been put here for your leadership skill and for your leadership ability. We don't always do or have to do everything that we want to do. Sometimes we have to do things that don't seem palatable, but they are right.

I am firmly convinced that this elimination of bias

requirement is right. I ask you to continue your leadership and vote against it.

MS. COOK: Thank you, Mr. Lopez.

Mr. Haberlach at the pro microphone.

MR. HABERLACH: I'm Bill Haberlach from Region 3, elected delegate.

Contrary to what Mr. Lopez indicates, I don't think we're voting on this particular resolution as to whether or not we're going to eliminate the bias. We're just asking to put it to a vote of the membership.

This is a situation where a representative form of government, do you represent the will of your constituents or do you represent your own personal beliefs? And after years of thinking about this and the representative form of government, you have an obligation to consider both. And if your beliefs are not in tune with those of your constituents, you simply have to make a decision.

I have heard enough from the attorneys in Jackson County to realize that this is such a divisive matter, that it is destroying the entire credibility, not just of the Board of Governors, but that of the entire Bar.

To the attorneys in Southern Oregon, they feel that this is an unfriendly, demanding, pushy organization that is trying to interfere with their professional practice. They resent this terribly. And this is something we need to consider

as to -- are we going to take our Bar, which has always had the support of its members, and do something that may not have the support of its members?

This reminds me of Henry David Thoreau when Thoreau didn't want to pay taxes for a war that he didn't like. Thoreau eventually paid his taxes, but on the Civil Disobedience he writes that the authority of government must have the sanction and consent of the government.

If we do not have the agreement of the governed, then we're going to have anarchy, and anarchy is something we do not need in this organization. So I would ask that you put this to a vote of the entire membership.

MS. COOK: Thank you, Mr. Haberlach.

Mr. Lang.

MR. LANG: Thank you. I, too, am a liberal. I worked for civil rights in the mid-sixties actively before several of you were probably born. My heroes are Ghandi and Martin Luther King. On the other hand, I support diversity. But on the other hand, there's another minority; there's a minority that wants to have what the Oregon Constitution recognizes in Article III, section 1, Bill of Rights. That's freedom of conscience.

And if we start imposing requirements that you must study this and study that, then I think we're offending another very important minority, people like Thomas Payne, give me

liberty or give me death; people who feel very strong of conscience. I don't think anyone here should make the mistake and think that if we put this to a vote of the membership or the people that have spoken in favor of this are racist or bigoted or biased. I think it's actually much more the other way. I'm proud to be a lawyer. I'm proud of being a colleague of all of you. But on the other hand, we need to recognize those people who wish to make their own mind, to think for themselves, who don't need to be told how to believe in God, who the God is, or whether there's a God. We get into those areas, we see what happens among us here; it gets very divisive. Perhaps a vote of the membership will be enlightening and will promote the discussion further among our members.

I only will correct one thing that Mr. Georgeff said. We did conduct a poll. It was a very open poll, it was not suggested. Douglas County Bar was 80 percent for the elimination of bias, and we've had good discussion on it. So I think it's time we let the members decide to protect the very minority as a freedom of conscience, who may believe a little different than anybody else marching in the parade.

MS. COOK: Thank you, Mr. Lang.

Ms. Hoffman.

MS. HOFFMAN: I'm Janice Hoffman and I'm from Region 5, and I realized I have almost 29 years of experience with this Bar.

And just lightning quick, I remember in my first job interview in rural Georgia, I was asked how I feel about the last Bar meeting when naked ladies could jump out of the cake.

I came here to Portland, Oregon, and interviewed at a large law firm here and was told point blank, they had room for me in their trust and estates department, but no woman lawyer was going to be a litigator in their firm.

So memories are short and attitudes shape over time, and we've become a subtle group where we no longer are as overt as we were. But I know that it was worth an hour of time to the National Association of Criminal Defense Lawyers last month to have me address the issue of the cultural biases or the cultural perception of mens rea requirements in the law. And we went through how our varied laws, in their phraseology, such as the word "reasonable," such as the word "willful," turn on people's cultural experience and perception. And what it turns out is that all of us in our naivete assume that these have common meaning, but when you dissect them as legal matters, they turn on cultural questions, racial questions, gender questions, and our law is filled with them.

What I'm hearing, that the people are tired of being patronized to. That's fair. But that goes to content and that goes to people taking a more active role in the presentations in their community.

I'm an elected member of Region 5. I was put here

because people trust my judgment. I don't need to refer things back to the community of all lawyers for this vote. Why am I here?

So I would urge everyone to vote against this. This is part of our responsibility. If our community doesn't like how we vote, they don't vote for us next time, they get a whole new group of delegates. That's the system we have. So I urge everyone to vote against this and just get on with the next measure.

MS. COOK: Thank you, Ms. Hoffman.

Mr. Olsen.

MR. OLSEN: Arden Olsen, Region 2, elected representative.

I'm at the other microphone because I want to make a comment. Assuming that this were to pass, I have a concern about the mannerism of elections to the membership.

We've had experience in initiatives and referenda in Oregon where you can see what happens is that people wind up making decisions, and you're not sure once the thing was over whether the kinds of views that you wish had been embedded in the legislature, the kind of debate that we're having here, has really happened in a way that a matter gets attention.

And so if this were to pass and if the Board of Governors were to decide to do it, I would ask that consideration be given to some mechanism whereby something analogous to the

ballot statements that go out with initiatives, since the people can have a chance to talk about whether it's a good idea or a bad idea, given where we are today, would be helpful.

I personally am probably of the view that this body will have a better debate about these kinds of issues than you'll have with the general membership at large. I don't accept that this is a Republican issue or Democratic issue. I reject the kind of polarization that happens around some of these issues. I just hope that we make this decision in a way that the right kinds of considerations get managed. Thanks.

MS. COOK: Thank you.

Mr. Browning.

MR. BROWNING: Thank you very much.

Occasionally we do the right things, but we adopt them in the wrong way for the right reasons but with the wrong result.

I'm standing at the other microphone because as my good friend, Mr. Georgeff, has indicated, I really haven't decided which way to go. The concern I have is we are here as representatives. Even though I opposed it, we went to the House of Delegates model on the basis that we would have a better discussion, we would have a rounded-off discussion; we wouldn't have a situation as was characterized earlier by Mr. Yugler that an open vote but with only a 10 percent return was somehow or another insignificant, even though 60 percent of those who voted

voted in favor of a particular thing.

What are we going to do here if we have a vote and only 10 percent of the people vote, and it's two percentage more from the Portland area than from down in the valley, and then we're going to pretend that somehow or another that represents the will of the Bar. I think that would be just as insignificant and instatistical.

We need to make a decision today. I think it's going to go with the upstate folks versus the down state folks. I think that's very, very sad, because I don't think it's the kind of issue that does that. I think it's the kind of issue that should have been presented when the president goes around to each of the Bar societies as she goes around, and it's the kind of issue that should have been presented in the various CLEs as we went to the various CLEs. It's the kind of issue that should be taken into account, but that we shouldn't be taking the time, the very limited time as long as we only have 15 hours per year and taken from that 15 hours and made mandatory.

So I'm probably going to vote against sending it to the membership as a whole, but I'm also going to try to find some way to continue to work to not make it be a mandatory part of the MCLE but part of what's presented to each and every member, and that we continue as part of our aspiration to provide the best possible legal services to every citizen of our state. Thank you.

MS. COOK: Thank you, Mr. Browning.

Recognize the delegate at the pro mic. Thank you for your patience.

MR. SEULEAN: I'm Dave Seulean, a delegate from Region 3.

And I attended the diversity program yesterday and it was a great program. I go to all of them. I get a lot out of them. I can tell you anecdotal stories of bias that's been exercised against me where I was the victim, and I can in honesty tell you where I was the perpetrator, but I don't think that's really the point with this body.

The members that I talked to in Region 3, the concern is -- is we've gone to this. We are the attorneys. We've all been educated in law school about this. We talk about it in our circles. Whether you're Republican or Democrat or liberal or conservative, that doesn't matter. We talk about this, and we come from our heart when we do this. The concern that these folks have is -- is the cynical implication that we just don't get it, we're attorneys and we've got to be reeducated every three years because we'll slip back into our evil ways. I know of no other professional group that views its own members so cynically that we need to continually be reeducated on this, and that's the concern of the membership down in Region 3. It's that we do admit what we do, we do want to do it better, and it's the cynicism that counts, it's the way it's set up. So that's why

I'm going to vote for sending it to the membership.

I know we can say it's a republican thing, we've been sent here. But in the alternative, if we don't have a vote on that now, I do want the membership to vote. If it's that sensitive and it leaves the group this emotional on both sides about it, let's let the membership look at it. Do you think it's going be stopped here? No. It will be talked about in all the local Bar meetings and the topic won't go away. That's why I think the Bar still needs these programs, need them strongly, and we need a lot of them, but we don't need the mandatory aspect of them. Thank you.

MS. COOK: Thanks. I'll recognize the gentleman at the con microphone.

MR. McLAUGHLIN: Mr. McLaughlin again. We've just been through a series of resolutions. This is the first one that all of the sudden there's some anti-democrat policy we're engaged in? We didn't send -- didn't send any of the others back to the membership to vote on? I'm just damn proud of my vote and if my members don't like it, either they weren't communicating with me, or they voted for the wrong person, or they will vote me out next time. This is about leadership. Let's stand up and be leaders. Thank you.

MS. COOK: Thank you.

Ms. Gruber.

MS. GRUBER: Well, since we're talking about

leadership and why people sent us here, when I was elected two years ago I did what I was told was a rather unique thing. I sent out a campaign letter to all 2000 attorneys in my region, and not only did I tie for first place with a fairly well-known individual and I being a rather unknown; I tied for first place, but more significantly, we got twice the voter turnout that year than in previous years, not only in our region but throughout Oregon. I -- I got the figures from the Bar office back to 1999. I ran in 2003. Because people are interested in this. And I made it very clear to in my campaign letter that I did not think that this diversity CLE belonged in a legal education class. People sent me here to do something about it.

And it's hard for me to grasp this notion that -- that our -- the 13,000 members of the Bar are too lowly to be allowed to vote on such a significant issue? Significant issue.

The mandatory legal education program was established to keep us all abreast of changes in the law, to protect the public from some old coot who -- or cootesse, what's the woman's name -- went through law school way back when, and the law had moved on and he or she was still sitting there with those old skills. That was the reason for it.

And now it is political indoctrination. There's no other way to say it. Even the presenters of almost every program I've been to -- I've been to seven, with various sponsors. I'll give you a list if you want, be happy to give you a list. Almost

every one I went to, the presenter made it very clear they were -- they made derogatory comments about conservatives. They made complimentary comments about liberals. They, too, saw their presentation as a political presentation. Why else the comments? Snide little remarks here and there on whatever subject of the day was going on in -- you know, in our nation, in our capitol. So it isn't conservatives or common sense attorneys who see this as political propaganda. The actual presenters themselves know they are peddling left wing political propaganda.

MS. COOK: Thank you, Ms. Gruber. Appreciate it.

I'll recognize the delegate at the con mic. Is somebody at the other mic? I can't tell.

I'm sorry, love to recognize the delegate at the other mic, please. Mr. Orr.

MR. ORR: Good afternoon everyone. My name is Melvin Oden-Orr and I'm from Portland, Multnomah County, and I'm at the other mic because I want to talk about something that this is apparently a part of, that I want to make sure everybody understood sort of the big picture.

The diversity requirement is a part of a plan to make the Bar a better Bar. Another part of that is the affirmative action program that is scheduled to sunset next year. I'm at the other microphone because that is the issue that I want everyone to focus on, that this issue, each and every resolution geared towards the elimination of bias, directed towards the

affirmative action program, all those things are all chipping away at undoing what is an effort to make the Bar a better Bar, to make us better lawyers, to make us prepared to practice in a time in this nation where eventually will be a majority. It's going to be a lot of people with a lot of perspectives from a lot of background, and it's going to be important for us to be able to deal in that environment.

I rise to say we need to stop the chipping away at the effort to be a better Bar. That's all.

MS. COOK: Thank you. I'll recognize the delegate at the con microphone. Thank you for waiting.

MS. REEVES: Madame President, my name is Liani Reeves and I'm a delegate from the Portland area. I'm standing before you today not necessarily with my delegate hat on, but certainly as an attorney of color practicing in this state of Oregon.

I wasn't going to say anything, but I wanted to get up and make a few remarks based on things that have been said already.

First of all, I can appreciate Ms. Hoffman's comments about being told she -- you know, no woman was going to be a litigator. I haven't been in the Bar 29 years. I've been in the Bar a lot fewer years than that, but I was told similar things because I was an Asian woman. So those issues have not exactly gone away.

The other thing I wanted to say is that it's been brought up that this is a divisive, isolating issue and I agree. This is undoubtedly a divisive, isolating issue. When people sit around and talk about how isolated they feel at these CLEs, that's how I feel most of the time.

What we're asking for with this CLE requirement -- I don't think elimination of bias is a particularly good name for it because I don't think bias will ever be eliminated. What we're asking is for three hours out of three years of your life, you sit down and you think about some of these issues. I wish that for three hours of three years I didn't have to think about these issues, but I live with them every day.

As far as somebody -- I think somebody in this group mentioned the survey that went out, when you're looking at whether or not there was a bias issue in our Bar. Yes, a survey went out to minority attorneys, it went out to organizations that represent minority and low-income clients. I certainly hope that when we're looking at whether or not our justice system is fair, that we are not surveying a bunch of white men. I don't think we all should be surveying, you know, people that wouldn't be able to adequately speak to those issues and say whether or not the justice system of ours is just.

Again, I'm an elected leader like all of you, and I think I can represent on behalf of my district, and if I can't, then they can vote me out. But I do want to remind people that

our Bar is not representative of our population. Our Bar has about four percent of attorneys of color and our population is a small percent, so when we're looking at whether or not that representative body can take a look at whether or not we are fair to all of the people in this state, you would take those numbers into consideration as well.

MS. COOK: Thank you.

I'll recognize this delegate at the pro mic.

MS. HOHENGARTEN: Hi. I'm Alison Hohengarten and I'm the president of the Deschutes County Bar Association, and I'm here at the pro microphone not to speak on whether or not I believe we should eliminate the elimination of bias credit or not. I do firmly believe that this is a hotly contested enough issue that it should go back to the members of the Bar. I respect the fact that we're elected officials here to make a vote on behalf of those members, but at least it's obvious to me this is a heated enough item that it should go back.

When I met with the members of my local bar association or at least the ones interested enough to show up, this was the one that we had the most disagreement about, and for that reason I'm here.

I would vote that we should put it back to the members, I think it's just important enough that we do that.

MS. COOK: Thank you.

I'll recognize the delegate at the con microphone.

MS. UBERLHAU: Thank you. My name is Judy Uberlhau and I'm from District 3. I have a couple quick comments. First of all, the elimination of bias, somebody needs to rethink what we call this course. Somebody also needs to rethink what content is accepted. But given that, it's very important to think this is not about political correctness, it is not about liberal versus conservative. It's about our common humanity. And it's just as important for attorneys as for anybody else to understand each other, to honor each other, to respect each other, and that's part of a good practicing lawyer.

We are a representative body. You know what happens in representative bodies? If they don't do what their constituents want, they throw them out. What are we doing? We're not -- we've refused to live with what this body said, and so now we're going to send it out to the body. And what is -- what if, as someone pointed out, only 20 percent of the Bar responds, and out of that 20 percent, let's say 75 votes to get rid of this, is that representative? It certainly is not. And so that's why I am voting against this.

MS. COOK: Thank you.

I'll recognize the delegate at the other microphone, please.

MS. LOWE: Valerie Lowe, delegate from Eugene. I would like to call the question.

MS. COOK: Thank you. The question has been

called. Is there a second?

UNIDENTIFIED SPEAKER: Point of order.

MS. COOK: Yes.

UNIDENTIFIED SPEAKER: That would take a motion for the previous question for that to be mandatory.

MS. COOK: We have a motion to call the question on the underlying motion we've been debating.

UNIDENTIFIED SPEAKER: I know. But that's not the previous question.

MS. COOK: I took that as a motion for the previous question. Is that how you intended it, to cut off debate?

MS. LOWE: Yes.

MS. COOK: That is not debatable. It requires a two-thirds vote. If you vote in favor of that, the debate will be cut off and we'll move to a vote on the amended resolution.

All those in favor of terminating debate, please raise your placards.

(Vote taken.)

MS. COOK: All those opposed.

(Vote taken.)

MS. COOK: Mr. Georgeff, I'll recognize you for one minute to close, please, sir.

MR. GEORGEFF: Thank you, Madame President.

The rules provide for a vote of the membership. If that's ever going to mean anything, this is the time. The

evidence is from Region 3, 30 percent response rate, 84 percent don't want the program, 100 percent of Curry County Bar doesn't, 80 percent of Douglas County. I thank Mr. Lang for his correction.

As Ms. Coburn said, as Mr. Haberlach said, this has been a divisive issue. And one of you suggested or several of you suggested, well, the members can vote me out if they don't like my leadership, and none of those people said that they did anything, not a single thing to ask their region membership whether they wanted this program, which has been so divisive, to continue.

The vote would be at the time of the next House of Delegates election. If it's reliable enough to elect delegates, it should be reliable enough for the membership. I ask you to support this resolution. Thank you.

MS. COOK: Okay. Mr. Georgeff, I understand that your resolution as amended is a recommendation, not a directive.

MR. GEORGEFF: Absolutely correct.

MS. COOK: Thank you.

All those in favor of agenda item No. 20 as amended, please raise your placards.

(Vote taken.)

MS. COOK: All those opposed.

(Vote taken.)

MS. COOK: The resolution fails.

This concludes the 2005 House of Delegates meeting. I thank you all. Safe travels. Thank you.

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