

THE STATE BAR OF CALIFORNIA
GOVERNANCE IN THE PUBLIC INTEREST
TASK FORCE NOTICE AND AGENDA

PUBLIC HEARING: *
*
WILLIAM HEBERT *
CHAIR, *
THE STATE BAR OF CALIFORNIA, *
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STATE BAR OF CALIFORNIA
1149 South Hill Street
Board Room
Los Angeles, California

Thursday,
January 20, 2011

The above-entitled matter came on for hearing,
Pursuant to Notice, at 9:35 a.m.

BEFORE: WILLIAM HEBERT
PRESIDENT

1 APPEARANCES:

2

ON BEHALF OF THE STATE BAR OF CALIFORNIA:

3

MEMBERS OF THE STATE BAR BOARD OF GOVERNORS
WHO ARE ALSO MEMBERS OF THE TASK FORCE:

4

5

LOWELL CARRUTH, ESQ.
(Appearing Telephonically)

6

WELLS LYMAN, ESQ.

7

JON STREETER, ESQ.

8

ANGELA DAVIS, ESQ.

9

JEANNINE ENGLISH (Public Member)

10

LUIS RODRIGUEZ, ESQ.

11

LOREN KIEVE, ESQ.

12

DENNIS MANGERS (Public Member)

13

GWEN MOORE (Public Member)

14

MICHAEL TENENBAUM, ESQ.

15

PAT KELLY, ESQ.

16

EX OFFICIO MEMBERS:

17

JOE DUNN, Executive Director Of The State
Bar

19

BETH JAY, Principal Attorney To The Chief
Justice Of The State Bar

20

JUDY JOHNSON, Immediate Past Executive
Director Of The State Bar

21

22

GAYLE MURPHY, Senior Executive Of Admissions

23

Honorable JoAnn Remke, Presiding Judge Of
The State Bar Court

24

25

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1 APPEARANCES CONTINUED:

2

FROM THE OFFICE OF THE GENERAL COUNSEL OF
3 THE STATE BAR:

4

STARR BABCOCK, General Counsel

5

TRACEY MCCORMICK, Assistant General Counsel

6

CATHY TORNEY, Director Of Administration

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AMY ANDERSON, Administrative Assistant To
8 Starr Babcock & Cathy Torney

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| Professor Richard Abel Connell Professor of Law Emeritus UCLA Law School | 89 |
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EXHIBIT:

1 - Short Written Statement By Francis Tepedino,
3 pages

P R O C E E D I N G S

(9:35 a.m.)

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3 MR. HEBERT: All right. Good morning, ladies
4 and gentlemen. I'd like to call to order this meeting
5 of the Governance in the Public Interest Task Force in
6 the State Bar of California.

7 My name is Bill Hebert, and as president of
8 the State Bar of California, I'd like to welcome all of
9 you today to this first of two public hearings.

10 This one is in Los Angeles, and there will be
11 a second public hearing next Thursday in San Francisco.

12 As you are aware, Assembly Bill 2764 added new
13 Section 6002.1 (b) to the Business and Professions
14 Code, which created the Governance Task Force.

15 AB 2764 required me to appoint a Task Force of
16 11 members and to preside over the Task Force and for
17 the Task Force to submit a report to the supreme court,
18 the governor and the assembly and senate judiciary --
19 committees on judiciary that includes it's
20 recommendations for enhancing the protection of the
21 public and insuring that protection of the public is
22 the highest priority in the licensing regulation and
23 discipline of attorneys.

24 The law requires the Task Force to submit its
25 report on or before May 15, 2011 and every three years

1 thereafter.

2 Also present with me today are the following
3 members of the State Board of Governors, who are also
4 members of the Governance Task Force. I believe we
5 have Lowell Carruth by phone.

6 MR. CARRUTH: Yes, I'm here.

7 MR. HEBERT: Okay. Lowell Carruth, a second
8 year member from Fresno, a lawyer member from Fresno.

9 Angela Davis, a second year lawyer member from
10 Los Angeles.

11 MS. DAVIS: Third year.

12 MR. HEBERT: Third year, excuse me.

13 Jeannine English, a third year public member
14 appointed by the governor.

15 Loren Kieve, a first year lawyer member from
16 San Francisco.

17 Wells Lyman, a second year lawyer member from
18 San Diego.

19 Dennis Mangers, a first year public member
20 appointed by the president pro tem of the senate.

21 Luis Rodriguez, a first year lawyer member
22 from Los Angeles.

23 Jon Streeter, a third year lawyer member from
24 San Francisco.

25 And in addition, to assist with the duties of

1 the Governance Task Force, I appointed the following ex
2 officio members, who are also with us here today.

3 Joe Dunn, executive director of the State Bar.

4 Beth Jay, principal attorney to the chief
5 justice of the State of California.

6 Judy Johnson, immediate past executive
7 director of the State Bar.

8 Gayle Murphy, senior executive of admissions.

9 And the Honorable JoAnn Remke, presiding judge
10 of the State Bar Court.

11 This committee is supported by The Office of
12 The General Counsel of The State Bar including the
13 following people who are with us here today: Starr
14 Babcock, general counsel.

15 Tracey McCormick, assistant general counsel.

16 Cathy Torney, who's in the audience, who is
17 the director of administration of the office of the
18 general counsel.

19 And Amy Anderson to my right, who is the
20 administrative assistant to Starr Babcock and Cathy
21 Torney.

22 The staff has caused notice of this hearing to
23 be given by circulating information to the media,
24 posting notice on the State Bar's Web site, giving
25 notice through the State Bar's regular e-news to its

1 members, distributing notice to all local specialty and
2 minority bars in California, distributing notice to all
3 subscribers to the State Bar list server of the
4 Governance Task Force, soliciting input, generally,
5 from other consumer advocates and public interest
6 groups, and sending notice and request for information
7 to 20,000 members of the State Bar chosen at random.

8 The notice specified the time, place, and
9 purpose of the hearing.

10 We will attach to the record of the hearing
11 today a list of the recipients of the notice other than
12 the 20,000 survey members selected at random.

13 We have a court reporter present today to
14 transcribe all of the oral testimony presented. This
15 testimony together with any written comments that are
16 received will be made available to the full Governance
17 Task Force, to all members of the board of governors,
18 and will be made part of the record available to the
19 supreme court, the governor, and the legislature in
20 connection with submission of the Task Force Report in
21 May 2011.

22 If you have, as a speaker, any supporting
23 documentation you are going to refer to which has not
24 previously been submitted for photocopying prior to the
25 hearing, please provide the material to Cathy Torney or

1 Amy Anderson or the court reporter so that photocopies
2 can be made and included in the public record of the
3 hearing.

4 Now, some of you may be here today to discuss
5 your experience with a specific attorney. While it's
6 not the purpose of this hearing to register complaints,
7 we understand that you've taken time from your busy
8 schedules to be here.

9 Therefore, we respectfully request that, if
10 you discuss your experiences with a specific attorney
11 and you have already filed a complaint with the State
12 Bar, please refrain from using the attorney's name.

13 Until a complaint is filed with the State Bar
14 Court, the complaint is a confidential matter.

15 Because the transcripts of these hearings will
16 be made public, we'd appreciate your cooperation by not
17 mentioning attorneys by name, but please do feel free
18 to discuss your experiences.

19 Now, if you're here and you haven't previously
20 registered to speak, please see Amy, who's sitting here
21 to my right or Cathy, in the audience, or one of the
22 staff members in the room from the State Bar, and we'll
23 set aside time for you to speak, either before lunch
24 today, if there's time, or at the end of the day.

25 For those of you speaking today, we ask you

1 that you complete your testimony within 30 minutes or
2 less because we want to allow time for questions by
3 members of the Governance Task Force, and you'll be
4 notified when there's five minutes left, and one minute
5 left, and when your time is up.

6 I'll be calling out names in the order in
7 which you're scheduled to speak. To be sure that the
8 court reporter is able to hear clearly, please come to
9 the podium there at the room, and sit at the desk.
10 We've got a microphone there.

11 Please state your name and identify yourself
12 for the record, and the speaker list will become part
13 of the record, and the court reporter will make sure to
14 verify the spelling of your name by reference to the
15 speaker list.

16 Now, because this is a public hearing, it is
17 also scheduled as a regular meeting for the Governance
18 Task Force. We've got some administrative matters we
19 need to address before we call our first speaker.

20 Michael Tenenbaum has joined us here today so
21 Michael is a third year member of the State Bar Board
22 of Governors, a member of the Task Force, and he's from
23 Ventura.

24 So instead of taking the roll, since I've
25 already gone around and introduced everybody, if

1 there's no objection, I'd like to substitute those
2 prior introductions for the roll call toady.

3 I have no chair's report today. We have in
4 the agenda the Task Force report of December 3rd, 2010.
5 If there's no objection, that report will be received.

6 There are no action items on the agenda today
7 for the meeting. There's no consent items, and without
8 any further delay, we'll turn to our first speaker.

9 The first speaker is Professor Robert
10 Fellmeth, who is the Director For the Center of Public
11 Interest Law at the University of San Diego School of
12 Law.

13 Professor Fellmeth.

14 MR. KIEVE: I would just add that I think our
15 speakers can assume, that if they submitted
16 submissions, we've read them?

17 MR. HEBERT: I think that's accurate, but I
18 want to make sure that the speakers don't feel
19 constrained from making sure that they say what they
20 want to say.

21 At the same time, I think Loren is exactly
22 right, that you should assume that we've read your
23 submissions, and we'd like to certainly leave time for
24 some questions and some, hopefully, lively discussions.

25 Okay, Professor Fellmeth.

1 T E S T I M O N Y

2 PROFESSOR FELLMETH: Mr. Chairman, members of the Task
3 Force, can you hear me? Okay. We have submitted our
4 written testimony January 10, 2011. It's in your
5 materials, and I'm, certainly, not going to read my
6 testimony. That's not my purpose here.

7 MR. HEBERT: And can I -- can I -- just one
8 injunction for all the speakers. The court reporter
9 wants to get a clear and accurate record, and if you
10 can -- it's not natural for most of us, but if you can,
11 slow down to make sure that he can get everything that
12 you say. That would be helpful, and I'm sure that
13 he'll remind the speakers as well; okay. Thank you.

14 PROFESSOR FELLMETH: Thank you, Mr. Chairman.
15 Court reporters use my picture as a dart board, I'm
16 afraid.

17 The testimony of January 10 also includes our
18 letter of November 29th within it, by reference, so
19 those two documents are going to be relevant to what I
20 have to say today.

21 I'm Robert C. Fellmeth. I hold the Price
22 Chair in Public Interest Law at The University of
23 San Diego School of Law.

24 My background, very briefly, is -- after law
25 school, working on consumer matters for the Ralph Nader

1 Organization investigating the failed Trade Commission,
2 Interstate Commerce Commission, the Congress, drafting
3 reports, books, new statutes in those areas.

4 I came to California and became a
5 white-collar-crime prosecutor specializing in antitrust
6 and white-collar crime, lots of interaction with the
7 regulatory agencies, some interaction with lawyer and
8 lawyer regulation during those periods. I served nine
9 years as a prosecutor.

10 During -- after I was -- left the DA's office
11 and became a Professor of Law at USD Law School and
12 then the Price Professor of Public Interest Law during
13 that period, the legislature enacted a statute to
14 create the position of State Bar Discipline Monitor.

15 That was originally for three years. It was
16 extended to five years. It was a position designed to
17 investigate the largest part of the Bar's operation,
18 which, of course, is its discipline system. And I was
19 privileged to do that and issue some eleven reports and
20 helped draft some statutes in that area.

21 I want to say, as an aside, that a lot of what
22 we did during those years, '87 to '92, I really wasn't
23 leading anything. I was following your predecessors.

24 The reforms that were enacted to create the
25 current State Bar Court -- and Judy Johnson will

1 testify to this -- were very much supported by and led
2 by a series of State Bar presidents: Terry Anderlini,
3 Allen Rothenberg, Colin Wied, members of the Board of
4 Governors that preceded those of you on the Board of
5 Governors in your office -- people like Kevin Culhane
6 and Pat Phillips.

7 They not only listened to me, but they taught
8 me. And they did something that is fairly
9 extraordinary for public officials, something that
10 we're asking you to do again, and that is, they gave up
11 some territory.

12 They said the predictable, "more for me. More
13 for me. More authority for me. However, I was elected
14 or selected, that's how it should be."

15 They said no, and they did kind of what
16 Mikhail Gorbachev did in the highest traditions of
17 human generosity: They gave up territory. And the
18 result has been a State Bar Court, which is, I think, a
19 model for the country.

20 It is independent of the State Bar, and prior
21 to its creation, the supreme court reviewed every
22 single disciplinary matter.

23 After its creation, they decided they can get
24 finality to the decision of the State Bar Court subject
25 to only discretionary review, and that was a nice

1 affirmation of what we had done.

2 And surveys, after the creation of the State
3 Bar Court, indicated strong support for it as a
4 different system by both respondent's counsel and by
5 the prosecutors in the State Bar system.

6 So I'm very proud of that work, and I'm very
7 proud of the prior Boards of Governors who made it
8 possible and who led it.

9 I also helped direct the Center of Public
10 Interest Law, and my wife Julliane D'Angelo Fellmeth,
11 who is the major director of the center.

12 And CPIL monitors regulatory agencies, and we
13 started doing that 30 years ago with the State Bar
14 included -- going to all the meetings, examining them.

15 And we're in a position to kind of compare how
16 the State Bar operates vis-a-vis all the other boards
17 and commissions that regulate the doctors and
18 pharmacists and accountants and all the other trades
19 and professions because we've been looking at them.

20 Doing the California regulatory law reporter,
21 examining them, testing our students on them and so
22 forth, and engaging in the sunset-review process of
23 many of them.

24 Why are they there? What are their purposes?
25 How can they be better structured? How is compliance

1 with transparency statutes going in terms of
2 Bagley-Keene, open meetings and public records act
3 compliance -- all those kinds of issues. We've been in
4 the middle of that for 30 years.

5 I also have been, for the last 20 years,
6 chairing the Board of Public Citizen Foundation, which
7 is the organization in DC which is very much involved
8 in legal reform issues with its supreme court unit and
9 its Congress watch and civil help research group and
10 other sub-entities.

11 So we have a longstanding interest in the
12 issues before you and before the Task Force.

13 My first point I want to make is the need for
14 separation between trade associations and the state
15 agencies.

16 It's not just apples and oranges. Apples and
17 oranges you can make a fruit salad. This is tomato
18 soup and oranges.

19 What are those orange slices doing in my
20 tomato soup? They don't work. Not a good dish.

21 It's one thing to have professionals who are
22 members of a profession and on a board or commission.
23 We tend to favor public member dominated or controlled
24 boards, and we've advocated for that for many years,
25 but we do see some value in having people who have some

1 experience in a profession, serving on that board.

2 But the appointing authority is always, in
3 every case, for every other agency except this one, a
4 public official, someone who's either elected by the
5 body politic or appointed by a public official.

6 This is the, really, only exception, and
7 there's a reason why it's not the rule, a very good
8 reason.

9 Because state agencies perform functions that
10 involve necessary inevitable police power kinds of
11 activities.

12 They make decisions about who can practice.
13 Prior restraint system that is very momentous in its
14 intervention. They decide who can be drummed out of a
15 profession or trade, who's going to be prosecuted, what
16 the criteria for prosecution is going to be.

17 They decide and they assess money from people,
18 compulsory money from people to perform their
19 functions.

20 Now I want to -- I want to go through some of
21 the arguments that are commonly made to defend the
22 Bar's very unique different system and respond to them
23 in terms of why I do not think they apply to properly
24 distinguish the Bar in terms of its governing
25 mechanism.

1 The first is, well, we are part of the
2 judiciary. There's some truth to that. Obviously,
3 we're admitted to the courts, but I think we also all
4 realize that most attorneys don't go into court
5 everyday.

6 Many attorneys never go into court at all.
7 They deal with consumers in the same way accountants do
8 and doctors do and other professionals do.

9 They see them in their offices. They advise
10 them. They advise businesses, and they have the same
11 kind of consumer professional relationship that is
12 fairly common to other trades and professions.

13 They also have that element of court contact
14 and court relationship, and we recognize that.

15 In fact, that's the reason why our
16 recommendation is that the majority of members of the
17 State Bar Board of Governors be appointed by the
18 supreme court, as our recommendation was for the State
19 Bar Court, that the supreme court make those
20 appointments.

21 Because we do recognize that there is -- there
22 are some differences between other trades and
23 professions. That there is a judicial connection with
24 the Bar that is special even though it's not strictly a
25 judicial creature.

1 The second argument is, well, the supreme
2 court supervises. Really, public officials make the
3 final decisions. We're simply -- I think that argument
4 understates your own importance.

5 And by the way, it's wonderful to be an
6 attorney, as we, all of us here who are attorneys, to
7 be able to argue to a tribunal, "No, you're too
8 important."

9 You get the counter, "No, I'm not important."
10 You like to be in that position. In any event, you are
11 important. I mean it. You are important. You decide
12 all sorts of things that are not reviewed by the
13 supreme court.

14 For one thing, you're the proponent of most of
15 the rules they're going to review. You're the ones who
16 really are deciding, as a practical matter, what rules
17 you're gonna propose.

18 You're the ones who decide how you're gonna
19 prosecute, and who you're gonna prosecute, and what
20 your criteria is gonna be for prosecution.

21 The supreme court doesn't tell you to do that.
22 You also should keep in mind that all the other boards
23 and commissions also have public official review,
24 probably more direct and involved than yours is.

25 All of the agencies that regulate professions

1 and trades tend to be within the Department of Consumer
2 Affairs. DCA, that's a public official appointment.

3 They review the rules. The rules go then to
4 an officer, administer of law, appointed directly by
5 the governor, public official, who reviews rules under
6 six criteria.

7 The hearings are held within the office of
8 administrative hearings for most agencies. Again,
9 public officials appointing those people. No one
10 connected to any profession or trade at all.

11 The prosecution, unlike the Bar, not appointed
12 by the board or commission but really the attorney
13 general. Again, a public official performing those
14 prosecutions.

15 So you have all of this public official review
16 of what other agencies do probably more direct and
17 involved than the review of what you do.

18 And as I said, what you do is important. You
19 decide what's on the table. You decide what's to be
20 discussed, and I think it's important that you have --
21 you recognize that public agency responsibility you
22 have, that role you have.

23 And as a public agency exercising public
24 police powers, you best come from, derive from the body
25 politic, not any interest group with any kind of vested

1 stake in the decisions being made.

2 And I say that understanding fully that every
3 member of the Bar Board of Governors is there because
4 they want to do what's right. They're not there --
5 "how do I make more money? How do I help myself?"

6 I don't think for a second that's going
7 through the minds of any member of the Bar Board of
8 Governors, not your predecessors, and not you.

9 You're there because you want -- from your own
10 point of view -- to protect the public interest and
11 advance the public interest.

12 You're there because you want to do what's
13 right. I understand that, but you have to understand
14 that we are all prisoners of our own empathy lines of
15 our own tribal rules and so forth.

16 And you are very much affected by where you
17 came from, who you are, who you see, who you identify
18 with. And people outside your domain view you that way
19 as well, probably, more so than you do.

20 What about expertise? -- the third argument.
21 We have to be very careful about expertise because
22 expertise is most useful if it's on point. We all know
23 that.

24 We know that we love expert witnesses if
25 they're our expert witnesses. We don't like the expert

1 witnesses the other side hires. We know better than
2 anybody, as attorneys -- those of us who are attorneys,
3 know the importance of a generalist making a decision
4 because we exceed and accept that everywhere.

5 Those juries are generalist. Even the judges
6 are really generalist as to the subject matter of our
7 cases. We each get expert witnesses on point. We try
8 to combine these two variables -- that I try to teach
9 my students -- are the ideal mix. Independence and
10 expertise, can you combine the two?

11 So you're making a decision from a broad point
12 of view, future interest point of view, and at the same
13 time know enough about the subject, know about
14 unintended consequences.

15 That's the secret. Can you do that? How do
16 you do that?

17 Well, I think there is something to be said
18 for knowing a little bit about law practice, for
19 knowing a little bit about the courts, and for having
20 that point of view and that information as part of the
21 Board of Governors.

22 I think that's true with the medicine
23 regulation as well with pharmacy and so forth.

24 And having some people who are in the
25 profession or trade on a board or commission is

1 probably a positive. Having them appoint the members
2 of a board or commission is a different matter
3 altogether, and there's a reason why we don't do that.

4 It's one thing to say I'm a lawyer, and I know
5 something about the law. And I'm a lawyer selected by
6 this group or this group of people -- this particular
7 category person, who selected me to whom I owe some
8 duty of loyalty.

9 They selected me. They appointed me. I'm
10 there because of their discretion and their offices.

11 The fourth argument is, well, it's democracy.
12 Well, it's democracy in a sense that you have a cartel
13 election of which, maybe, 15 or 20 percent of our
14 members of the Bar participate.

15 And if you want to survey what our members
16 think, the people who are -- we're counting on for
17 elective democratic legitimacy and you look at the '92
18 survey, it's very interesting that 89 percent
19 disapproved of the Bar's structure. And 57 percent
20 thought that the Bar should be run as other state
21 agencies are run, i.e. as we're gonna be proposing in
22 our testimony.

23 Now, there was another survey in '96 -- and we
24 mentioned that in our testimony -- that came out
25 differently because, as we all know, surveys vary

1 widely depending on how you ask the question. We think
2 the question was asked less helpfully in '96. But in
3 any event, however the poll comes out, there is clearly
4 a substantial percentage of members of the State Bar
5 who are not totally enamored with the idea of their own
6 selection of their governors, to their credit, I think.

7 The problems -- what are the problems? What
8 are we addressing here? Why are we worried about this?
9 Isn't -- aren't we in utopia? Aren't we always making
10 the right decisions?

11 I think a lot of what the Bar Board of
12 Governors does is right and it's good. A lot of what
13 you do is laudable. It's not so much what you do, it's
14 what you don't do.

15 I have to say I'm very embarrassed that the
16 Bar took such a long time to reinstate to me a rather
17 obvious rule, that an attorney who does not have
18 malpractice coverage has to disclose it to a client to
19 who they owe a fiduciary duty, to quote an 1880 case of
20 the highest order, Cox v. Delmas.

21 That's embarrassing. That's just
22 embarrassing. Why aren't you considering mandatory
23 malpractice insurance as Oregon requires for all
24 attorneys?

25 If your purpose is to prevent irreparable harm

1 through incompetence, why are you not protecting
2 consumers, who are the victims of your failure to do
3 so?

4 Why is the client security fund so limited in
5 its amount, and its coverage, and its scope? Not on
6 the table.

7 Attorney billing and dishonesty -- is that on
8 the table? Are you discussing that? If the purpose of
9 the Bar is to assure competence, are we really doing it
10 with a single examination at age 25 with, probably, no
11 questions being asked in the area of specialty?

12 That -- you're going to be practicing for the
13 next 50 years where the law changes rapidly without any
14 updating, without any securement of assurance of
15 competence in the area where you were actually relied
16 upon by people.

17 Is that on the table? Are we looking at that?
18 Well, you could say, "Well, we have specialization with
19 certification, we're kind of looking at that. We have
20 continuing education."

21 Maybe a little bit, but not really on the
22 table. As I think -- a more publically minded,
23 publically directed board might put it on the table.

24 There are a lot of issues. I mean, I have --
25 I can give you a long list of issues, based on our

1 review of the board, over the last 30 years, of things
2 you do not discuss because they're kind of -- part of
3 the tribal rules. We don't want to discuss, and we
4 just don't think we should discuss. We don't think we
5 need to discuss.

6 And maybe our answers to those questions and
7 of those issues that are put on the table would be
8 different than yours. But what we decide to talk
9 about, what we put on the table, what's our agenda,
10 that's the important decisions we all make.

11 And those have got to be properly made from a
12 broad perspective by a broad representing the broad
13 body politic, when you're making these kind of
14 police-power decisions.

15 Now, there are some other issues in terms of
16 public protection, and there are some questions you
17 asked in your questionnaire. And I want to -- I want
18 to answer them as explicitly and directly and in as
19 much detail as I can, and I'll just do that very
20 quickly.

21 How many members would be on the Board of
22 Governors? We would advocate 17 members. You're
23 higher than that now, but the medical board has 15.
24 Accountancy has 15. Most boards are between 9 and 15,
25 in that range.

1 We think 17 is fine. We think 9 should be
2 attorneys. That would be a majority of attorneys. We
3 think they all should be appointed by the supreme
4 court.

5 I want to add, by the way, that when we
6 advocated for a State Bar Court, we wanted all those
7 appointments made by the supreme court.

8 And the Burton Bill that moved some of those
9 appointments to the legislature and changed the review
10 department to removing the one non-attorney member, we
11 didn't agree with.

12 We didn't agree with it then. We don't agree
13 with it now, and if anyone wants to mount a campaign to
14 rescind the Burton Bill, you have our support. We'll
15 even sponsor it.

16 We think the terms should be four years. It's
17 really not -- and there ought to be a two-term maximum,
18 not a single three-year.

19 It's really not enough of institutional
20 memory, and those of us who follow the legislature know
21 the problems of lack of institutional memory that have
22 been -- that have accompanied the overly restrictive
23 term limitation initiative at the state legislative
24 level. I suspect Joe will agree with me on that.

25 In any event, we have issues of institutional

1 memory that are important. We need to have a president
2 of the State Bar that is not just there for one year.
3 We need to have, I think, two-year terms at least,
4 maybe, even allow two terms.

5 Maybe, even have some kind of succession kind
6 of tradition like many boards have so there is some
7 institutional memory that goes for more than one, two
8 or three years.

9 Having four, six, eight years -- people that
10 have been on six, seven, eight years has a very, very
11 strong advantage. You don't make the same mistake
12 twice. You learn from what you've done. You know why
13 you did things before, and there are just incredible
14 value to it.

15 I think that public protection should be in
16 the mandate -- in the State Bar mandate as the prime
17 directive of the State Bar. I don't even think you
18 ought to be called Board of Governors by that.

19 I think you ought to be called Board of
20 Trustees. I think we ought to be called something that
21 evokes, not "we're in charge," but we have an
22 obligation to -- to, as a police power, public agency
23 to protect the public on behalf of the broad public
24 interest.

25 And that may mean inconvenience for our own

1 profession. I also think that the public mandate
2 should be somewhat different for lawyers and for
3 other -- maybe to other groups.

4 Because to me, it goes a little bit beyond
5 public protection for us because we have issues of
6 access and justice. And even there, I say, efforts to
7 resolve and prevent disputes because I would
8 respectfully argue that the highest calling of any
9 profession is to try to eliminate the need for our
10 services.

11 For doctors, that is, having a healthy
12 population so you're not needed. For lawyers, it's
13 having fewer disputes so you're not needed.

14 And I think access in dispute resolution and
15 prevention and -- are very strong missions for any
16 State Bar. And I think that public protection should
17 be there as an important mandate in the statute in
18 front of us as it now is with the medical board
19 statute.

20 I think transparency is, also, very important,
21 and as some of you may know, we were promised by your
22 predecessors 20 years ago that the State Bar would
23 adopt rules equivalent to the Bagley-Keene Act because
24 we had a Elihu Harris Bill that he was authoring to
25 subject the State Bar to much of the Bagley-Keene Act.

1 And we dropped it based on those promises, which, by
2 the way, made him very angry at us because he had the
3 votes.

4 And he wanted -- didn't want us to do that and
5 when we did, we risked a certain amount of hostility
6 from him. And those of you who know him know that you
7 don't want to do that if you can avoid it.

8 What came out of the Bar rules is not close to
9 the Bagley-Keene Act. You've got all sorts of
10 problems, and the reason why we say hook onto the
11 Bagley-Keene Act is because contrary to what some of
12 you may think, there really isn't very much of anything
13 I can think of you doing that is not being done by some
14 other agency that is operating under the Bagley-Keene
15 Act.

16 You have a whole body of law. And as lawyers,
17 you know the value of having a body of law where all
18 sorts of questions have been adjudicated.

19 And Bagley-Keene gives you all sorts of
20 opportunities to have closed sessions, to have
21 emergency meetings, to have special meetings -- all
22 developed with criteria and with cases and with
23 consideration that you should adopt and build on.

24 If you have some exception that applies to
25 you -- I can't even think of what it might be -- fine.

1 Let's include it.

2 But why not take advantage of a body of law --
3 and by the way, I want to tell you the body of law is
4 not always in the direction of transparency that those
5 of us at CPIL have advocated. We don't win every time
6 at all.

7 We have agency prerogative very much in force
8 with Bagley-Keene, but there is a ten-day notice, not a
9 five-day notice. There is a public comment opportunity
10 which is a little bit better than, say, the judicial
11 counsel's one.

12 There is a close-session criteria, at least,
13 so you know when you can and cannot, and how you do it.
14 And if I'm in Chairman Hebert's position here in the
15 State Bar, I would like the idea of knowing where the
16 lines are so I don't have to guess and create new law
17 perhaps.

18 And there's an enforcement remedy in
19 Bagley-Keene. Now, there may be an enforcement remedy
20 in terms of the Bar rules because I suppose you could
21 bring a 1085 petition for ordinary mandamus or
22 whatever, but it's not -- it's only a -- the generic
23 default kind of remedy you might have.

24 You don't really have anything spelled out
25 anywhere like you do with Bagley-Keene explaining how

1 you sue and, by the way, the timeline that you must sue
2 by, which is tight.

3 So you don't disturb decisions that are being
4 made under a procedure you might think violates
5 transparency rules. So you have lots of reason to hang
6 onto Bagley-Keene.

7 If you want to do it your own way, look at
8 Bagley-Keene. Use it as a guidepost. There's a reason
9 those things are there, after many years, with lots of
10 contention from lots of different agencies.

11 That pretty much concludes my remarks in terms
12 of -- in terms of what I'd like to emphasize in my
13 testimony, and I'm certainly here, free and willing, to
14 take any questions you might have of me.

15 MR. HEBERT: Okay. Well, thank you. I
16 appreciate that. I'm sure we will have some questions.
17 Let me just make a couple of -- couple of housekeeping
18 matters.

19 One is, if you can turn off your cell phones.
20 That's No. 1. I think the mics are always on, so you
21 don't have to worry about turning on your mic.

22 I wanted to recognize a couple of people who
23 have joined us.

24 Gwen Moore, who's a second year member, is
25 appointed by the speaker over the assembly. She is a

1 public member of the State Bar Board of Governors, and
2 Pat Kelly, who's a member of the Board of Governors,
3 but who is not a member of the Task Force has joined us
4 as well.

5 So let me go ahead and open this up to
6 questions. Does anybody on the Task Force have any
7 questions for Professor Fellmeth?

8 Let me start out with Luis Rodriguez.

9 MR. RODRIGUEZ: Good morning, Professor.

10 PROFESSOR FELLMETH: Good morning.

11 MR. RODRIGUEZ: Can you hear me?

12 PROFESSOR FELLMETH: Yes.

13 MR. HEBERT: And if you could, I'm going to
14 try to say your name for the court reporter, so the
15 court report will have your name so we have a clear
16 record.

17 But if you could go ahead and repeat your name
18 before you ask your question or before you speak so the
19 court reporter can get your name down, that would be
20 helpful.

21 MR. RODRIGUEZ: Sure. This is Luis Rodriguez.
22 Good morning, Professor.

23 PROFESSOR FELLMETH: Good morning.

24 MR. RODRIGUEZ: I had a couple of questions.

25 In your presentation as well as your -- the

1 letter that you submitted, you talk about regulation
2 and prosecution of attorneys.

3 And, specifically, you talk about regulation
4 of the profession going to the department -- California
5 Department of Consumer Affairs; correct?

6 PROFESSOR FELLMETH: Well, I'm talking about
7 the Department of Consumer Affairs does regulation, but
8 I'm not suggesting that the Bar go under the Department
9 of Consumer Affairs.

10 MR. RODRIGUEZ: You're not suggesting that?

11 PROFESSOR FELLMETH: No.

12 MR. RODRIGUEZ: Okay. And what about the
13 prosecution of attorneys?

14 PROFESSOR FELLMETH: No.

15 MR. RODRIGUEZ: Not -- but going to the State
16 Attorney General's Office.

17 PROFESSOR FELLMETH: No.

18 MR. RODRIGUEZ: All right. I just want to
19 clarify.

20 MR. HEBERT: Wells Lyman.

21 MR. LYMAN: Thank you. Thank you very much
22 for coming here, Professor. Thank you. For I've read
23 your three letters that you've written, and they're
24 very informative. And I've read a history of this.

25 It must be an irony to you after reading the

1 history of what this Bar has done for the past 30 or 40
2 or 50 years.

3 Many of these issues keep coming up, and they
4 keep coming up, and they keep coming up.

5 Here's my question: I may be one that agrees
6 with you -- and, maybe, others don't -- that I think
7 that there's a process, a discussion that we're having.
8 And that is, how to organize the Board of Governors,
9 and if that will be changed.

10 There's also a substance and that is whether
11 there should be a bifurcated Bar, and I think
12 inevitably, if the change in the governance goes to the
13 direction of more of appointment, ultimately, it will
14 end up with a bifurcated Bar.

15 Because I think, sometimes, it's hard. I just
16 don't know how the participation of attorneys -- and,
17 therefore, they will say, well, I represent the people
18 why should we do this?

19 If that happens, and I will dispute whether
20 there was -- with you that your term "tribal mentality"
21 we all have. We can all be defined in matters of what
22 we do professionally. It could be a professor's tribal
23 mentality, and a lawyer's tribal mentality.

24 We are all victims of the things we perceive,
25 and -- but assume you're right for a moment, and my

1 disagreement doesn't fall on deaf ears.

2 Are you concerned that if this governance
3 changes so much and there is a bifurcation, that these
4 attorneys -- and you've called them cartels, trade
5 unions -- all these things actually form a State Bar
6 Association?

7 And they -- and with this Internet, you can
8 almost make a virtual one linking from the voluntary
9 Bars to, basically, assembling 200-plus attorneys --
10 all who have some individual political clout. They
11 work on campaigns. They provide money to campaigns.

12 And if there is that Bar Association, which
13 would, maybe, come to the sole purpose of acting in the
14 best interests of attorneys and their practice, and
15 then formulating that in an amazing -- which I think
16 would be a great amount of political influence, which
17 might be used just for selfish purposes because now
18 there is no supreme court. Now there's no legislature
19 guiding that process. They're on their own. They can
20 form a pact.

21 Are you concerned about the power of that
22 association, and how it affects regulation, and how it
23 affects this other side that is now going to be,
24 basically, state regulated?

25 PROFESSOR FELLMETH: A little bit. I mean, am

1 I concerned because CMA -- and Joe can tell you about
2 CMA --

3 MR. DUNN: Yes.

4 PROFESSOR FELLMETH: -- is a powerful trade
5 association and influences the state. That CTA,
6 California Teachers Association influences the
7 legislature.

8 How about the trial lawyers? Hello, yes. I
9 guess I am. I am a little concerned about that, but to
10 me it's a non sequitur to say because we're concerned
11 about private influence, therefore, we'll put the
12 private influence entity in charge of the state
13 mechanism.

14 I mean, that's -- that's taking what is a
15 problem and making it into a fatal disease. I do think
16 that there will be a separate State Bar if our reforms
17 and those at the legislature are looking at are
18 enacted.

19 And if you, in your wisdom, support it, it's
20 very likely to occur. And I do think they will have
21 some influence, and guess what? I'm going to be
22 joining it, and CPIL will be participating in it.

23 And we're going to be arguing a point of view
24 within it as well, but we're not going to be able to,
25 by force of law, assess dues. We're not going to be

1 able to propose rule making that we know the supreme
2 court will be looking at. We're not going to be able
3 to decide who's going to be disciplined as the State
4 Bar Board of Governors is essentially able to do
5 through its appointment of the Office of Trial Counsel
6 and all the rest of it.

7 We're not going to be in that kind of policy
8 position. Will we have influence? Yes. Just like
9 everybody else does. Just like the accountants do and
10 so forth.

11 Do we fight with them? Yes, we do, but
12 they're not the state agency, thank God. To the extent
13 they become the state agency, then we're really in knee
14 deep.

15 You know, now we're up to our necks, and to
16 the extent that happens, and the big four accountancy
17 firm ends up controlling the appointments to the board
18 of accountancy, we're in much worse shape than we are
19 having the big four lobby independently appointed
20 public members on the accountancy board or even
21 accountants on the accountancy board.

22 So as someone who's been involved in lobbying
23 and public policy for 30 years involving the parties
24 you're referring to, my opinion is: Yes, it will be a
25 problem, but not nearly the problem we have.

1 MR. HEBERT: Okay. Wells, anymore questions?

2 MR. LYMAN: Yes. One other question. Thank
3 you.

4 MR. HEBERT: Okay. All right. Go ahead with
5 your question.

6 MR. LYMAN: You stated on the term -- you
7 talked about the term -- and I understand why you were
8 doing that to try and get -- and I totally understand
9 the problem of institutional knowledge.

10 And we -- we're seeing it here because we
11 think we're confronting -- sometimes the newer members
12 think we're confronting something new, and we're not.
13 We're confronting something that's old that's occurring
14 with the State Bar.

15 What do you envision when there is a four-year
16 membership period. In particular I think of the
17 president. I was looking at Bill Hebert when we talked
18 about being the president for two years.

19 I would assume he is -- would fall out of his
20 chair if we told him he had to serve another year.

21 Aren't you going to get or won't we get a
22 different type of really non-employed, in some ways,
23 professional board members?

24 I think one of the qualities that the
25 attorneys do bring is: We all have, to my knowledge,

1 full-time day jobs. And that does give us access to
2 kind of see what's happening good and bad in the
3 practice of law.

4 But it -- once these terms get too long, I do
5 not see how a full-time attorney could ever really want
6 to or be a president of this State Bar for two years.

7 Do you have any responses to those comments?

8 PROFESSOR FELLMETH: Well, I've had lots of
9 conversations with former presidents of the State Bar,
10 and most of them are frustrated by the one year. Most
11 of them, during their first year they kind of get their
12 legs under them.

13 They have a proposal. They have an agenda
14 they want to -- and then someone else takes over or
15 they have to rush it because -- rush what they want to
16 do because they only have the one year, and you only
17 meet every -- so many months.

18 It doesn't work too well. There is,
19 obviously, going to be more sacrifice. On the other
20 hand, I have to tell you that I think being the
21 president of the State Bar, and being a member of the
22 State Bar is going to be a lot more prestigious under
23 the proposal we're talking about because you're not
24 simply someone elected by colleagues, other lawyers.

25 You're someone appointed by a major public

1 official -- for those of you who are attorneys, by the
2 supreme court of the state.

3 And hello, you're going to have a lot more
4 respect from the supreme court. You're going to have a
5 lot more respect from the legislature. You're going to
6 have a lot more respect from the public.

7 You're gonna be -- you're taking your
8 position -- and I think this is a wonderful argument,
9 by the. As an attorney, I love to make this kind of
10 argument.

11 Not only are you wise, not only are you
12 important, but you will be more exalted, properly so,
13 if this mechanism for selecting you applies to your
14 successors.

15 I think that -- I think that there'll be more
16 people who want to be the president of a Bar that's
17 appointed by the Supreme Court of the State of
18 California. I think you're going to have more
19 applicants, not fewer.

20 MR. LYMAN: Thank you.

21 MR. HEBERT: Loren.

22 MR. KIEVE: Loren Kieve from San Francisco.

23 First of all, I would like to thank you for
24 your distinguished record of public service. Thank you
25 for coming here and bringing us your innovative

1 suggestions of how we could do a better job of serving
2 the people of California.

3 I have a couple of disadvantages. I'm really
4 not sure how the State of California actually works,
5 and one of the other questions -- issues that I have is
6 I'm not really sure how all other professions or people
7 who work in this State are governed.

8 But as I understand it, doctors, engineers,
9 accountants, dentists, pharmacists have not an
10 integrated Bar or integrated structure, but they are
11 governed by a publically appointed or largely
12 publically appointed body.

13 Am I correct about that?

14 PROFESSOR FELLMETH: Well, they're entirely
15 publically appointed. There may be public appointees
16 who are members of the profession or trade, but the
17 appointing authority is always a public official.

18 MR. KIEVE: Okay. And again, I'm just asking
19 this for information.

20 Do doctors have to have periodic
21 requalification to be able to practice medicine in this
22 state.

23 PROFESSOR FELLMETH: Oh, yeah. Sure. Sure.

24 MR. KIEVE: What?

25 PROFESSOR FELLMETH: Do doctors have to have

1 prequalification to practice medicine?

2 MR. KIEVE: No. Do they have to have periodic
3 requalification to --

4 PROFESSOR FELLMETH: Requalification.

5 MR. KIEVE: -- continue to practice medicine in
6 this state?

7 PROFESSOR FELLMETH: No. I think they should.
8 They do not. They do -- the practice of medicine does
9 have a somewhat privatized system of hospital
10 privileges of specializations of certification and so
11 forth that we do not have.

12 In other words, you cannot, actually,
13 practice -- well, let me -- let me amend that. There
14 is a certain amount of specialized licensing in
15 medicine that is not in law.

16 You can practice, as far as the Bar's
17 concerned, patent law, immigration law, criminal
18 defense, PI -- on and on -- bankruptcy -- on and on and
19 on -- with one license.

20 The doctors are somewhat more specialized.
21 Podiatrist, separate. Psychiatrist, separate.

22 A lot of them are separated out, but the
23 medical board itself does have a broad category of
24 physicians. Even within that, though, they do have all
25 sorts of specialized competency steps they have to, as

1 a practical matter, go through before they can even see
2 a patient.

3 MR. KIEVE: My question was simply this: That
4 once they've satisfied those steps, am I correct that
5 there is no requirement that after 10 years of practice
6 or 20 years of practice, they have to undergo a
7 reassessment in order to continue practicing medicine?

8 PROFESSOR FELLMETH: Not from the State, not
9 anything the State does. Privately there are
10 reassessment potential things that happen, but not from
11 the State, and I think there should be from the State.

12 MR. KIEVE: Okay. My next question is: Is
13 the answer the same for engineers? Accountants?
14 Dentists and pharmacists? There is no requirement of
15 requalification?

16 PROFESSOR FELLMETH: Well, engineers tend to
17 be licensed in areas of specialty at the outset, and
18 accountants are not quite as varied in their practices,
19 but you're correct that other professions or trades do
20 not require updated expertise.

21 However, we're in a profession where a single
22 supreme court decision can reverse our proper advice.
23 We're in a profession that is more specialized and
24 requires more specialized knowledge than almost any
25 other trade or profession that I can think of in terms

1 of the array of specialization we're now engaged in.

2 And we're in a profession where there's a
3 irreparable harm visited on people to whom we give
4 wrong advise. So I'm aware that there are not a lot of
5 precedence that repeat the recommendation I'm
6 suggesting, but I think the Bar, in this category, in
7 this area, is somewhat unique.

8 MR. KIEVE: My next question is: Are you
9 aware of whether doctors, engineers, accountants,
10 dentists and pharmacists are required to have
11 malpractice or professional liability insurance as a
12 condition of their practice and trade?

13 PROFESSOR FELLMETH: I don't -- I don't think
14 very many -- I don't think physicians are going to be
15 operating in hospitals or engaged in practice without
16 malpractice coverage. You won't find it.

17 MR. KIEVE: Is that a State requirement?

18 PROFESSOR FELLMETH: No. It's, in fact,
19 practically imposed by hospitals.

20 MR. HEBERT: Thank you, Loren.

21 Angela Davis, and then Michael Tenenbaum.

22 Angela.

23 MS. DAVIS: Good morning, Professor. Angela
24 Davis, and I'm a District 7 Los Angeles County
25 governor.

1 I wanted to ask you a couple of questions
2 about Bagley-Keene, and I was listening very closely to
3 your remarks this morning, and my impression is that at
4 this juncture you're not, necessarily, advocating
5 literal adoption of Bagley-Keene but rather adopting
6 it -- looking through the model.

7 Am I right in that impression or?

8 PROFESSOR FELLMETH: I think it would be
9 easier just to apply Bagley-Keene. That would probably
10 be our preference, but I -- but we're not wed to -- I
11 mean, there's nothing dogmatically perfect about
12 applying Bagley-Keene.

13 And there are lots of aspects of Bagley-Keene
14 that clearly do not apply to the Bar. If the Bar wants
15 to take the Bagley-Keene major elements and create its
16 own rule, we agreed to that 20 years ago, and we don't
17 object to it now.

18 MS. DAVIS: Let me ask you, if I may, just one
19 follow-up question is: One particular concern -- and
20 you're probably already aware of this. It's been
21 discussed by the Task Force before -- is the
22 description on participation by way of dial-in,
23 conference calls as we know them and use them
24 frequently today, would really not be possible to a
25 large extent under Bagley-Keene.

1 And some of us have a concern that that would,
2 to some degree, stifle debate. I mean, even on this
3 very Task Force the representative of the Center for
4 Law and Public Interest called in more than once, and
5 her comments were greatly -- were valuable and were
6 appreciated, but they were made via the dial-in number.

7 Today we have a board member who's in Fresno
8 and for practical reasons could not be in Los Angeles,
9 and I -- I just -- I wonder how you respond to that
10 concern?

11 PROFESSOR FELLMETH: Bagley-Keene does allow
12 for call-in meetings, and it's not terribly burdensome
13 to do it the way it specifies which is: You have --
14 you're sitting in your office -- in your law office and
15 going to be on the conference call.

16 You have to -- where the conference call
17 callers are -- allow someone from the public, if they
18 want to come and sit in -- I know it's a little
19 intrusive -- to sit in your conference room because
20 they're allowed to be at the locations where the
21 conference call is taking place.

22 But if you think about it, if you're gonna
23 have a meeting and you're gonna have, essentially, many
24 meetings in three different cities, how nice is it
25 encouraging of public participation in every different

1 location where people can go to sit there and listen to
2 what's going on?

3 As a practical matter, you don't have the
4 public flooding into people's offices where the
5 conference calls are being made from. Now, I know some
6 of us make our conference calls while lying in our beds
7 at 9:00 a.m. pretending, like, we are, actually, in our
8 offices, and that won't work.

9 MS. DAVIS: Well, no. And you can't call in
10 from an airport or a --

11 PROFESSOR FELLMETH: You can't call in from an
12 airport.

13 MS. DAVIS: -- hotel or depositions in --

14 PROFESSOR FELLMETH: There are some --

15 MS. DAVIS: -- other cities.

16 PROFESSOR FELLMETH: There are some
17 limitations on doing that, but, you know, you're a
18 public -- if you're a public agency and want the public
19 to participate, you can do conference calls by that
20 mechanism.

21 MR. HEBERT: Angela, anything else? Okay,
22 Michael.

23 MR. TENENBAUM: I just had a follow-up
24 question on Angela's and then an original question.

25 MR. HEBERT: This is Michael Tenenbaum.

1 MR. TENENBAUM: So my understanding of the --
2 I looked at the differences between Bagley-Keene and
3 the way the State Bar operates, and you've outlined
4 them. And we've had the benefit of having our counsel
5 outline those differences.

6 And you make the point that as a practical
7 matter, if we're almost following them close enough
8 right now, closely enough, why don't we just adopt them
9 and make that -- make it official, eliminate any
10 concern about those.

11 And the biggest one that I have is the one
12 that Angela pointed out -- is the issue of calling in.
13 My understanding of that rule -- and I think you refer
14 to it in your papers -- is that the rule exists so that
15 there are no ex parte communication.

16 So that I'm not sitting on the phone in my
17 office where no one else can see who's there with me,
18 paying me hard cash to vote a particular way or
19 whispering in my ear things that we wouldn't be able to
20 see at a board meeting.

21 That's -- if I'm correct in understanding,
22 it's to avoid the influence of ex parte communication
23 in addition of making it open to the public.

24 PROFESSOR FELLMETH: You know, if you wanted
25 to have a variation on Bagley-Keene in that regard,

1 this is how you might do it: You might have a
2 conference call meetings, but where the headquarters --
3 where the main -- the thing is.

4 There you have a room, like this room, where
5 you would allow the public to come in and listen and so
6 forth. They wouldn't be allowed, as they are in
7 Bagley-Keene, everywhere where someone's calling in --
8 which I understand would be a problem for some of us.

9 I can understand some objection to that, even
10 though agencies all over the state manage to do it, but
11 if you wanted to have that variation, that wouldn't be
12 the end of the world.

13 After all, if you met in that one location
14 anyhow, they'd have to come there, and all you're doing
15 is allowing other people to come in.

16 So I can see doing it that way, but I would,
17 somewhat, amend your predicate remark by saying I don't
18 think that the Bar is really complying with
19 Bagley-Keene.

20 You're not doing the ten-day notice in
21 advance. You're not allowing public comment. You're
22 not having closed meetings by the same criteria. You
23 don't have an enforcement mechanism.

24 There are very serious parts of Bagley-Keene
25 that you're not complying with, and what I'm trying to

1 say is not -- what I'm saying is you can easily. Yes,
2 you're not, but it's not that big a deal for you to do
3 it.

4 MR. TENENBAUM: Okay. I think as a practical
5 matter today, for most of our conference calls, other
6 than certain emergency conference calls, we actually
7 make it a point to have a physical location like Los
8 Angeles or this office or the San Francisco office
9 available.

10 So I was -- just wanted to see how hard you
11 were sticking to that position because, I mean, as a
12 practical matter, all of us have Blackberrys or cell
13 phones. We can get text messages saying vote this way
14 or here's what I want you to do. I mean, there's lots
15 of ways for external influence.

16 PROFESSOR FELLMETH: If folks can call in or
17 they can go to the -- I mean, we're gonna be in
18 Webinars pretty soon, I'm sure. We're all gonna be on
19 this Skype, the Cloud thing. I don't even want to
20 think about what we're gonna be, you know, on pretty
21 soon.

22 And we're all gonna be able to see each other
23 at all times, and we'll have -- probably all gone to
24 hell. But before -- before that, if we could just have
25 a place where consumers can go and a point where they

1 can access in here, I don't think it has to be the
2 Bagley-Keene mechanism, necessarily.

3 MR. TENENBAUM: Here's my real question: You
4 and I are on the same page about that particular point
5 there at the end and, actually, about most of your
6 comments.

7 But the one that I had a concern about was the
8 suggestion that members of the Board of Governors be
9 selected solely by appointment.

10 And my question for you is: For the
11 appointing authority -- whoever that, whether it's the
12 Justices or a committee set up by the Justices or -- at
13 some point you're gonna have people selecting other
14 people from this appointment process.

15 Should any of the viewpoints of the candidates
16 for selection be considered? For example, you know, I
17 ran on a platform for the State Bar that advocates many
18 of the reforms that you did.

19 I don't know that if I took such a radical
20 position in a -- of reform in a meeting with a handful
21 of committee members about, here's what I would do if I
22 was on the board, I'd fix this. I'd totally re - --
23 overhaul that. We have major changes to make -- that
24 that would be as welcome, for example, as somebody else
25 who took a different viewpoint.

1 And I'm just wondering, are you advocating
2 that whoever the appointing authority is actually
3 examine the candidates for their viewpoints, their
4 positions, their policy rules, like you're able to set
5 forth today on a ballot when you run either for public
6 office in any form including the State Bar?

7 PROFESSOR FELLMETH: You know, I think it's up
8 to them. I do think that they're -- if they're gonna
9 have any kind of specification on selection, it ought
10 to be that there be some diversity in terms of, maybe,
11 area of law, maybe age, maybe experience, maybe
12 geographic. I'm concerned about that.

13 I do have some confidence that the
14 appointment -- if you have -- if you have nine from the
15 supreme court, I think you're gonna get some Mike
16 Tenenbaums in there. I'm very confident you will, and
17 that's one of the reasons we're proposing it. I think
18 we will end up with people like you.

19 MR. HEBERT: Okay. So Jeannine and then Beth
20 Jay.

21 MS. ENGLISH: Professor Fellmeth, thank you,
22 again, for coming. I have admired your work for longer
23 than I want to say, but I had a couple of questions
24 about the appointments you recommend, the 17 members.

25 Generally, you recommend more public members

1 than accountants, for instance. So why in this case
2 are you recommending more attorney members?

3 And then, secondly, you're recommending that
4 the supreme court appoint all of the attorneys and the
5 public members all be appointed by the legislature or
6 the governor.

7 And my question is: Isn't there -- wouldn't
8 there be an opportunity to have the supreme court,
9 actually, appoint some of the public members and have
10 the governor and the legislature appoint some of the
11 members from the Bar?

12 PROFESSOR FELLMETH: We're not wedded to -- I
13 think you make some good points. I mean, I think that
14 there is, perhaps, some benefits in doing that -- doing
15 it that way and having more of a mix between the two.

16 I think that's something worth looking at. I
17 want to say that if you want to switch that from a nine
18 attorney and eight public to nine public and eight
19 attorney, we not only will not oppose you, but we'll be
20 delighted.

21 I want to say that when I proposed a review
22 department of three judges appointed by the supreme
23 court some 20 years ago, Pat Phillips said, "Well, why
24 don't we have one of the members of the review
25 department not an attorney?"

1 I said "Holy cow. I got the Board of
2 Governors to my left. If I'm gonna have a Board of
3 Governors to my left, I'm going to be buying drinks for
4 everybody tonight."

5 So if you want to do that and move to a public
6 member majority, you can have my vote. What I'm trying
7 to do is -- what we're trying to do is be incremental.

8 I'm not saying we won't be arguing in the
9 future for a public member majority, we will. We do
10 every occasion for every agency, as you've mentioned.

11 The medical board is, right now, a majority of
12 physicians, and that's why we're not pushing the issue
13 right now because we are kind of using the medical
14 board as an analogy, and we have a pretty good medical
15 board, I'd have to say, right now.

16 MS. ENGLISH: Thank you.

17 MR. HEBERT: Beth Jay.

18 MS. JAY: Professor Fellmeth, it's a pleasure
19 to be here with you, and thank you for all that you've
20 done for the Bar. The court, I know, appreciates it.

21 I'm the principal attorney to the chief
22 justice. I'm not speaking here on behalf of the chief
23 justice, who is still catching her breath trying to
24 catch up with all of the things that she has to absorb
25 and understand, nor am I speaking for the court, that

1 something will happen after this is over and as the
2 process develops.

3 But I am speaking from my 30-plus years of
4 experience with the court and more than 20 years
5 dealing with the Bar in various ways. A couple of
6 things I just wanted to know.

7 One thing is that the order of discipline are
8 not final when they come or issued by the State Bar
9 Court. They're only final when the supreme court
10 issues orders.

11 Every discipline, that is, every disciplinary
12 order is a supreme court order, not a State Bar Court
13 order.

14 PROFESSOR FELLMETH: Yes. But what I'm saying
15 is that about three years after the reform was
16 implemented, the supreme court no longer picks up and
17 automatically de novo reviews all of the cases as they
18 did before with the old State Bar Court.

19 MS. JAY: That is true. And the court also
20 looks at things not simply because -- I should note
21 this that -- not simply because there is a review
22 requested either by the prosecutor's office or by the
23 individual respondent, but also --

24 PROFESSOR FELLMETH: They can be sua sponte
25 too, sure.

1 MS. JAY: I wanted to clarify that.

2 PROFESSOR FELLMETH: Sure.

3 MS. JAY: Also, on the review of rules and
4 also statutes, the court over the years has, in fact,
5 changed various procedures both prescribed by statute
6 and also changed rules to conform to its decision in
7 various areas.

8 But of course -- keep losing my ident- --
9 because as the -- you know, I know you very fully
10 recognize, as you say in your written material and in
11 your remarks, that the State Bar Court has ultimate
12 plenary authority as is expressed and recognized in the
13 State Bar Act.

14 But it's very much been a cooperative
15 enterprise with the legislature, and the court,
16 whenever possible, prefers to defer to the legislature.
17 But if it disagrees, it will make changes such as it
18 did in the appointment of State Bar Court Judges in the
19 initial setting up of the applicants evaluation and
20 nominations committee, in that procedure, and in the
21 standard of review to be applied by the review
22 department.

23 So I just wanted to note those things, in a
24 sense, because I think they're relevant to the
25 determination of how far detached the supreme court is

1 versus the oversight of some of the other entities that
2 you were talking about.

3 And it may be less hands-on in some areas, but
4 I don't think it's completely hands-off is a point that
5 I wanted to make.

6 One thing that I also would be curious to hear
7 from you about because it's something I've been
8 thinking about: right now the supreme court in a way
9 is insulated from some things that the Bar does to
10 please the legislature.

11 What do you think would be the impact if the
12 State Bar Board of Governors or Board of Trustees, or
13 whatever they're nominated, were in large part
14 appointed by the supreme court to the extent that the
15 supreme court also, ultimately, reviews or may review
16 decisions of the State Bar disciplinary system and
17 admission system?

18 So there's a little bit of intersection of
19 varying roles. And do you think that there's any
20 danger in a sense in the supreme court being the major
21 appointing authority in terms of, frankly, political or
22 other exposure?

23 PROFESSOR FELLMETH: I probably would not have
24 the State Supreme Court appoint the chief prosecutor
25 for the Bar.

1 MS. JAY: Right, and it does not.

2 PROFESSOR FELLMETH: Yes. And it does not.
3 And I would not have it do that.

4 MS. JAY: Yes, I agree.

5 PROFESSOR FELLMETH: By the way, I want to
6 say, as an aside, that when I was the monitor, I
7 reported to the chief justice. That was who I reported
8 to, and I was pleased to do that.

9 So the court was involved in those reforms
10 very much.

11 MS. JAY: Yes, very much so.

12 PROFESSOR FELLMETH: And on the issue of this
13 juris prudential separation of authorities, I think the
14 proposal we're making is that there be a mix, and that
15 the court, yes, makes nine appointments, but the eight
16 are coming from the legislature.

17 There -- they have appointments there too,
18 and, you know, and the governor has appointments there
19 too, a few more than they do now.

20 And I can tell you -- and I think Joe will
21 confirm this -- that if you have a Bar sitting there
22 from Supreme Court appointment and from the appointment
23 of the very people who are in those two other branches,
24 you're gonna get, I think, more respect.

25 And you're gonna have more -- you'd be

1 listened to a little bit more -- a little bit better
2 than if the profession is electing you at a 15 to
3 20 percent rate of election by the way of voting.

4 Now, it's interesting to hear what he has to
5 say, at some point, about that, but my own view is
6 based on my 30 years of lobbying this legislature and
7 so forth, and the rest of it is that this will be an
8 ascendancy for the State Bar Board of Governors.

9 And I don't think it creates a huge conflict
10 in terms of role problem because you'll have this mixed
11 body that the court -- and, again, making now, you
12 know, four-year appointments, not one year serving at
13 the pleasure kind of appointment, but a four-year
14 appointment.

15 And knowing that there is a connection to the
16 court, and the big argument behind the current Bar
17 structure is we need to have -- we have -- we're
18 different.

19 We're judicial connected, and so I want to
20 keep that judicial connection, but have it mixed in
21 with the other branches recognizing they have a role
22 too. Again, I'm seeking Aristotelian balance here.

23 MS. JAY: Thank you.

24 MR. HEBERT: Thanks, Beth.

25 Jon Streeter and --

1 MR. RODRIGUEZ: I just have one more.

2 MR. HEBERT: Let me just -- yeah. And then
3 Luis.

4 And Professor Fellmeth, I really appreciate
5 all your time this morning.

6 PROFESSOR FELLMETH: Thank you.

7 MR. HEBERT: We are just gonna need to rap up
8 here; so I just want to let the Task Force member know,
9 because we do have a lot of other speakers; so I'd like
10 to Jon and Luis, and I'd like to get onto the next
11 speaker; okay?

12 MR. STREETER: Professor, let me join the
13 chorus of admiration and praise for your long record of
14 service and your depth of thought on these large issues
15 that we're considering here today.

16 I too found your presentation to be enormously
17 thoughtful and innovative. It does bring before us,
18 once again, a fundamental issue that many have
19 struggled with over the years. That is, whether we
20 should have an integrative Bar at all.

21 And indeed, as I read your submission and hear
22 your comments today, the thrust is -- although you make
23 a number of important, I think, and helpful
24 suggestions -- the thrust is that we should do away
25 with the highbred structure that we've been living with

1 for so long.

2 And I guess it's that issue that I'd like to
3 ask you a question about. It seems to me that the
4 notion of public protection is something that has been
5 bandied about rather loosely, and you give it a
6 definition. It seems to be, frankly, a rather abstract
7 definition involving prior restraints.

8 Many of us, I think, would include in the idea
9 of public protection the importance of access to
10 justice, the importance of people who are not so rich
11 having the ability to get a lawyer.

12 In divorce situations or everyday consumer
13 situations and just to give you an example of something
14 that we dealt with because you used a couple of
15 examples.

16 This board passed, by a narrow majority, a
17 prohibition on lawyers involved in renegotiating
18 mortgage foreclosure situations, the taking of advanced
19 fees, and it was something that was -- had a lot of
20 support in the legislature.

21 We supported it, but we were criticized
22 because a minority of the board had reservations about
23 it and, in fact, voted against it on the grounds that
24 the proposed legislation might have the effect of
25 turning lawyers away from serving people in this field.

1 And, in fact, there's been a lot of press
2 coverage recently that this legislation has had that
3 effect. And I would submit to you that the issue of
4 public protection is not so easily definable and is not
5 so clear in many occasions.

6 And often, people who are suggesting that
7 they've got a clear idea of what that means may be
8 overlooking how lawyer-client relationships actually
9 work.

10 So with that premise -- and, I guess, I would
11 just ask you: What effect do you think that separating
12 the police-power function from the trade association
13 function would have on the many services that we
14 provide currently, and we've been providing for
15 decades -- that you acknowledge are good and
16 constructive -- that promote access to justice? --
17 that promote, in many ways, through education of
18 lawyers through the -- through our lobbying activities,
19 where we're trying to expand the availability of
20 lawyers?

21 What -- do you think that by narrowing the
22 police-power function and housing it separately from
23 this other function we would be -- can you say that
24 we -- or predict that we would be more effective in
25 promoting access to justice for everyday folks around

1 the State?

2 PROFESSOR FELLMETH: I think you're gonna be
3 much more effective. I mean, I absolutely agree with
4 everything you're saying. I understand the rule of
5 unintended consequences.

6 I understand that underlines the idea of
7 having some people around that may -- you know, wait a
8 second. If we do this we're -- the poor are not going
9 to be getting any mortgage help at all because
10 attorneys require \$1,000 or some money up front to
11 start with.

12 And you're going to be cutting off your nose
13 to spite your face -- and I'm talking too fast. And I
14 understand -- I understand your points and agree with
15 all of them.

16 I do think that, if you have the two-part
17 structure, we have -- you know, Wells' talking about
18 well, what about -- what about the -- this separate
19 behemoth State Bar Trade Association?

20 Fine. Now you have two. Now you have the
21 Trade Association, which I hope will be working for
22 access to justice, and I think access to justice should
23 be part of the State agency mandate as well.

24 I don't see any conflict between a police-
25 power functioning agency and trying to lessen disputes,

1 trying to give equal access to justice anymore than the
2 medical board -- and it does, also, by the way,
3 recognize the need for medical services for the poor
4 and sponsors, in fact, a special scholarship programs
5 for loan forgiveness for doctors who go into
6 underserved areas.

7 That's the medical board doing that, and the
8 Bar Board of Governors, as a State agency, can and
9 should do that too. I'm with you 100 percent. I just
10 think that if you have two of them doing it, all the
11 better.

12 MR. STREETER: Well, then, I guess, I don't
13 understand where the separation is. I mean --

14 PROFESSOR FELLMETH: The separation is --

15 MR. STREETER: -- why do we need to have this
16 separation in the first place?

17 PROFESSOR FELLMETH: The separation is that
18 the police-power function, the mandatory assessment of
19 fees, the initiation of rules, the decisions about who
20 to discipline, are not made by people selected by
21 attorneys who have -- who are perceived and do have a
22 point of view, necessarily, influenced by their
23 professional alignment.

24 Every other State agency -- to me the burden
25 should be just shifted the other way. If every State

1 agency is policed by public appointees, why should we
2 be different?

3 What is it about us that is so different?

4 MR. STREETER: It seems to me that that's a
5 slightly different point. The question of appointment
6 versus selection, and you give a compelling case,
7 frankly, for why those in charge of the police function
8 ought to be appointed.

9 And it's as detailed and compelling as I've
10 seen, but that's different from this much more
11 fundamental issue of whether we destroy the integrated
12 structure of the Bar especially when you're saying that
13 there will continue to be access to justice functions
14 performed by the discipline and admissions agency.

15 I just -- I guess I just -- I see the issue
16 that you're putting -- as the most important issue as
17 this one of appointment in a way in which trustees, if
18 you will, arrive at this table rather than the -- this
19 issue of whether we have one Bar or two Bars.

20 PROFESSOR FELLMETH: I don't think public
21 officials should be running a trade association or
22 their appointees. The two are separate functions.
23 They're complimentary. They help each other, but
24 they're separate.

25 And there's a reason for the separation, and I

1 am irritated, annoyed by the term "integrated" because
2 I love integration.

3 It's a positive word, and it's also a positive
4 connotation. Let's use the word "divestiture" of the
5 cartel.

6 How about that? You know, it's funny how, as
7 lawyers, we all know, framing things is everything;
8 right? Is it right to life or is it freedom of choice,
9 whatever?

10 MR. STREETER: That's fair. And you can use
11 words like "tribal." You used words like --

12 PROFESSOR FELLMETH: Of course, I do.

13 MR. STREETER: You used words like "cartel."

14 PROFESSOR FELLMETH: Of course. And it is a
15 cartel.

16 MR. STREETER: So, you know --

17 PROFESSOR FELLMETH: It's also integrated.
18 It's words with flavor. And, of course, I'm an
19 attorney, and I use words that flavor in my direction.

20 MR. STREETER: They're colorful words, but,
21 frankly, they get in the way of the argument because
22 we've got some very serious issues to deal with here.

23 And, you know, you've made an attack on the
24 way that the Bar is structured without consideration of
25 how other states do this. I see nothing in your

1 submission on this issue advocating divestiture that
2 compares how we do things to other states.

3 I see no analysis on this charge that it's
4 unethical for lawyers to be in the position of those on
5 this board are in. There's no legal analysis of where
6 that normative judgment comes from. No citation of US
7 Supreme Court precedent on that point.

8 So, you know, it's one thing to throw around
9 colorful words, but I'm really trying to press you on
10 the fundamental premises that you're getting at and
11 most importantly the consequences.

12 It may be unintended, but this, quite frankly,
13 radical suggestion could well hurt people. It could
14 hurt people that need access to lawyers.

15 PROFESSOR FELLMETH: Yeah. I don't think --

16 MR. STREETER: The casual suggestion that we
17 ought to be in the business of putting ourselves out of
18 work is cute, but there are those of us who believe
19 that lawyers perform a constructive function in
20 people's lives often and that that ought to be fostered
21 and promoted.

22 PROFESSOR FELLMETH: I don't think
23 delegation -- the terms of art here -- if you want to
24 look at Supreme Court precedent, I would commend the
25 whole notion of delegation of police power to private

1 interest, the state action doctrine and antitrust law
2 and so forth.

3 Now, the defense of the Bar always is Supreme
4 Court review and Supreme Court entity, but I think we
5 all know, as I've already argued, that other agencies
6 have more serious review, more close review than the
7 Bar does by its public agency.

8 Other states are all over the map. Some
9 states do it the way I'm suggesting. Others do it
10 differently. Others do it the way we're doing it now.
11 I don't think that proves very much except that we
12 should be in the lead and not behind.

13 MR. HEBERT: Okay. Luis, one quick question.
14 We got a lot of other speakers. We're running out of
15 time. And I remind all the Task Force members that
16 today is the day to get information.

17 We're gonna get the chance to debate and argue
18 and deliberate in a couple of weeks so let's, maybe,
19 save some of the debating and arguing for later.

20 Luis, and then we're gonna get to our next
21 speaker.

22 MR. RODRIGUEZ: Professor, in providing the,
23 as you put it "the tribal cartel," how or what entity
24 or what individual would you suggest do the regulation
25 and the prosecution?

1 PROFESSOR FELLMETH: Well, I think you have
2 the reconstituted Board of Governors appointed by
3 public officials appointing the Chief Trial Counsel,
4 who does the prosecution.

5 MR. RODRIGUEZ: Well, maybe I'm a little
6 confused. I'm reading your paper that, when you're
7 drawing comparison as to what other trade associations
8 are doing, you talk about the regulations being shifted
9 over to the Department of Consumer Affairs and the
10 prosecution of that profession being shifted over to
11 the State Attorney General's Office.

12 Is that what you would suggest if the Bar was
13 divided?

14 PROFESSOR FELLMETH: No. I don't have strong
15 objections to that model, but that's not what we're
16 suggesting. I think if you have a Chief Trial Counsel
17 appointed by a Board of Governors, who's appointed by
18 public officials and not by those practicing the trade
19 or profession only, I think you have the kind of
20 separation and independence that makes it a -- I'll say
21 it -- ethically viable structure.

22 MR. RODRIGUEZ: I'm sorry. I'm still
23 confused. What I'm trying to look at is the cost of
24 regulation, the cost of the prosecution because, if I'm
25 just -- without listening to some of the other talk

1 here, if I'm just reading your paper, I would assume
2 that the cost would be shifted to the State and
3 consequently the taxpayers.

4 That's one worry that I have. And so in
5 reading your paper, that's the impression that I get.
6 And consequent to that, once the State has this pool of
7 potential money, okay, from attorneys, whether you up
8 the fees, as the State now regulating the profession --
9 the concern that because this is another pool that the
10 politicians can reach into when the budget looks bad.

11 Let's increase the fees. Let's not call it
12 taxing. Let's increase the fees. Don't you see?
13 Would you agree or disagree that that's a potential?

14 That if it goes to the State, obviously, it
15 becomes a burden of the taxpayers, and once it gets
16 there, it's a nice little pocket for the politicians to
17 reach into when times are dire in trying to cover those
18 gaps in the budget.

19 PROFESSOR FELLMETH: It's a burden on the
20 taxpayers now because you have a mandatory charge that
21 is with a ceiling, which is approved by the legislature
22 and then determined -- exact amount determined by the
23 board, and then you have a assessment that is passed
24 through.

25 Whenever you have an industry-wide assessment,

1 it's gonna be passed to the consumer so it is a tax
2 now. I don't think that's gonna change one way or the
3 other. Your question of whether or not the
4 reconstitution is going to open the way for the
5 governor to raid the special fund. That's a very
6 interesting question. I hope it doesn't. I hope you
7 can prevent that from happening. And any way you can
8 think of to prevent that from happening, we'll support.

9 MR. HEBERT: Okay. Professor, I want to thank
10 you very much for your time. We've got some other
11 speakers so thank you very much.

12 PROFESSOR FELLMETH: Thank you.

13 MR. HEBERT: The next speaker that I have on
14 the list is the president of the Los Angeles County Bar
15 Association.

16 And while you're walking up to the microphone,
17 I just want to check on a couple of things. One, our
18 court reporter, how are you doing?

19 DEPOSITION OFFICER: All is well.

20 MR. HEBERT: Okay. I want to remind the
21 speakers, again, we do have a court reporter. He's
22 taking everything down.

23 I'm sure that none of you will be able to
24 speak any faster than Professor Fellmeth.

25 Maybe I don't need to give the warning, but

1 please just keep it measured and even so our court
2 reporter can get everything down; okay?

3

4 T E S T I M O N Y

5 MR. STEINBRECHER: Thank you. I am Alan
6 Steinbrecher, and I'm president of the Los Angeles
7 County Bar Association. I'm proud to say that a number
8 of the officers of the association are here with me
9 today.

10 I invited them to come down and sit with me
11 while I spoke. They said no. That's fine. You go
12 down. We'll be right behind you.

13 So in acknowledgement of their presence, right
14 behind me, I would like to introduce Eric Webber, the
15 president-elect of the association; Dick Burdge, our
16 senior vice president; Don Mike Anthony, our immediate
17 past president; Margaret Stevens, our treasurer; Paul
18 Kiesel and Ellen Pansky our assistant vice presidents;
19 and Sally Suchil our executive director.

20 MR. HEBERT: Welcome, everyone. Thank you for
21 coming.

22 MR. STEINBRECHER: Let me begin by telling you
23 why Los Angeles County Bar Association has chosen to
24 both submit a written statement and to appear here
25 today.

1 As you may know, we have 27,000 members of the
2 association, virtually, all of whom belong to the State
3 Bar.

4 The Los Angeles County Bar Association's
5 mission is to both serve its members and the public.

6 We take that role seriously as demonstrated by
7 its numerous projects to improve the system of justice,
8 protect the public, and serve the community.

9 LA County Bar Association members donate tens
10 of thousands of hours each year to help our community
11 by such activities as conducting clinics in areas of
12 immediate current interest to the public such as in
13 personal bankruptcies, home loan foreclosures, and home
14 earthquake and fire losses.

15 They also help victims obtain TROs for
16 domestic violence situations, and they assist people
17 with navigating the immigration process among many,
18 many other activities.

19 Because of this commitment to our profession
20 and the public, the Association's members have a strong
21 interest in the governance of the State Bar, and its
22 role in protecting the public.

23 We do not always agree with the State Bar, and
24 from time to time have opposed the State Bar on certain
25 issues, but it does not diminish our strong interest in

1 its governance.

2 Let me then turn to our view of the State
3 Bar's mission. We agree with the language of AB 2764
4 that the State Bar's highest priority is the protection
5 of the public.

6 We believe that is now and should remain its
7 primary focus. We agree with the Task Force that the
8 State Bar pursues that public protection mission
9 pursuant to the California Supreme Court's
10 constitutional statutory and inherent authority to
11 regulate the legal profession in California.

12 We believe that the State Bar currently
13 implements that public protection mission through its
14 limited oversight of attorney licensing or Bar
15 admission and attorney discipline.

16 These are the crucial aspects of the State
17 Bar's responsibility to protect the public.

18 Insuring attorneys that are practicing in the
19 state meet minimum competency and ethical requirements,
20 comply with ethical and legal rules, honor their duties
21 to their clients in the courts, and are disciplined
22 appropriately when they fail to do so.

23 Moreover the State Bar's role in drafting and
24 enforcing the rules of professional conduct provide
25 critical protection to the public in the vast majority

1 of actual or potential attorney-client relationships
2 that never involve disciplinary matters.

3 We also believe that the State Bar has a
4 secondary but still vital role of public service.
5 Examples of how the State Bar currently serves the
6 public are public education on legal matters including
7 client's rights against attorneys, improving access to
8 justice for persons of limited means, recommending
9 legislation or changes to legislation, and evaluating
10 candidates for judicial office.

11 Other State Bar activities such as substantive
12 law sections, continuing legal education, and scholarly
13 publications, we consider to be valuable but not core
14 missions, and many can be done by other organizations.

15 There are two overriding issues of interests
16 to the Los Angeles County Bar Association in State Bar
17 governance.

18 First, regulatory competence: We believe that
19 the operations and activities of the State Bar are best
20 overseen by a governing body that is comprised of
21 people who are both sincerely dedicated to the State
22 Bar's core public protection and public service
23 missions and qualified to oversee those core missions
24 effectively.

25 Effective regulation of the profession

1 requires a broad understanding of both the law and the
2 practice of law. Therefore, we believe that most
3 members of the State Bar's governing body should be
4 persons experienced in practicing law in this state.

5 We see no inherent conflict of interest in
6 members of the State Bar serving on the governing body
7 that oversees the regulation of lawyers and other
8 aspects of the State Bar's public protection mission.

9 At the same time, we also believe that
10 non-lawyers can bring valuable insights and experience
11 to the governing body particularly those who have
12 experience as clients, and many may have useful
13 experience in areas such as consumer protection,
14 financial matters, management and administration,
15 public education, and other areas that can enrich and
16 inform the governing body.

17 The second key issue is the central role of
18 the California Supreme Court. We believe that an
19 integrated Bar, under the control of the State Supreme
20 Court, is the regulatory structure best suited to
21 oversee and implement the State Bar's public protection
22 and public service missions.

23 Control of who can practice law in California
24 and how they should be disciplined, if necessary,
25 should be within the purview of the court.

1 Now, let me turn to the Los Angeles County Bar
2 Association's specific comments on possible State Bar
3 changes.

4 We believe that it is proper and prudent to
5 review current governance from time to time even if no
6 deficiencies are readily apparent to determine if a
7 better structure may be achievable.

8 We also believe that there may be improvement
9 to the existing structure that could be made. Having
10 said that, however, we urge caution in making any
11 changes until they are thoroughly considered since any
12 change can have unintended consequences which could
13 result in less effective governance.

14 That caution seems warranted here since the
15 criticisms of the status quo that we have heard do not
16 seem to warrant any change in and of themselves.

17 We've heard a criticism that "Find A Lawyer
18 Program" was not instituted. We opposed the Find A
19 Lawyer Program that the State Bar proposed because we
20 believed that it lacked the public protection required
21 of local "Find A Lawyer" programs.

22 A second criticism we have heard was the
23 nonrenewal of the former Chief Trial Counsel contract,
24 which we understand to be -- to have been a personnel
25 issue.

1 We've also heard criticism of the attorney
2 malpractice insurance debate. We consider that to be a
3 policy debate with arguments both ways. The fact that
4 it was opposed does not prove to us some inherent flaw
5 in State Bar governance.

6 As to the composition of the governing body:
7 We believe that the majority of the governing body
8 should be members of the State Bar with meaningful
9 experience in the practice of law.

10 Changes that could be considered would be to
11 require a ten-year practice minimum or considering
12 diversity requirements other than geographical
13 diversity.

14 Insofar as the method of selecting members
15 goes, we believe that a vetting of candidates may be a
16 beneficial change. The vetting to be done by a
17 knowledgeable and independent screening body, and that
18 would apply to both lawyer and non-lawyer members of
19 the governing body.

20 We do believe that any selection process,
21 however, should be nonpartisan, unaffected by partisan
22 affiliation. And we believe that it should be
23 considered to have no political appointments of any
24 kind.

25 The selection should be through a nonpartisan

1 process. We would welcome an increased role of the
2 supreme court. As I mention, we have no objection to
3 current geographical districts, although, we do believe
4 that Southern California is underrepresented in the
5 current structure.

6 And, finally, we believe that non-attorney
7 members of the governing body should be nonpartisan and
8 subject to the same vetting process as attorneys.

9 I appreciate the time that the Task Force has
10 given me to represent the views of the Los Angeles
11 County Bar Association, and I would not say "welcome,"
12 but I will certainly try to respond to any questions.

13 MR. HEBERT: Mr. Steinbrecher, thank you very
14 much for your comments, your thoughtful comments.

15 I'll start out with Wells Lyman.

16 MR. LYMAN: Thank you very much. Thank you
17 very much for coming, and with these fine
18 representatives that -- I watched them. They're doing
19 a very good job of covering -- covering your back.

20 MR. STEINBRECHER: Backing me up? I
21 appreciate that.

22 MR. LYMAN: So you're not alone.

23 You made one statement about the governance,
24 that you believe the majority should be members of the
25 State Bar.

1 Why is that, and what's the basis of that
2 opinion?

3 MR. STEINBRECHER: Well, we believe that the
4 practice of law is complex. It involves value
5 judgments often or understanding the complexities of
6 existing law, possible changes that might occur in the
7 law.

8 There are a number of attributes of practicing
9 law that we, frankly, think distinguish practicing law
10 from engineering and some of the other professions that
11 have been mentioned.

12 We believe that having a thorough
13 understanding, not only of the law, but of the practice
14 of law is extremely important for the effective
15 governance of attorneys in California.

16 And that's why we believe that a majority of
17 the governing board should have the practicing attorney
18 experience.

19 MR. LYMAN: Can I do a follow-up on that?

20 MR. HEBERT: No. Go ahead. I think any
21 person I call on should go ahead and try to exhaust all
22 the questions they have.

23 MR. LYMAN: This is my last question.

24 I accept your point of view about having the
25 value of that, but I'm not sure the answer is why that

1 value can't be given to a Board of Governors without
2 being the majority of the makeup of the Board of
3 Governors?

4 MR. STEINBRECHER: Well, I think that the --
5 if the board is going to vote and they are confronted
6 with difficult issues. I think that the majority of
7 the people making the decision who have -- if they have
8 the experience of practicing law and understand, to
9 some degree, the complexities of the law and the
10 complexities of practicing law, would bring a better
11 result. I mean, it's simple as that.

12 MR. HEBERT: Okay. Loren Kieve.

13 MR. KIEVE: In your report you state
14 "geographic constituencies make much less sense today
15 for selection of lawyer members of this body." You say
16 "the significant divisions within the Bar between
17 independent practitioners and lawyers employed in the
18 public and private sectors and among independent
19 practitioners the divisions are firm size and
20 specialization by subject matter and clients help."

21 "Lawyer constituencies should be reconfigured
22 to reflect these divisions."

23 I would just note that looking around the room
24 at this Task Force, by itself, we have a deputy public
25 defender. We have an assistant US attorney. We have

1 at least two small firm practitioners. We've got two
2 minorities. We have women. I suspect I can canvas the
3 board. We have plaintiffs lawyer. We have defense
4 lawyers, and we have switch hitters.

5 One of the things that would be very useful --
6 and I applaud your notion of trying to get the broadest
7 group of people that you can representative of the
8 constituencies.

9 It may be very useful if our staff, the
10 general counsel could take a look over the last ten
11 years and tell us whether or not the elected system
12 produces that kind of diversity, but I think that this
13 is something that this Task Force should look at.

14 So thank you for bringing that up.

15 MR. STEINBRECHER: Thank you. Well, I would
16 just say that we do not have any criticism of the
17 existing composition of the State Bar Board of
18 Governors.

19 All we're suggesting is that if people want to
20 examine ways that it could, perhaps, be improved
21 through some imposition of some kind of rule or
22 something like that, that is an area that could be
23 looked at.

24 I believe that, and I believe our members
25 believe that the existing governing body does reflect

1 many, many different aspects of diversity within the
2 State. Again, it's an area that could be examined.

3 MR. HEBERT: Okay. Loren, anything else? Jon
4 Streeter?

5 MR. STREETER: Yes.

6 Is it your view that in the current
7 composition of the governors that are around this
8 table, but those who come from Los Angeles, bear any
9 particular allegiance to the lawyers in Los Angeles,
10 you know, members of your association?

11 MR. STEINBRECHER: Let me answer it this way:
12 I've never been on the State Bar Board of Governors,
13 and I've never been deeply involved in the State Bar.

14 From my perspective, based on my experience in
15 the Los Angeles County Bar Association, my answer would
16 be no. I do understand that because members are
17 elected geographically, there may be some greater
18 appreciation of the issues that face attorneys in that
19 geographic area whether it's a more rural northeast
20 district or a Metropolitan district such as Los
21 Angeles, but I've never seen any direct evidence of
22 that.

23 MR. HEBERT: Oh, Jeannine.

24 MS. ENGLISH: In your recommendation, I think,
25 under 2 you suggest that the non- -- or that the public

1 members go through a vetting process.

2 What do you mean by that?

3 MR. STEINBRECHER: It would be the same
4 vetting process that attorneys would go through. In
5 other words, if the present method of selecting
6 governors to the Board of Governors is found to be, for
7 some reason, something that could be improved, one of
8 our suggestions is to consider a vetting process for
9 all members of the Board of Governors, public and
10 attorney members, to recommend candidates that would
11 have some degree of minimal interest, experience, and
12 devotion to the State Bar, somewhat similar to the
13 candidate vetting process that is used for judicial
14 nominees, candidates.

15 MS. ENGLISH: So the public members would be
16 vetted through the -- a Bar? Who would vet? Who would
17 do the vetting? The public?

18 MR. STEINBRECHER: An independent nonpartisan
19 group that would be appointed or created. Nothing that
20 exists today.

21 MS. ENGLISH: Appointed by whom?

22 MR. STEINBRECHER: State Supreme Court.

23 MS. ENGLISH: Thank you.

24 MR. HEBERT: Okay. Michael Tenenbaum.

25 MR. TENENBAUM: Thank you. I'm speaking on

1 behalf of Gwen who just read my mind here about the
2 question I was going to ask you, which is, in one of
3 your executive summary points you say that "Any changes
4 that would increase partisan political influence in the
5 process by increasing the number of appointments by
6 political entities should be avoided for two reasons."

7 And one of them you give is it wouldn't
8 improve governance in the State Bar, and the second one
9 is you say it would intrude on the judicial branch.

10 I'm just wondering, I don't know if anyone,
11 whether Professor Fellmeth or any other person who
12 studies the Bar has looked at the people who serve on
13 the board who are appointed by public members.

14 My guess would be that they would tend to
15 mirror at least the political persuasion, the parties
16 existing votes of the people who appoint them.

17 But have you given any thought to that? I
18 know you represent the lawyers of Los Angeles, but have
19 you given any thought to bias or loyalty to the person
20 that appoints a public member on the part of the
21 public?

22 MR. STEINBRECHER: Only in general, and that
23 we would be concerned about any change in the current
24 governance that would increase either partisanship or
25 the political influence of the governance of the Bar.

1 MR. TENENBAUM: Have you thought about how you
2 avoid that? I mean, if you have a -- for example, a
3 speaker of the assembly makes an appointment, how do
4 you insulate that from political influence?

5 Is that even possible?

6 MR. STEINBRECHER: Well, we're talking about
7 theoretical changes that might be able -- that might
8 improve the system of selecting members of the Board of
9 Governors, and that would be a suggestion of a way that
10 may be improved.

11 As to the current system, I don't have any
12 specific examples or experience or belief that any of
13 the existing or former public members have acted -- you
14 know, have conducted themselves in a way that was
15 overly partisan or anything like that.

16 Since we're talking in part here about a
17 theoretical situation, our theoretical position or our
18 position is that theoretically, it would be better to
19 remove, to the degree possible, any political
20 influence.

21 MR. HEBERT: I don't see any other hands in
22 the room.

23 Lowell Carruth, you'll let us know if you want
24 to ask a question; right?

25 LOWELL CARRUTH: I sure will.

1 MR. HEBERT: Okay. Good. Thanks, Lowell.

2 If there aren't any other questions, then
3 Mr. Steinbrecher, thank you so much for coming, and
4 thank your colleagues as well.

5 MR. STEINBRECHER: And, again, on behalf of
6 the Los Angeles County Bar Association, thank you for
7 giving us the time to make our views heard.

8 MR. HEBERT: At this time, I'd like to take
9 about a five-minute break, and then we'll go on into
10 our next speaker, Professor Richard Abel.

11 (A brief recess was taken.)

12 MR. HEBERT: We've got a few people I'd like
13 to wait for. We have a couple -- okay. I want to go
14 ahead and call the meeting back to order after the
15 break.

16 And our next speaker is here, and this is
17 Professor Richard Abel.

18 Professor Abel.

19

20 T E S T I M O N Y

21 PROFESSOR ABEL: Thank you. Thank you for
22 having me. Thank you for accepting my testimony and
23 listening to me this morning.

24 My name is Richard Abel. I'm Connell
25 Professor of Law Emeritus at UCLA. I retired two years

1 ago. I'll tell you a little bit about my background,
2 and I'll speak very briefly, much less than 30 minutes,
3 in the hopes that we can have lively discussion.

4 I've taught at UCLA for 35 years. Before I
5 retired, I taught Professional Responsibility every
6 year during that period, and I wrote extensively about
7 the subject as well.

8 I have a number of books. The most
9 grandiosely entitled is called "American Lawyers" and
10 it's everything you might want to know about the
11 subject.

12 I also have this recent book, which I sent a
13 chapter to you, and I've brought a copy with me. I'm
14 happy to give it to the Task Force. I did not bring 20
15 copies so I wouldn't object if some of you wanted to
16 buy it, but I can provide you with a single copy which
17 I'll leave here.

18 MR. HEBERT: You have to inscribe it to
19 everybody.

20 PROFESSOR ABEL: You have to see whether you
21 want me to do that.

22 I'm going to start with some fairly abstract
23 remarks that won't surprise you. I'm an academic, but
24 I'm going to use those remarks to structure the
25 question, which is highly practical, and I'm going to

1 come to that quickly.

2 And I'm going to make, really, just two fairly
3 concrete proposals or at least flow two ideas, which
4 would require significant changes, and I'll be
5 interested in your reaction and comments on these.

6 So let me start from the basics. The legal
7 profession: A profession by definition has to address
8 a problem that is truly an intractable problem, and
9 that is, it has to combine expertise and
10 accountability.

11 The expertise element is obvious. Professions
12 emerge as part of the division of labor as knowledge
13 becomes more and more fragmented and esoteric, none of
14 us can master all the bodies of knowledge on which we
15 depend, and the professions are the most extreme form
16 of that division of labor.

17 But because they call themselves professions,
18 they also hold themselves out as performing a public
19 service, and for that reason, they also have an
20 obligation of accountability.

21 And those two are intentioned, and they're
22 intentioned in ways that are very difficult to
23 reconcile.

24 Let me say a word about "accountability" in
25 the following respect: We are all, I think, almost

1 everybody in this room, certainly the vast majority of
2 us, producers of legal services in some fashion or
3 other.

4 Either we ourselves are practicing lawyers or
5 judges or we train lawyers as I did for much of my
6 career. We bring a particular point of view to that
7 task.

8 When we are consumers of other professional
9 services, we want them to be accountable to our
10 interests, and I think as consumers, we would not be
11 satisfied with a situation in which those who govern
12 those other services, whether they are medicine or
13 dentistry or accounting or architecture or
14 engineering -- we could go on -- were exclusively
15 governed by members of the producing category.

16 What we want -- consumers represented and in
17 charge in some significant way, and that's a very
18 difficult task.

19 It's a difficult task for at least two
20 reasons: One is the expertise function. We as
21 producers spend our lives gathering information about
22 what we do, and we are the most expert about what we
23 do.

24 We cannot have that kind of expertise about
25 all the other forms of activities about which we were

1 consumers. So we're specialists as producers, and
2 we're generalists as consumers.

3 Secondly, we cannot invest a lot of energy or
4 emotion in things that we do as consumers. If we buy a
5 good or a service, most of the time, and it's not what
6 we want, it goes bad or whatever, we can discard it and
7 go to something else.

8 Our concern as producers is something that
9 occupies us in the most fundamental way. It's
10 something that we care about. Those of us -- those of
11 you who have been involved, for instance, in the State
12 Bar Court know how caught up lawyers are when they are
13 the subject of the disciplinary process because their
14 entire future is at stake.

15 So the question is: How can we create the
16 kinds of accountability that are essential if the
17 profession can perform its public function?

18 I want to make two points, one about the kinds
19 of -- the way in which lawyers themselves should be
20 represented on any governing body, and the second about
21 the ways in which the consumers of legal services are
22 to be represented on any governing body.

23 With respect to lawyers, themselves, when the
24 State Bar emerged more than 80 years ago, it emerged as
25 a set of geographically defined constituencies. And in

1 a sense, that was a natural evolution that simply
2 reflected the nature of democratic represented
3 governance in the United States as a whole.

4 But it also made sense because lawyers around
5 the state of California in the 1920's performed much
6 the same function regardless of where they were.

7 There certainly were rural urban differences,
8 and those were significant differences, but there was
9 not a high level of specialization.

10 Lawyers looked much the same and did much the
11 same across the State. 80-plus years later, that is
12 entirely different. The level of specialization in the
13 profession is very high, and lawyers spend their lives
14 within a circle of lawyers operating in the same
15 specialty and have very little to do with lawyers
16 operating in other domains.

17 Corporate lawyers have nothing to do with
18 criminal practice. Family lawyers have nothing to do
19 with personal injury law. You can come up with your
20 own examples.

21 I, therefore, would make the argument that, if
22 lawyers -- the lawyer members of the governing body
23 whatever it is called and however it is chosen, the
24 lawyer members, if they are going to reflect the
25 diverse interests of the profession, they should be

1 chosen according to those diverse categories.

2 And there would be a lot of controversy about
3 how you define the categories and the fine-tuning of
4 those categories. I'm not going to get into that
5 detail now, although, I'd be interested in your views,
6 but I would make the argument that functional
7 categories make a great deal more sense than the
8 present geographic categories.

9 And there are data that we can draw upon.
10 They tend to be national data so they might not apply
11 perfectly to California, but, for instance, there are
12 two major studies, a link profession in Chicago, which
13 divide up professional efforts by subject matter and
14 clientele.

15 These include the work of Jack (sic) Heinz and
16 Ed Laumann, the first book, "Chicago Lawyers," the
17 second book "Urban Lawyers."

18 They cover a 25-year period, and they tell us
19 in, really, extraordinary detail what proportion of
20 lawyer effort is devoted, for instance, to plaintiff's
21 personal injury work or antitrust defense or any of the
22 categories you might come up with.

23 So it would be possible to create those
24 categories and make them representative for the
25 profession at large. I put that idea out for your

1 consideration.

2 That, I think, is feasible, practically, if
3 politically contentious. The second proposal is both
4 politically contentious, and I'm not sure whether it
5 can be realized.

6 The problem is this: It's hard enough, with
7 respect to consumers of other professional services, to
8 define who those consumers are and to organize them and
9 to identify them sufficiently that they could actually
10 be mobilized, activated, engaged so that they could
11 participate in the governance of that service.

12 It's, particularly, difficult to do that with
13 respect to the consumers of legal services. Let me
14 actually start with the easy part.

15 We know, again, from the Chicago studies that
16 about half of legal services are consumed by what I
17 consider, broadly speaking, to be business interests --
18 so companies, corporations, et cetera, partnerships.

19 Those entities, actually, have a variety of
20 associations that speak on their behalf, and, again,
21 that would be disagreement as to which association
22 might be mobilized there, but one could identify them.

23 Let me give the opposite extreme of a consumer
24 of legal services who are very important but, I would
25 argue, are -- would be impossible to empower as

1 representatives of the governing body, and those are
2 the people who have gone through the criminal justice
3 system.

4 How would you identify and create a
5 representative for the people who are the defendants in
6 the criminal justice system who care deeply about the
7 quality and integrity of the legal services they
8 receive but who are disaggregated except when they're
9 in prison?

10 It would be very difficult to do that. There
11 are intermediate positions, I think, between those two
12 extremes -- between the business consumers on the one
13 hand, who I think are readily identifiable, and let's
14 say, criminal defendants on the other extreme.

15 There are a variety of consumer groups that
16 represent people who buy other goods and services so
17 they would be involved in consumer disputes, in
18 products liability disputes.

19 You might identify car owners through the AAA.
20 You might identify other groups, perhaps consumers of
21 family law services, consumers of legal services in
22 property disputes -- landlord, tenants, et cetera.

23 I put it to you that that's a serious problem,
24 but I think that, if the ideal upon which the problem
25 of governance is founded -- which is representation --

1 is to be taken seriously, then your Task Force has a
2 difficult challenge of trying to identify ways to
3 engage the wide variety of consumers of legal services
4 in the governance process in ways that are better than
5 are presently done.

6 I'm not, for the moment, maligning the bona
7 fides of those who are represented as public members.
8 I'm sure they are doing an excellent job, and they're
9 doing the best job they can, but I come back to the
10 question.

11 As a consumer of other professional services,
12 wouldn't you want to see your consumer interests
13 represented if that could be done?

14 Thank you.

15 MR. HEBERT: Thank you. Do we have any
16 questions for Professor Abel?

17 Wells Lyman.

18 MR. LYMAN: Thank you. One statement,
19 Professor Abel. I read this, and then I started
20 reading it with trepidation of the size of it.

21 When am I going to do this? But you are a
22 wonderful writer. You actually made -- I don't know
23 how you did it. You, actually, made a page turnaround
24 of something that could be very difficult to go
25 through, and I really commend you for that.

1 I wanted to commend you on one more. You made
2 me a better board member after reading this than before
3 I read it. So I really thank you for that.

4 I see the conundrum of this, how do you
5 represent the consumer. We have a choice that we've
6 only discussed, and that goes between whether lawyers
7 should represent this association, this Bar or whether
8 members that are selected from the legislature or the
9 supreme court should do it.

10 None of this that you refer to, as far as
11 consumers, comes into that -- seems to come into that
12 mix. After reading your -- this chapter, it's -- some
13 of these points -- I read, for instance, the --
14 Governor Wilson and Willie Brown, he -- they got into
15 what -- they did things with the State Bar that were
16 completely within some of their grudges or some of
17 their self-interest.

18 And then I -- it made me concerned about the
19 politicization between republicans and democrats and
20 how that could cause the State Bar to shift back and
21 forth and who would influence that.

22 Do you have any other choices besides lawyers
23 that are selected as they're selected now, and/or
24 public members that are appointed by, basically,
25 political forces which are not, necessarily, to me the

1 same as consumer representation?

2 Do you have any opinion on that?

3 PROFESSOR ABEL: The best I can offer is a
4 quite flawed compromise, which would be to identify a
5 number of consumer organizations broadly speaking, and
6 let them nominate, and then let the appointive
7 authority -- whatever that is -- choose among them.

8 It's a little bit like the ways in which
9 professional bodies like the State Bar or the LA County
10 Bar would comment on judicial appoints or put forward a
11 slate or whatever.

12 It's a mix of public and private involvement,
13 but at least -- I think it would be an improvement in
14 the following sense: If consumer bodies consistently
15 put forward candidates and those were ignored by the
16 appointing authorities, then the claim that those
17 appointees were representative of consumers would be
18 substantially weakened.

19 I think it would be an embarrassment at least,
20 and by the way, if that first chapter is entertaining,
21 I think the credit goes to the State Bar, which is in
22 the protagonist during those 80 years.

23 MR. LYMAN: It does resemble a Tennessee
24 Williams play.

25 MR. HEBERT: Anything else, Wells?

1 MR. LYMAN: No.

2 MR. HEBERT: Michael Tenenbaum.

3 MR. TENENBAUM: Yeah. I had a quick question.
4 I was intrigued by your suggestion that the composition
5 of the board include not only lawyers and public and
6 consumer representatives, but also representative of
7 the fora in which lawyers practice, which I assume you
8 mean judges or someone from the judicial branch.

9 Can you tell us a little bit more about what
10 you envision for that and why?

11 PROFESSOR ABEL: So if you think about the
12 following question: Who gets to observe lawyer
13 behavior? Most lawyer behavior is, actually, extremely
14 private because it occurs in a lawyer's office. And
15 it's not seen by anybody except partners and
16 associates, and, maybe, opposing counsel in some
17 fashion.

18 Judges are the best place to observe, at
19 least, that portion, which is a fraction of lawyer
20 behavior, which occurs in the litigative (sic) context.

21 We know that judges have been very reluctant
22 to be protagonist in disciplinary matters. They file a
23 very small proportion of disciplinary complaints.
24 There's a whole host of reasons for that, but they do
25 have the best vantage point about lawyer behavior,

1 generally.

2 I would rather see the judiciary involved in
3 fostering policy making from that vantage point than I
4 would, necessarily, in having judges impose sanctions,
5 which is a highly contested issue.

6 I'm not suggesting other alternatives, but I
7 think, at the very least, judges could perform a very
8 useful function both -- mainly State, but perhaps
9 federal and perhaps administrative agencies in which
10 lawyers appear with some frequency as well.

11 MR. TENENBAUM: For practical reasons, would
12 you also support retired judges taking the place of
13 judges?

14 PROFESSOR ABEL: I don't -- the only
15 disadvantage is that -- as a retired person myself --
16 knowledge obsolesces, and therefore at some point the
17 knowledge would be less immediate, but I wouldn't be
18 opposed to it, no.

19 MR. HEBERT: Jon Streeter.

20 MR. STREETER: I too, like Wells, really
21 appreciate your background in history, and I think --
22 and I commended this to all of my colleagues. It will
23 make us all better board members to understand how we
24 got here.

25 So I wish to also give my praise toward the

1 potboiler that you --

2 PROFESSOR ABEL: Soon to be a major motion
3 picture, of course.

4 MR. STREETER: In listening to your remarks
5 about representational democracy, it brought to
6 mind some pleasure reading that I carry around with me,
7 at least I am these days.

8 It's called America's Constitution by one of
9 your colleagues at Yale, Akhil Amar, who wrote a great,
10 essentially, biography of the United States
11 Constitution.

12 And truth be told, the kind of things that
13 you're talking about are some of the most difficult
14 problems of governance known to mankind.

15 And, you know, there were a lot of people at
16 near genius levels several 100 years ago who came up
17 with a pretty darn good system, thinking about the
18 kinds of things that you're telling us about -- how to
19 design a good system of representation, but it wasn't
20 perfect by any means back then.

21 And, you know, I would respectfully suggest
22 two things: If we are going to embark in, you know, an
23 adventure of redesigning, at this kind of fundamental
24 level, how the Bar is structured, we need to -- we need
25 to take a lot of time doing it.

1 Back then, it took 12 years to come up with
2 something that was just a start, and in the end it was
3 a work of genius, but it took 12 years.

4 You know, there was a lot of political back
5 and forth, and what you're talking about, and, frankly,
6 what Professor Fellmeth talked about, you know,
7 involves clashes of political interests that we're not
8 going to solve here in this room.

9 You know, I mean, there's problems of
10 feasibility with what you're talking about, No. 1. And
11 I think your example of criminal defendants is the best
12 example. I mean, it's just not possible to get these
13 important interest groups, you know, in an organized
14 way to be a meaningful electorate.

15 Another observation I would make is: We're
16 focus- -- very much focused on lawyers representing
17 clients, and there needs to be, as much as possible of
18 that for people who need it. But, frankly, we're never
19 gonna get to a system where everybody can get it.

20 And there's a vast number of people in this
21 State who deal with the justice system without
22 representation, and there's an access to justice issue
23 there. There's no attorney-client relationship, you
24 know.

25 Pro se litigants, people who can't afford

1 lawyers ought to -- ought to be representative in this
2 endeavor of trying to improve the justice system as
3 well.

4 So, now, I would never suggest that there's an
5 easy fix to that or that's an overall urging solution.
6 I would just caution that we not try to solve this
7 overnight, certainly not within a space of three months
8 because it is such a difficult problem.

9 So, I mean, those are -- I guess I'd ask for
10 your observations about feasibility on these ideas of
11 coming up with a new system of representation.

12 If we're gonna have an electoral -- a new
13 electoral system, do you really think it would be
14 possible to -- what would we do?

15 Maybe, ask the folks at Twitter to help us
16 design a new way of connecting us up with
17 constituencies or something?

18 I just -- I mean, it's hard to imagine how
19 that would be designed.

20 MR. TENENBAUM: Jon, I'm going to ask that you
21 sign up for the afternoon session.

22 PROFESSOR ABEL: Let me -- let me respond to
23 several of your comments, and then come back to the
24 specific concrete --

25 MR. HEBERT: No. I'm joking. Those are for

1 Jon.

2 PROFESSOR ABEL: Oh, okay -- specific concrete
3 idea.

4 First of all, I think change can be
5 incremental. I don't think you have to make radical
6 change in the next three months.

7 I think if you made particular changes and
8 tried them out, you could then move on and expand them
9 or retract them or modify them. I don't think
10 everything has to be done all at once.

11 Secondly, this discussion of governance is a
12 long discussion. It's been going on for decades so
13 it's not as though -- it's not as though it's new.

14 Third, as Professor Fellmeth indicated, there
15 are a variety of models in other states that could be
16 looked to so that you wouldn't be embarking
17 (Unintelligible) something that's never been tried
18 before.

19 And then, finally, the reason I circulated
20 that chapter was not only for your entertainment value
21 and to promote my book, but also for the following
22 salutary lesson that I took from it, in the course of
23 writing it, and I hope that you would take from it as
24 readers, which is this: Over an 80-year period, good
25 people in positions of governance in the Bar made

1 decisions which to them at that time seemed to be in
2 the public interest, and yet within years or decades,
3 we see them as being retrograde and protectionist.

4 I don't say that to malign them, but just to
5 say that we see within the limitations of our time and
6 environment or perspective, and that's why we need to
7 broaden the representational framework so that more
8 perspectives are brought in.

9 So now, to a very concrete question. I think
10 it would be possible, for instance -- I'm not making
11 this as a -- this is something you would want to think
12 about, if you want to take it seriously -- to offer the
13 members of the Bar a comprehensive list of categories
14 of practice to identify themselves with, and let that
15 identification become the constituency from which they
16 vote.

17 And then the numbers in each of those
18 constituencies determine the number of representatives
19 that that constituency gets. So if a category -- just
20 to pick one at random -- is criminal defense, since
21 we've been talking about that, that is for most people,
22 if they do it at all, a significant part of what they
23 do.

24 They might have to choose between that and
25 something else, but most people who do criminal defense

1 do it pretty close to full time or a very substantial
2 part of their time.

3 And then you would see how many people
4 identify with criminal defense, and that would be a
5 proportion of the Bar, and they would get a
6 proportional number of representatives on the governing
7 board. That's -- I think that would be a feasible --

8 MR. STREETER: Right. On the lawyer's side it
9 seems --

10 PROFESSOR ABEL: Yeah.

11 MR. STREETER: I mean, I think that -- I agree
12 with you that there are identifiable specialties mostly
13 among associations. There's the Association of
14 Criminal Defense Lawyers. You know, there's a lot of
15 leading associations --

16 PROFESSOR ABEL: Right.

17 MR. STREETER: -- that could easily tap, but I
18 thought the more intriguing and, frankly, the more
19 important perspective you offer was how to get the
20 diversity of representation among the client
21 constituency.

22 PROFESSOR ABEL: Yeah. Now, it's very
23 difficult. I'll give you -- I'll make two comments.
24 One, I think you could start with a single organization
25 about which there was consensus among the Task Force

1 that they were, in fact, representative of consumers.

2 Maybe Consumers Union, I'm not at all sure
3 that's the right one, but you would find one, and you
4 would start the process by having them make nominations
5 for the appointing -- for the appointing authority to
6 choose from, and that would be one position on the new
7 governing body.

8 To go back to -- this is not a full answer,
9 but just to go back to your question of pro se
10 litigants.

11 I'm a founding member of the Public Interest
12 Program at UCLA Law School. We have -- now have about
13 10 to 15 years of graduates, and I've been interviewing
14 them to see what happened to them.

15 And one of them is now the presiding attorney,
16 the directing attorney of the pro se unit in the
17 Southern District of New York Federal Court.

18 So I interviewed her, and she's doing
19 fantastic work, and she sees the vast mass of pro se
20 petitions that flow through her office, which is in the
21 thousands a year.

22 It might be possible to identify those doing
23 pro se assistance and make them somehow deputies of
24 that group. None of these is perfect. These are
25 surrogate representational capacities.

1 MR. HEBERT: Michael Tenenbaum.

2 MR. TENENBAUM: Real quick, I'm just
3 wondering. There's a variety of ways that you could
4 divide up the membership of the board and say we want
5 representatives of voters by practice areas, which is
6 what you're suggesting or by tenure or by geography.

7 And I'm just wondering, it seems to me, having
8 served on the board for a few years, that most of the
9 issues that we deal with on the board don't happen to
10 affect one particular constituency of lawyers -- the
11 practice area of lawyers more than others.

12 Every once in awhile we'll have an issue where
13 the benefit of having a prosecutor or a criminal
14 defense lawyer on the board helps and so forth, but
15 have you -- do you have any empirical basis for that to
16 say "well, I've looked at the board -- the decisions
17 the board makes, and they would make superior
18 decisions, or more importantly, decisions that are
19 better for the public interest if they had a bankruptcy
20 lawyer, and a divorce lawyer or a criminal lawyer"?

21 PROFESSOR ABEL: It isn't so much a question
22 of expertise in a narrow technical sense but rather
23 lived experience. And my argument would be that the
24 profession has grown so large and so diverse along a
25 variety of dimensions of which subspecialty is one, but

1 age, race, gender, religion, et cetera may be others.

2 So diverse that it is those significant
3 differences that shape the perspectives that they bring
4 to the table.

5 I don't know that anybody has been excluded.
6 I'm not suggesting that. I'm not, necessarily,
7 suggesting that the decisions will be superior. I am
8 suggesting that geographical constituencies seem to me
9 to make little sense.

10 That's what I'm arguing, and I would at least
11 put forth the hypothesis that if participation in
12 election is on the order of 15 or 20 percent -- and I'm
13 taking that from Professor Fellmeth's remarks, I
14 haven't tried to verify that -- but it's historically
15 the case that elections don't produce large turnouts.

16 You might get better turnouts, and therefore
17 more engagements if you restructured constituencies.

18 MR. HEBERT: Loren Kieve, and then Gwen Moore.

19 MR. KIEVE: In the field in which I practice,
20 probably, the best observer of lawyer's conduct would
21 be court reporters. And I doubt we are going to get
22 what we have the political will to have the inmate
23 representative on this board.

24 But we do have public defenders, and we have
25 people who have represented families, and I think they

1 bring that perspective to it.

2 There is, as I see it, a tension between your
3 suggestion, that there should be specific, at least
4 constituency representatives on this board, and
5 Mr. Fellmeth's perception that there should be no
6 constituency representatives on this board.

7 I took my job here on the assumption that,
8 although I may have been selected by my peers or non-
9 peers -- depending on how you define it in San
10 Francisco -- I represent the people of the State of
11 California.

12 And I think it is important that whatever we
13 do, we find a way to make sure that that is the
14 paramount obligation and the paramount constituency of
15 every member of this board.

16 PROFESSOR ABEL: I don't disagree at all. I
17 am not suggesting in any narrow sense that, if you
18 restructured the nature of the constituencies, that the
19 representatives would then become mere tools or
20 spokespersons for that narrow interest group.

21 I am suggesting -- and I will make -- argue
22 this strongly that what you know about the nature of
23 practice is a function of how you spend your time, and
24 therefore, you bring a perspective to the table which
25 is very different because of what you know.

1 I'll go back to what I know best, which is
2 faculty meetings. I'm a torts teacher. That's what I
3 spent 40 years doing, and I come with a different
4 perspective from a tax teacher, and I would think it
5 would be important that those two perspectives be
6 represented.

7 It is that -- it is that kind of -- it's about
8 perspective, not about representational capacity.

9 MR. HEBERT: Gwen Moore.

10 MS. MOORE: My question goes to your notion
11 that it might be a good process to have consumers --
12 public members selected from consumer organizations or
13 appointed from those.

14 Would not a better process be if you had some
15 kind of criteria that was set up for what you want from
16 a public member?

17 Often when people represent organizations or
18 groups, sometimes the general will is not carried out,
19 but it is the purpose of whatever that organization is,
20 and so I'm just a bit curious about your comments
21 there.

22 PROFESSOR ABEL: I guess, I will do the
23 typical law professor trick and put the question back
24 to you.

25 What would -- it's hard for me to imagine what

1 the criteria are, and that is why I would punt the
2 problem to organizations that at least purport to
3 represent a variety of consumer perspectives.

4 What kinds of criteria would you have in mind?

5 MS. MOORE: Actually, that's why I asked the
6 question to you.

7 PROFESSOR ABEL: Well, that -- that's -- I
8 mean, it is my belief that organizations that have
9 spent their professional activities trying to voice a
10 consumer perspective would be able to choose or
11 nominate consumer representatives more effectively than
12 I or you would be able to devise criteria as a Task
13 Force.

14 MS. MOORE: I guess my concern is one that,
15 generally, organizations are organized around a concern
16 or a concept.

17 And I just wonder if you would be narrowing it
18 by suggesting that these are the folks that should be
19 suggesting, just as there're broad issues here, and
20 they're not others that come from one other group.

21 I'm not so sure the public members ought to be
22 tied to an organization as opposed to the general
23 concern with representing the people of California or
24 the consumers of California.

25 I think that you might --

1 PROFESSOR ABEL: I can't -- I'm not gonna
2 offer a strong view of that then.

3 MS. MOORE: Okay.

4 PROFESSOR ABEL: Because I don't have one. I
5 think it is so extraordinarily difficult to identify
6 those who have both the expertise and the dedication to
7 represent consumer interests that I would be open to a
8 variety of ways of selecting them. I'm not advocating
9 for one.

10 MR. HEBERT: Okay. I don't see any other
11 questions, any other hands here in the room.

12 Lowell, do you have any questions?

13 MR. CARRUTH: No, I'm -- no.

14 MR. HEBERT: Okay. All right. Well,
15 Professor Abel, thank you very much. We will,
16 actually, we'd love to get a copy of your book, and
17 we'll put it in our library archives in San Francisco
18 for anybody who wants to read it.

19 Cathy, can you get the book from
20 Professor Abel. Thank you very much.

21 Okay. Moving right along since we've got a
22 couple more speakers here before we break for lunch.

23 Our next speaker is Victor Acevedo, and he's
24 with the Mexican-American Bar Association of Los
25 Angeles County.

1 Mr. Acevedo, welcome.

2

3 T E S T I M O N Y

4 MR. ACEVEDO: Thank you, very much. Good
5 morning.

6 I have just very brief comments that I'd like
7 to make. First, thank you very much for inviting me to
8 speak to you all.

9 As you indicate, my name is Victor Acevedo. I
10 am the 2011 president of the Mexican-American Bar
11 Association. My day job is -- I've been 12 years a
12 public defender for Los Angeles County.

13 For those of you who are not familiar with our
14 organization, we represent an excess of 800 members:
15 Attorneys, judges, elected officials, law students, and
16 the Latino legal community in LA County, as well as,
17 also representing the interest of the Latino consumer
18 within LA County as well.

19 One of the main points that I have seen, not
20 only through my review of the materials, but in the
21 speakers that have preceded me, is this idea of public
22 protection.

23 And I think that one of the board members,
24 earlier this morning, Mr. Streeter, I believe, raised a
25 very good point, which is this issue of public

1 protection is not, necessarily, very clearly defined.

2 Because one of the things that we have to
3 understand, obviously, as lawyers and as a governing
4 body that regulates the practice of law in California
5 is what interests are being protected when we use that
6 term?

7 Is it the disgruntled client of a lawyer who
8 didn't receive the services that he or she believed
9 that he or she should have received or is it something
10 more to the level of criminal activity or serious
11 misconduct on the part of an attorney?

12 Because, I think, some of the suggestions that
13 have been made to the board are really -- could
14 arguably be categorized as window dressing versus
15 something that really goes to the heart of the issue.

16 I do share the statements by the president of
17 the Los Angeles County Bar Association that the
18 protection of the public is the primary concern of the
19 State Bar, and it's done in two ways.

20 One, obviously, the most logical one is the
21 regulation of those who are admitted to practice.

22 Obviously, we want to insure that the new
23 admittees (sic) are qualified and responsible
24 individuals that can undertake the task of practicing
25 law in the State.

1 And the second, corollary to that is the
2 disciplinary system that is imposed on lawyers
3 statewide. I'm going to focus my concerns on some very
4 brief areas.

5 One of those is the regulatory competence that
6 was already shared by the president of the Los Angeles
7 County Bar Association.

8 I do believe that one of the most important
9 things is to select individuals within the regulatory
10 structure that are strongly dedicated to insure the
11 protection of the public in terms of insuring that
12 legal services are adequately provided and that the
13 public is not taken advantage of and, also, that the
14 individuals that make up that regulatory scheme be
15 qualified.

16 I would further an idea that when the term
17 "qualified individual" is used, it would be my
18 contention that it is, probably, most advisable of the
19 attorney members of any regulatory scheme to be
20 qualified in the practice of law as opposed to, maybe,
21 distinguishing between academics or individuals who
22 have passed the Bar Exam but have never had an
23 attorney-client relationship.

24 Why? Well, the logical reason there is
25 because oftentimes, as I'm sure you are a lot more

1 versed in these issues than I am, a lot of the
2 complaints are due to a lack of education on the part
3 of the public.

4 As a public defender, one of the main things
5 that I deal with, on an almost daily basis, is the
6 education of the public's perception of what lawyers
7 are supposed to do versus what the professional rules
8 of responsibility actually dictate we're really
9 supposed to do.

10 So a lot of time, my belief is that, some of
11 the complaints that go into the State Bar are more an
12 educational exercise in at least advising the members
13 of the public that they don't really have a complaint
14 or complaints against a lawyer.

15 It's that they don't really understand the
16 nature of the attorney-client relationship and the
17 different areas that may impact the persons perception
18 that they were wronged by an attorney.

19 The second issue, also, is there -- that the
20 California Supreme Court should be the final arbiter of
21 any disputes or of any disciplinary action against an
22 attorney.

23 The only thing I will emphasize there is that
24 my belief there is that there should be as much
25 transparency as possible.

1 Why? Because at the end of the day, part of
2 public protection is showing and demonstrating, either
3 through documentary proof or through statistical
4 analysis, the kinds of complaints that come into the
5 State Bar -- how those complaints are separated in
6 terms of whether it is just an educational issue on the
7 part of the person calling in or whether there really
8 is misconduct on the part of the attorney.

9 I think a lot of these issues are brought
10 about by this misperception that lawyers can't be
11 trusted to regulate themselves.

12 I did read the full article by the professor
13 that was provided in the materials, and I echo the
14 accolades that some of the members of this governing
15 body have given to the professor because it really was
16 an eye-opener to me, and it made me realize that these
17 are things that have historically been evolving and
18 continue to evolve.

19 And I think that we're still on the right
20 track in terms of believing that our profession can
21 regulate itself, but I think transparency is a goal
22 that we should all keep in mind.

23 Because, if we can turn to data to say that,
24 "look, these complaints are being handled in a timely
25 fashion, and they are being resolved in an appropriate

1 fashion, and that those attorneys who commit serious
2 misconduct are being disciplined or disbarred," then I
3 think that that would go to great lengths to allay any
4 concerns by the public that lawyers can indeed regulate
5 themselves.

6 A big concern that's shared by my organization
7 is the unintended consequences that any new changes to
8 the governing structure of the regulatory body
9 overseeing attorney discipline would have.

10 One of the biggest and most important
11 questions for us is any fiscal consequence that would
12 be engendered by a substantial change in the regulatory
13 structure of attorney discipline.

14 Because if, currently, we are not beholding to
15 the state or its finances and being able to meet our
16 function of self-regulation, why then open the door to
17 potential catastrophe by becoming an appendage of the
18 State, where all or most of the activity that we
19 currently engage in regulating our practice becomes
20 part of the state.

21 I would find it very hard-pressed to be
22 convinced by anyone that a State agency within this
23 state within the fiscal climate that we currently
24 operate under, would be in any position to meet out the
25 obligation that we have to protect the public in a way

1 that is more efficient or better than the one currently
2 in place.

3 So one of the concerns that I hope that the
4 Board of Governors certainly takes to heart is this
5 fiscal impact that any changes would have on that.

6 One of the things, also, that was raised by
7 the first speaker, the professor who indicated that one
8 of the things that he would like to see is mandatory
9 malpractice insurance.

10 Although those are legitimate concerns,
11 perhaps, also, one of the things that we could discuss
12 is how we could better educate the public to be better
13 consumers.

14 Any regulatory scheme is always going to be
15 flawed no matter where it comes from, no matter the
16 good intention of the people that are designing that
17 regulatory scheme.

18 But I think, instead of enabling a public that
19 turns to us to discipline attorneys for, maybe,
20 instances where there shouldn't be discipline because
21 of the lack of understanding of the attorney-client
22 relationship, that, perhaps, a bigger push should be
23 made to encourage consumers when they engage the
24 services of a lawyer to ask certain questions to be
25 provided with documentation.

1 Obviously, I'm a lawyer. I would know what
2 kinds of question to ask if I were to engage the legal
3 services of a practitioner that is not from my field.

4 Certainly, members of the public are not going
5 to be as sophisticated to know those kinds of questions
6 but, perhaps, tied into the Task Force goals might be a
7 long-term vision where those kinds of things can be
8 dealt with to minimize the resources that are going to
9 have to be allocated to deal with the calls that really
10 are just about educating the public in terms of their
11 rights or the attorney-client relationship itself.

12 One of the criticisms that Professor Fellmeth
13 also brought to this board was his criticism of the
14 democracy in terms of -- well, we can call it
15 democracy, but if only 40 percent of the people within
16 this structure are actually voting, can we really call
17 it a democracy?

18 I would simply raise the issue that part of
19 being in a democracy is being able to make a choice not
20 to engage in the voting process. Now, that can be for
21 a number of different reasons.

22 It can be apathy or it can simply be that
23 people choose to be rationally ignorant about things
24 that they simply don't have time to invest in.

25 And in addition to, maybe, they feel that the

1 current structure doesn't need their particular voice.
2 I certainly wouldn't say that it is undemocratic
3 because of low participation.

4 Another issue also -- and this goes to the
5 main point that I'm trying to make in terms of the
6 public's understanding of the attorney-client
7 relationship and that is the issue of attorney billing
8 and dishonesty.

9 One of the questions that immediately rises to
10 my mind is, of the disputes that the State Bar receives
11 on this particular issue, how many of those are after
12 the fact disputes that are generated because a client
13 felt that their case either didn't prevail on the
14 merits or are ultimately dissatisfied with the ultimate
15 resolution of their case that they then turn to the
16 complaint process to try to, you know, get back at the
17 attorney who they feel, maybe, wronged them, when in
18 reality, maybe, there wasn't anything unethical about
19 the fee structure itself?

20 As far as the issues of who should be
21 representative, MABA really takes a strong position in
22 this particular area because the recent -- the
23 relatively recent history of the -- of the State Bars
24 Board of Governors has only seen three Latino board
25 members in the recent past.

1 Representing the largest minority Bar
2 Association in LA County, and one of the largest
3 minority bar associations statewide, access is
4 definitely one of the issues that we turn to you and
5 this Task Force to make sure that the access that we
6 have made very small strides to get does not go away.

7 And one of the concerns that I certainly share
8 with some of the other individuals who have submitted
9 the responses that the Task Force requested is this
10 issue of who gets to appoint the board.

11 I do believe that non-lawyers should be part
12 of this regulatory scheme but should always maintain a
13 minority voice within that.

14 Why? Because one of the things that we deal
15 with as lawyers, again, is this issue of we know best
16 what our professional responsibilities are in the
17 context of an attorney-client relationship.

18 A non-lawyer is not going to be as
19 sophisticated to understand the nuances involved and
20 the pitfalls that may come as a result of professional
21 responsibility and ethical conduct -- ethical standards
22 of conduct that are demanded of attorneys, but that
23 don't cross the line of being malpractice.

24 I certainly would, also, echo a prior -- I
25 think -- I'm not sure if one of the speakers said -- I

1 think that one term by the Board of Governors is
2 probably adequate because then you don't fall into the
3 pitfall of if there is a possible second term, are
4 there going to be some political wrangling that are
5 going to be potentially permeating somebody's
6 representation on the board. And so I believe that one
7 term is probably good enough.

8 As far as the board of trustees being named --
9 I'm sorry. As far as the Board of Governors being
10 changed from governors to trustees, again, I think I
11 see this more as window dressing more than anything
12 else.

13 It doesn't go really to the heart of whether
14 or not we are doing a good job of regulating our own
15 and protecting the public.

16 And more important than anything else, I think
17 one of the issues that I see, also, is this particular
18 issue of -- the material, the article does a really
19 good job of exposing some, you know, issues with, you
20 know, how do we deal with members who are disbarred and
21 being readmitted, and certainly those are problems.

22 But I think most of the problems that we deal
23 with from the regulatory standpoint are dealt with in
24 an acceptable manner.

25 It's the cases on the margins where really all

1 of the problems come in because, as you all know, we
2 have a responsibility if we're convicted of a crime to
3 self-report.

4 Now, if we don't self-report, obviously, we
5 are in violation of our duties under the regulatory
6 scheme here in California, but to say that there is a
7 systemic problem in how we were regulating, I guess, I
8 would need to see a lot more concrete information.
9 Because, I think that, if you were to crunch the
10 numbers, so to speak, you may come to the realization
11 that most of the problem lawyers are being dealt with
12 in an adequate manner.

13 Reasonable minds can always differ whether the
14 ultimate sanction wasn't harsh enough or not, and that
15 is, obviously, something that we would need it -- the
16 buck needs to stop somewhere.

17 I'm very comfortable with having the
18 California Supreme Court be the final arbiter of all of
19 the disciplinary actions against our attorneys.

20 The other question that I do raise is why do
21 we have or why is there this perceived inherent trust
22 in public officials or in elected officials appointing
23 members to this board?

24 I like the idea that every geographic area in
25 California is properly represented, not only because it

1 has allowed access to minorities onto the Board of
2 Governors, but also as Mr. Tenenbaum himself shared the
3 story earlier this morning, he actually ran on a
4 platform that there were certain things that he wanted
5 to bring to the board if he were elected to it.

6 And I think that elections are always a good
7 thing. Why? Because it shows your commitment to the
8 cause, No. 1. But No. 2, it allows you to then
9 mobilize your troops, so to speak, and get the word out
10 and really put yourself out there as somebody who is
11 truly dedicated to the ultimate obligations that -- of
12 the board that you would be elected to.

13 Taking that away and centralizing that up to
14 Sacramento is going to engender -- even if it's the
15 intended consequence -- certainly for MABA, we would
16 see it as unintended consequence is that it would,
17 obviously, then be nothing but a political game of who
18 knows who.

19 And you would seriously undermine the access
20 that certain members of underrepresented groups have
21 made to get on to the Board of Governors.

22 We are not going to be guaranteed,
23 necessarily, that kind of representation if the board
24 structure is changed from its current format of having
25 the geographic areas elected than if we had them all

1 appointed by political appointees.

2 Because once somebody is appointed by some
3 political body, there is always the possible perception
4 that that person may or may not have their interests
5 on -- bringing on -- bringing marriages to the board
6 versus those that -- those that appointed them.

7 And then, lastly, one of the final comments
8 that I want to make: Mr. Rodriguez made a very pointed
9 question of the first speaker about, you know, if you
10 did change the regulatory scheme so that there was a
11 fund that was, specifically, dedicated by the State of
12 California to fund what the State Bar currently does,
13 wouldn't we run the risk of having the governor dip
14 into that fund in times of fiscal crisis such as now?

15 Just to sort of share a personal anecdote, I'm
16 a member of the Automobile Club of Southern, and I read
17 sort of the monthly news -- the monthly magazine that
18 we get.

19 And that's -- I have seen just through reading
20 that, the attempts that that particular lobby has made
21 to maintain transportation funds dedicated only for
22 transportation projects in the State and how years --
23 election cycle after election cycle, when the State
24 needs money, they find loopholes to dip into that money
25 that is not theirs.

1 The professor, actually, gave a very, I think,
2 appropriate response, which is that he hoped that it
3 doesn't. But we live in an environment where hope is
4 not going to guarantee us anything.

5 And the current structure, as it is, where we
6 self-fund all of this has worked, and I see this as
7 perhaps an attempt to broke -- to fix something that's
8 not broken.

9 And I would just be very mindful of that -- of
10 those dangers if you were to decide to make that
11 recommendation when the Task Force obligations are
12 complete.

13 Thank you very much, and I'll take any
14 questions that you have.

15 MR. HEBERT: Thank you, Mr. Acevedo.

16 Dennis Mangers.

17 MR. MANGERS: Thank you for your helpful
18 comments today. I appreciate it very much, you're
19 being here.

20 I'm intrigued by how admittedly you and others
21 who will testify here today, suggest the importance of
22 how there has to be an attorney-control majority on the
23 Board of Governors.

24 And yet, as Professor Fellmeth pointed out
25 this morning, you are often before generalist judges

1 and certainly generalist juries whom you must persuade
2 your viewpoint at some point.

3 I see us all here as colleagues all engaged in
4 public protection. I learn a great deal from the
5 attorneys, but, ultimately, on behalf of the public, I
6 have to make a call given their expertise.

7 What kind of chaos could we expect will occur
8 if for some reason or another we come up with a
9 different formulation and on some occasion we outvote
10 the attorney members by a vote?

11 How does this disrupt the process of trying to
12 protect the public interest? Because all of you
13 seem -- all of the attorney representatives, who will
14 speak for us today, seem to be as adamant as you.

15 We need to make sure there's always a majority
16 of attorneys.

17 MR. ACEVEDO: That's a really good question,
18 and I guess one thing -- you can slice it in many
19 different ways in order to answer your question, but I
20 think one of the main dangers -- it all depends
21 obviously, how you do it.

22 If the body makes a recommendation and it goes
23 up to someone else to make a final determination, and
24 that person is a lawyer and adopts that, I think there
25 would be less dangers.

1 But I think the main danger is this not
2 understanding the attorney-client relationship. I, you
3 know, represented thousands of clients in my 12-year
4 career as a public defender, and there are times where
5 there is a need to explain either to family members or
6 other non-lawyers the nuances of what it means to have
7 an attorney-client relationship. What are the
8 obligations?

9 And, again, a lot of times it's this
10 misperception, and as long as the non-attorney members
11 of the Board of Governors have, maybe, I don't know,
12 perhaps enough experience in an attorney-client setting
13 or an attorney-client relationship, I think that that
14 is a minority view that could be extremely invaluable
15 to those who are attorneys.

16 But the main danger would be making findings
17 or recommendations against an attorney that are
18 misapplying or misunderstanding the rules of
19 professional conduct as they relate to our profession.
20 That would be the main danger that I see.

21 MR. MANGERS: I just have to say, with all due
22 respect, that it's just not cutting it for me. In the
23 course of my 50-year career -- professional career --
24 I've been in four different professions.

25 I understand relationships between

1 constituents, client and the professional pretty well,
2 in a far more generic way given my own personal
3 experience than perhaps just the attorney-client ones.

4 So I just want to make sure. It's just not
5 standing the test of reason for me, but I thank you for
6 your observation.

7 MR. HEBERT: Anybody else? Okay. No other
8 questions.

9 Thank you very much.

10 MR. ACEVEDO: Thank you.

11 MR. HEBERT: We're running a little behind
12 here so I really appreciate everybody's patience.

13 Our next speaker and last one of the morning
14 is Steve Raucher from the Beverly Hills Bar
15 Association.

16 Mr. Raucher, welcome, and thank you for
17 coming.

18

19 T E S T I M O N Y

20 MR. RAUCHER: Thank you. Thank you for taking
21 me before lunch, and so that you all don't hate me,
22 I'll try to be extremely brief.

23 My name is Stephen Raucher. I practice at a
24 nine-lawyer firm doing business litigation. My firm
25 also does family law in Westwood. More importantly,

1 here today, I'm the president of the Beverly Hills Bar
2 Association.

3 Beverly Hills Bar Association was founded in
4 1931. We have, approximately, 4,000 members who are
5 concentrated on the west side of Los Angeles, although,
6 our members are spread throughout the Los Angeles
7 region.

8 Our name is somewhat of a misnomer in that
9 only about 20 percent of our members, actually, live or
10 work in Beverly Hills.

11 I'd like to spend a moment just telling you
12 about the circumstances of the Beverly Hills Bar
13 Association's founding because it bears on the
14 perspective that we have on this issue.

15 Beverly Hills Bar Association was founded by
16 lawyers, primarily, Jewish lawyers who in 1931 were not
17 allowed to be admitted into other bar associations in
18 the County.

19 And of course, that problem has thankfully and
20 happily been eliminated, but the circumstances of that
21 founding factor into our mission and to our self-image.

22 Among other things, we founded Public Counsel,
23 which has outgrown us, in a sense, to become the
24 largest public interest law firm in the country, and
25 now we cosponsor Public Counsel with the Los Angeles

1 County Bar Association.

2 The point is we don't view ourselves simply as
3 a trade association. We view ourselves as advocates
4 for justice in the community in addition to leading the
5 legal profession, which is not necessarily the primary
6 mission of every voluntary bar association.

7 We have no interest in a State Bar Association
8 which exists to protect unscrupulous lawyers, nor do we
9 think that's what this Bar Association does.

10 As indicated in our response to the Task
11 Force, the State Bar has on numerous and recent
12 occasions adopted policies that were opposed by rank
13 and file lawyers and some voluntary bar associations.

14 And while we may not agree with every decision
15 that the State Bar has made, we think that this shows
16 that the State Bar does indeed take its public
17 protection role very seriously.

18 That's not to say that there is not room for
19 improvement, and so I'll just make three -- focus on
20 three areas before I let you all go to lunch.

21 We do think that the Bar Association
22 Governance would be benefited by increased continuity.
23 We do think that a president-elect position is a good
24 idea.

25 I think that two terms as president is too

1 much to ask of a volunteer, but extending that service
2 by one year where the president learns the ropes and
3 grows into the position and has more time having hit
4 the ground running as president, we do think would help
5 in that effort.

6 We also think -- and I haven't heard anyone
7 else talk about this possibility today -- that,
8 perhaps, direct election of the president by the
9 members of the State Bar would take out some of the
10 politicking in the sense of politicking on the Board
11 that goes into becoming president.

12 Of course, it would replace -- that there
13 would be a different form of politicking that would be
14 involved in that, but in terms of continuity and in
15 terms of Board members being able to focus on their job
16 as Board members, that is a suggestion that we think
17 this body should consider.

18 We do think it's very important to maintain,
19 not just a majority, but, a super majority of lawyers
20 as is currently the case on the board.

21 It may seem self-interested to say so, but I
22 think that lawyers really are unique in our society and
23 as a profession.

24 First of all, they're all officers of the
25 court and fall under the supervision of the judicial

1 branch, and that's not limited to supreme court review
2 of disciplinary provisions.

3 I can think of no other profession -- at least
4 for those of us lawyers who practice in the courts --
5 where there's the possibility of sanctions imposed by a
6 court, the possibility of contempt.

7 So we have checks and balances that other
8 professions don't have already built-in.

9 Nor can I think of any other profession that
10 is subject to more stringent ethical rules than the
11 legal profession. Other professions have ethical
12 rules, but none are as rigorous as those facing
13 lawyers.

14 I do agree that public participation on the
15 board is important, and I think, particularly, to have
16 public board members who have experience as clients
17 because it's a different perspective when you're the
18 client than when you are the lawyer.

19 But to answer the question, why is it
20 important to have a majority of lawyers or super
21 majority of lawyers? First of all, lawyers are not
22 monolithic. They come from a variety of different
23 perspectives so a bare majority may give undue
24 influence to people who don't come from the legal
25 background.

1 The analogy that came to my mind as I was
2 sitting here was: If I was a heart surgeon performing
3 a heart -- open heart surgery on a patient, I would not
4 want a board of people who are not doctors or heart
5 surgeons telling me how to conduct the operation.

6 Nor, certainly, if I was the patient lying on
7 that operating room table, would I want a board of
8 non-physicians telling my doctor how to perform the
9 operation.

10 This -- the State Bar is a little bit
11 different than other regulatory agencies in that --
12 particularly when we're talking about public
13 protection -- the changes that the State Bar Board of
14 Governors considers affect the actual practice of the
15 law and how lawyers have to practice.

16 And so I think, for all those reasons, it's
17 important to have, not just a majority but, a super
18 majority of lawyer members on the Board of Governors.

19 We do think that there's nothing magical about
20 geographic representation. The current system is
21 imperfect as it is. We suggested, as has been
22 suggested by others, looking at formalizing, making
23 sure that we have different perspectives from different
24 kinds of lawyers from different kinds of practices.

25 And I will tell you that last night I went on

1 the State Bar Web site to look and see who our board
2 members are and where they come from, and I was pleased
3 to see that -- I think, that this board is -- does
4 provide pretty good representation and a good cross-
5 section.

6 But I can tell you that I don't know if that's
7 true historically, by the way. I can tell you that
8 there's certainly a perception out there, at least,
9 that the State Bar Board of Governors has -- brings to
10 it a big firm bent or focus from big firms and with
11 less understanding of the problems and challenges faced
12 by small firms.

13 Justified or not, that perception is out there
14 and perhaps could be addressed by formalizing where we
15 get our board members from.

16 Finally, on the issue of election versus
17 appointment: At least the Beverly Hills Bar's
18 positions -- point of view is that it's less important
19 how the board members are selected than the composition
20 of the board.

21 But we are too concerned about the over
22 politicization of the board if we get away from an
23 election process and towards an appointment process,
24 particularly one where more appointments are given to
25 the legislature.

1 But in any event, when you go through an
2 appointment process, I think that it becomes much more
3 important who you know or how you are known, and I
4 think would, actually, close off opportunities for
5 lawyers to serve on the State Bar Board of Governors
6 rather than open them up.

7 I'd be happy to ask (sic) any questions. I
8 understand if you want to get to your lunch, but thank
9 you on behalf of the Beverly Hills Bar Association.

10 MR. HEBERT: I want to thank you for your
11 patience 'cause we are running a little late, and you
12 hung in there with us.

13 So let me go ahead and open up the questions,
14 Wells Lyman.

15 MR. LYMAN: Thank you for coming. Just one
16 quick question. You mentioned the direct election by
17 members of the State Bar for the State Bar president.

18 Wouldn't that, basically, entail that,
19 ultimately, one geographical area, not to mention
20 names, would elect every Bar president forever?

21 MR. RAUCHER: Well --

22 MR. LYMAN: Los Angeles would elect --

23 MR. RAUCHER: I don't know that that's the
24 case. I mean, folks -- again, in this day and age, you
25 know, how important is geography to the practice of law

1 in California?

2 I think that there are differences in practice
3 between different geographies, but I would like to
4 think that things like resumes, things like enunciated
5 positions on issues that face lawyers in the State may
6 have as much or more weight than simple geography.

7 MR. HEBERT: Loren Kieve.

8 MR. KIEVE: I just note that one advantage of
9 having the current process, which, obviously, could use
10 some tinkering every now and then is that the board has
11 a sense after two, three years of the caliber and the
12 quality of the person who's going to become the
13 president.

14 The second part about it is that, if you have
15 public members who participate in that process, my
16 sense is that that gives a greater legitimacy and
17 public confidence in the selection process.

18 MR. RAUCHER: I think that's a good point. I
19 understand.

20 MR. HEBERT: Yeah. I only had to fool 12
21 people not 228,000.

22 Michael?

23 MR. TENENBAUM: I had a quick question, and I,
24 probably, should have asked it of the LA County Bar
25 president as well, but when you say it's the position

1 of the association, I'm just curious as to -- I'm sure
2 there are diversities among the members of your
3 association.

4 By what process did you arrive at the position
5 that you've taken here?

6 MR. RAUCHER: I appointed an ad hoc committee
7 composed of some ethics experts, some folks with
8 background in the legislative process, and just people
9 who were, generally, interested in the subject.

10 They looked at the issues and came out with
11 recommendations which were approved by our board of
12 governors. We didn't do a survey or a plebiscite or
13 anything like that, though.

14 MR. HEBERT: Any other questions?

15 All right. Mr. Raucher, thank you very much.

16 MR. RAUCHER: My pleasure. Thank you.

17 MR. HEBERT: All right. I've got to feed my
18 Task Force members so we're going to take a break for
19 lunch.

20 Let's see if we can come back at 1:15.

21 We're going to start a little late. I
22 apologize for those of you who are going to speak in
23 the afternoon.

24 (Whereupon, the luncheon recess was
25 taken at 12:42 p.m., and the

1 proceedings resumed at the hour of 1:22

2 p.m.)

3 MR. HEBERT: Okay. Let's go ahead and get
4 started. I would -- the record should reflect that Pat
5 Kelly is not here, and then I am gonna go ahead --
6 before we start with the first speaker of the
7 afternoon, I do need to go ahead -- at the risk of
8 trying everybody's patience -- I'm going to go ahead
9 and just give some of my opening remarks, again, about
10 the process and procedures today, and then we'll go
11 ahead and get started.

12 As you can see, this is, as you know, a public
13 hearing of the Governance In the Public Interest Task
14 Force here in Los Angeles, California. We do have a
15 court reporter present to transcribe the oral testimony
16 here today.

17 The testimony along with any written comments
18 will be made available to the full Governance Task
19 Force, to all members of the Board of Governors and
20 will be part of the record available to the supreme
21 court, the governor, and the legislature in connection
22 with submission of the Task Force's report in May of
23 2011.

24 If you have supporting documentation that
25 you're going to refer to that hasn't already been

1 submitted for photocopying prior to the hearing, please
2 provide that material to Amy Anderson, who's here on my
3 right or to Cathy Torney, who's sitting in the first
4 row of the seats so that we can make photocopies and
5 include your written submissions in the public record
6 of the hearing.

7 Some of you may be here to discuss your
8 experiences with a specific attorney. While it's not
9 the purpose of this hearing to register complaints, we
10 understand that you've taken time from your busy
11 schedules to be here.

12 However, we, respectfully, request that if you
13 do discuss your experiences with a specific attorney
14 and you've filed a complaint with the State Bars Office
15 Of Chief Trial Counsel, could you please refrain from
16 using the attorney's name. Because until a complaint
17 is, actually, filed with the State Bar Court, your
18 complaint is a confidential matter.

19 Because the transcript of the hearing will be
20 made public, we'd appreciate your cooperation by not
21 mentioning the attorney by name, but please feel free
22 to discuss your experiences for the benefit of the Task
23 Force.

24 If you haven't previously registered to speak
25 and you want to speak, then please see Amy or Cathy or

1 one of the other staff members in the room at a break,
2 and we'll set aside time for you to speak at the end of
3 the day.

4 We would ask that you complete your testimony
5 within 30 minutes or less because we want to allow time
6 for questions, and you'll be notified when your time is
7 up.

8 Please keep in mind that we received your
9 written submissions in advance for most of you. You
10 can assume that we've read those, and we're familiar
11 with them, and I do want to make sure, again, that we
12 do have some time for questions and some lively
13 discussion.

14 I'm gonna go ahead and call out the name in
15 the order in which you're scheduled to speak.

16 To insure that the court reporter is able to
17 take everything down, please come to the front of the
18 room to the microphone. Begin by identifying yourself
19 with your name, and if you represent an organization,
20 the organization you represent.

21 Please speak slowly for the benefit of the
22 court reporter, and the court reporter will and does
23 have a list of all the speakers so we'll be able to
24 verify the spelling of your name by checking that
25 sheet; okay?

1 So our next -- our first speaker of the
2 afternoon is from the San Fernando Valley Bar
3 Association.

4 Welcome.

5
6 T E S T I M O N Y

7 MR. AMSTER: Welcome. Thank you so much for
8 giving me the opportunity of speaking. My name is
9 Seymour Amster, A-m-s-t-e-r. I am president of the San
10 Fernando Valley Bar Association.

11 It is our concern that we feel that the San
12 Fernando Valley is not getting represented properly
13 through the election to the Board of Governors.

14 I think it is important for us to understand
15 as, what has been stated very clearly, is the most
16 important aspect of this proceedings, as well as for
17 the State Bar right now, is protection of the public.

18 So it's our question, if we have around -- we
19 have about 1.76 million individuals in the San Fernando
20 Valley. That would constitute one of the fifth largest
21 cities in the United States, but yet, we're part of
22 District 7, and the five board -- the five Board of
23 Governors from District 7 are from downtown Los
24 Angeles.

25 How is the population in the San Fernando

1 Valley being protected when they don't have local
2 representation? And that's what I feel is an important
3 aspect here.

4 If the public is to be protected, we need to
5 have individuals that can be as closely aligned to that
6 public as possible. In the history of this country, we
7 have found that geographical representation is the best
8 way of doing this.

9 I know from reading the materials as I'm -- as
10 been stated, all you have, that many organization are
11 asking in some way of being represented of changing the
12 manner in which the representation occurs.

13 And I think it's gonna be very hard to make
14 sure that all of the various entities of our population
15 are represented unless we do it geographically.

16 And the more geographically we can do it, I
17 think, the better off we are and the more we divide it
18 into smaller regions when necessary.

19 Los Angeles County is a very diverse region.
20 The interest and issues of the residents of the San
21 Fernando Valley are far different than the issues and
22 residents of those in downtown Los Angeles, those on
23 the west side, and even those in Pomona, San Gabriel,
24 Lancaster, Santa Clarita -- all very different.

25 What harm is there in dividing up the Los

1 Angeles District 7 region into five separate regions,
2 one, individual elected from each?

3 You can have downtown, west side, you can then
4 have the east side, and then you can have the San
5 Fernando Valley.

6 I didn't count that in my head that that's
7 five, but I'm sure that it could be figured out to be
8 five.

9 The problem, of course, will be -- there might
10 have to be a giving up of power. And giving up of
11 power influence is never easy, but we constantly have
12 to be reminded.

13 Why are we the oldest government in the world
14 today? We have to look many times at our first great
15 leader, George Washington, an individual who gave up
16 power twice.

17 After the American Revolution, he had an army,
18 a dysfunctional government, but he gave up power so we
19 could be a democracy, and then as the first president,
20 he could have easily been a dictator, but he gave up
21 power again.

22 We are asking this board to strongly consider
23 what's in the best interest of the protection of the
24 public. To divide itself up into regions, it might
25 mean some giving up of power, but it will mean better

1 representation of our public.

2 MR. HEBERT: Thank you.

3 Does anybody have any questions?

4 MR. HEBERT: Michael.

5 MR. TENENBAUM: Since you mentioned George
6 Washington, I'm gonna just invoke Paul Revere.

7 We don't live in a time, I don't think, where
8 you have to, actually, ride around from district to
9 district or hamlet to hamlet --

10 MR. CARRUTH: Michael, can you speak up?

11 MR. TENENBAUM: Sorry. -- to communicate your
12 message, and I'm just wondering, the rules of, you
13 know, the geographic representation, I think, works
14 better in a situation where people, you know, are gonna
15 walk over to their district's office -- their
16 representative's office.

17 I mean, is there some -- two questions: No. 1
18 is is there some limitation on the communication
19 between the members of your bar association and the two
20 representatives from LA County we have here today?

21 And, secondly, do the rules of professional
22 conduct, which is what most of this Bar is involved in
23 propagating and enforcing -- do those apply any
24 differently, any nuance to people based on their
25 geographic representation including the San Fernando

1 Valley?

2 MR. AMSTER: Let me answer both those
3 questions. Communication: It was brought up at our
4 executive -- at our executive committee and at the
5 board. We only really received the opportunity to give
6 comment on this proceeding in early December when
7 there -- it was during a holiday period.

8 So we weren't communicated early enough, and
9 we had to react very swiftly. If we had had more
10 communication with our local representative, we would
11 have probably gotten more notice on it.

12 MR. TENENBAUM: Can I stop you right there.
13 When was the notice sent out? I think in
14 early December; right? Or the closing period is
15 February 1st. Okay. I just want to -- I mean, that
16 would -- if you got it later than everybody else, but
17 I'm just wondering if you got it. You got it the same
18 as everybody else.

19 MR. AMSTER: All right. Maybe the critical
20 aspect -- I mean, the Bar's got many things to do, and
21 what about the critical aspect of them having it
22 discussed?

23 The issue is this: Communication is extremely
24 important. Secondly, no, I don't think downtown
25 lawyers can properly represent all of Los Angeles

1 County.

2 If you are correct that downtown lawyers can
3 serve the interest of the public, then let's have all
4 of our courts in downtown Los Angeles. Let's have
5 uniformity. If we have made the decision to spread out
6 our courts so that they are more accessible to our
7 local population, then our Bar should reflect the same
8 thing.

9 We must have consistency. So if we have
10 decided that our population, that the average
11 consumer -- because that's who we're really talking
12 about, the average consumer here -- is better
13 represented by having a local court, having a local
14 state legislature, having a local congressman -- why
15 not a local Board Governor?

16 Now, you might say, "Well, but that's
17 attorneys that they're representing the Board of
18 Governors." No.

19 Who understands the particular issues of a
20 region better than the local attorneys practicing
21 there? Because the local attorneys practicing there
22 are also going to have firsthand knowledge of the local
23 disciplinary problems that might be occurring or the
24 local practices that are starting to happen that are
25 not good for the consumers because that's what we're

1 talking about.

2 And the final thing is: Foreclosures were
3 very heavily hit in the San Fernando Valley. There
4 were many individuals that were not having the proper
5 information communicated to them.

6 Hiring attorneys -- or whatever you want to
7 call them -- long after there was any chance of them
8 saving their home.

9 This information was not disseminated properly
10 to the individuals in San Fernando Valley. It's
11 something that our bar is going to try to deal with on
12 our own.

13 But I don't believe, when you look at the
14 local consumer, the more individualized you can have
15 the representation, the better off you are.

16 And then I'll ask you the other question.
17 Take the other view. What harm is that in dividing up
18 the region? What harm is there when you have
19 1.7 million people not having an attorney in their area
20 on the Board of Governors?

21 Static, that's the harm.

22 MR. HEBERT: And did you get your second
23 question answered about the rules of professional
24 conduct whether they apply differently?

25 MR. TENENBAUM: I think he said they don't

1 apply differently.

2 MR. AMSTER: If I could follow to make sure
3 that I'm clear.

4 MR. HEBERT: Yes.

5 MR. AMSTER: I'm treating you like a court of
6 appeals. I've got to make sure I answer the question.

7 MR. HEBERT: We're sitting en banc, yes.

8 MR. AMSTER: Okay. No, the rules of
9 professional conduct are not different, but the rules
10 of professional conduct have to be modified.

11 My concern is, in addressing that point is,
12 local attorneys sometimes know the local deviations
13 that are happening faster. It's more in touch.

14 I mean, I think there's nothing more clearer
15 than this whole foreclosure loan modification program.
16 I mean, it was -- it was not good. It was not a good
17 reflection on the law -- legal field at all -- what
18 happened here.

19 And the faster we could have reacted to it,
20 the better off it could have been. And I'm not saying
21 there wasn't proper reaction, and I'm not saying that
22 the State Bar didn't do the proper things.

23 I'm just saying for the average consumer, it
24 wasn't our most shining moment, and I know, personally,
25 a number of individuals who had no clue what to do

1 until they had given thousands of dollars to somebody
2 to keep them in their home when an unlawful detainer
3 was happening.

4 And it was not a pretty moment, and the more
5 we can have direct communication with our consumers the
6 better chance we have of spotting these issues before
7 it happens the next time.

8 Yes.

9 MR. HEBERT: Michael, do you have more
10 questions?

11 MR. TENENBAUM: I'm done. Thanks.

12 MR. HEBERT: Luis Rodriguez.

13 MR. RODRIGUEZ: Good afternoon, Mr. Amster. I
14 don't know if you remember me, but I went to your bar
15 association along with Gretchen Nelson when we ran for
16 the Board of Governors. And we met at one of the, I
17 think, it was the office for the San Fernando Valley
18 Bar Association.

19 And at that time, I along with -- and I think
20 I can speak for Gretchen, we extended ourselves to
21 everybody who we approached whether they supported us
22 or not.

23 And one thing that I want to make clear --
24 well, two things: One is we're open to anybody as you
25 heard, as the representatives of this district, whether

1 it's Angela, myself, Patrick, or Gretchen Nelson -- to
2 whatever concerns. That's one thing.

3 And the other thing is, I think, for some of
4 those folks who think that we as elected Board of
5 Governors are beholden to the district that elects us,
6 I think you can see today that that's not the case.

7 I think that it's clear that some people feel
8 that we haven't done enough for them, and we've had
9 these discussions before.

10 So I would, by way of a comment, I would
11 welcome you to call any of us at any time to address
12 these issues to bring them before the Board of
13 Governors, if those are issues of concerns to the
14 Valley Bar Association.

15 And the other thing is -- which I've advocated
16 for a long time for a -- to a whole lot of people is
17 run. I think this last time that Gretchen and I ran,
18 if I'm not mistaken, I don't remember seeing anybody
19 from the San Fernando Valley Bar running for the Board
20 of Governors.

21 And if you feel that we're not representing
22 you, that's, I think, a perfect -- and I think that's
23 why the method that we have now which is election, not
24 appointment, is extremely important. Because if you
25 feel you're not being represented, then this is a best

1 vehicle to mobilize.

2 And I know the San Fernando Valley is very
3 strong, and we saw that when there was a possibility
4 that the San Fernando Valley was going to break away
5 from LA City. So it's got power, and, again, I would
6 invite you to call me or my other colleagues for any
7 request or any questions that you may have.

8 MR. AMSTER: If I may respond, you are
9 correct. You were there as Gretchen was too, and
10 sometimes it's difficult to advocate a position when
11 I'm discussing about individuals such as you and
12 Gretchen, who I feel did reach out to the San Fernando
13 Valley, did take the time to come, and do want to have
14 open access to us.

15 But at the same time, we're not guaranteed
16 that it's always -- who is always going to be the
17 representatives, and when you look at a greater
18 concept, you want to have certain checks and balances
19 in place.

20 So I respect your position. I agree that you
21 absolutely came out, and I'll take you at your word
22 that you will be accessible because everything you said
23 that day was advocating that you would be accessible.

24 And I, in some ways, view your background and
25 Gretchen's background different than other Governors at

1 times. And this is going to be a difficult one for me
2 to say, but I'm representing an institution.

3 The fact that you were government attorneys at
4 some point gives you a broader idea because you're even
5 involved at that point with consumer protection in many
6 ways.

7 I'm concerned about individuals who might not
8 always have looked at things in so many different ways
9 or different types of clients from different
10 backgrounds coming into their office, and then be on a
11 board, and then have to deal with individuals who are
12 different in many ways.

13 Local representation insures that individuals
14 from the public are going to get individuals who
15 they're comfortable with, who they're going to as
16 attorneys.

17 It's not the individual -- it is the average
18 consumer that I am concerned about. The middle class
19 to lower class individual, I'm concerned about.

20 MR. HEBERT: Luis, do you have anything else?

21 MR. RODRIGUEZ: No, thank you.

22 MR. HEBERT: Jon Streeter, and then Loren
23 Kieve.

24 MR. STREETER: My name is Jon Streeter. I'm
25 from San Francisco. That's where -- my district is up

1 there, and I invite you to call me. If you have issues
2 concerning foreclosure crisis that you want on the
3 board's agenda, I invite you to call me.

4 If there are education programs that you want
5 this board to consider, please, look me up. I
6 represent you and your constituents in San Fernando
7 Valley just like every other citizen of the State of
8 California.

9 MR. HEBERT: Loren Kieve.

10 MR. KIEVE: I also am from San Francisco, and
11 I'm also going to second what Jon said. I did not
12 perceive that I'm elected to represent the good lawyers
13 of Marin and San Francisco Counties when they selected
14 me here.

15 I was selected to use my judgment and my
16 experience for the betterment of the people of the
17 State of California.

18 But you raise an interesting issue in terms of
19 what this representative of democracy or representative
20 election means.

21 How do you go about slicing and dicing those
22 elections? And I think it's fair game for us to ask
23 those questions as we move forward.

24 Thank you.

25 MR. AMSTER: Thank you. I appreciate that and

1 just to comment if I may. It is not me or attorneys
2 that I'm concerned about. We have to understand in our
3 society today we have a significant portion of our
4 population that sometimes -- and I'm talking about the
5 average consumer who's uncomfortable dealing with
6 individuals in a professional capacity.

7 It takes a lot for them to walk into an
8 office. It takes a lot for them to pick up a phone and
9 to mention their complaint or to mention their
10 concerns.

11 I speak from a little bit of knowledge on this
12 point because another part -- another hat that I wear
13 is I am a school site counsel. I'm chairman of my
14 son's high school which has a huge minority population
15 that goes to that high school.

16 I have learned from dealing with the parents
17 there to get them to talk, to get them to express.
18 They don't always feel comfortable first coming
19 forward.

20 It is a tough part of our society today, but
21 they have a very, very, very important voice that we
22 have to listen to. And these are the individuals that,
23 unfortunately, are the pray of the nefarious
24 individuals in our profession or purport to be in our
25 profession.

1 MR. HEBERT: Anyone else have any questions
2 for Mr. Amster? Okay. Hearing none, thank you very
3 much. I appreciate your coming.

4 MR. AMSTER: Thank you. No problem.

5 MR. HEBERT: We all do.

6 MR. AMSTER: Thank you.

7 MR. HEBERT: Okay. Our next speaker is
8 Douglas Crowder.

9 Okay. We'll go take a look and see if
10 Mr. Crowder is outside, and if he just stepped out for
11 a moment, we'll take the speakers out of order.

12 Mr. Crowder?

13 I think we will go ahead and take the speakers
14 out of order. If Mr. Crowder is here, we'll get back
15 to him. So why don't we have our next speaker. That's
16 Toby Rothschild from the Legal Aid Foundation of Los
17 Angeles.

18 Mr. Rothschild, welcome.

19

20 T E S T I M O N Y

21 MR. ROTHSCHILD: Thank you, very much.

22 Thank you very much and thank you to all of
23 you for taking your time to consider this really
24 crucial issue for the Bar and for the public.

25 My name is Toby Rothschild. I'm general

1 counsel at the Legal Aid Foundation of Los Angeles.

2 Let me start with a little of my background that I
3 bring to what I'm having to say here.

4 I've been with Legal Aid for 41 years. I've
5 been general counsel at Legal Aid Foundation for ten,
6 and before that, for 27 years I was executive director
7 of the Legal Aid Foundation of Long Beach, which ten
8 years ago merged with Los Angeles.

9 During those 41 years that I've spent
10 practicing law with legal services, I served as
11 president of the Long Beach Bar Association, served on
12 the board of trustees of the Los Angeles County Bar.

13 I served as, and in most cases chaired, the
14 Judicial Appointments Committee, the Access to Justice
15 Committee, and the Ethics Committee of the LA County
16 Bar among other committees.

17 In the State Bar I served in and was vice
18 chair, I think, or cochair of the Disadvantaged Person
19 and the Law Committee, which was an early effort back
20 in the mid-70s, if I remember correctly, that preceded
21 the current diversity efforts of the Bar.

22 I served on and chaired the Administration of
23 Justice Committee. Currently serve on the Committee on
24 the Professional Responsibility and Conduct, COPRAC. I
25 also served on and chaired sections of both the

1 Business Law Section and what was then the Legal
2 Services Section of the State Bar.

3 So I've done a lot of -- I've seen the Bar at
4 both local and state level in a variety of different
5 ways and have some fairly strong views about it. I
6 think the focus of what I want to talk about is your
7 definition of "public protection."

8 I think that we can all agree that admission
9 and discipline are the core of public protection, but I
10 think that if we see that as the -- as the outside
11 boundaries of public protection, we've missed a great
12 deal of the work that the Bar does on behalf of the
13 public.

14 I think, as I noted in my written comments,
15 that the work that the Bar does on expanding access to
16 justice is a critical part of protecting the public.

17 Much of the public of the lower and middle
18 class poor people and middle class people who don't
19 have other access to justice -- the work that the Bar
20 does in the Access to Justice Commission, the
21 committee, the Standing Committee on Delivery of Legal
22 Services -- both of which I have served on -- is a
23 clear public protection function that the Bar needs to
24 fulfill.

25 It wouldn't happen and couldn't happen

1 effectively without the Bar's efforts. The regulation
2 by the Bar of lawyer referral services is a clear
3 public protection effort making sure that when clients
4 are referred to lawyers that the lawyer has experience
5 in the area they're being referred, has malpractice
6 insurance, has some way that that client can have
7 assurance that they are getting what they need to
8 represent them.

9 The Legal Services Trust Funds Commission,
10 which manages on behalf of the Bar, public funds
11 obtained from banks on lawyer trust accounts from the
12 interest with little there is of it left. It's still a
13 little bit, and, maybe, some day there will be more.

14 But the work that the commission and the staff
15 do to insure the quality of the work that is done on
16 behalf of poor people in this State is a very, very
17 important function of the Bar.

18 The diversity efforts of the Bar: Again,
19 insuring that lawyers are available to the public to
20 protect the public by keeping people out who shouldn't
21 be in the profession is a critical function. But it's
22 also critical to make sure that the people who should
23 be in the profession are, and that those people are
24 people who can deliver services to the clients who
25 needs them. That also protects the public.

1 Our whole system of justice is really
2 dependent on access. If people are excluded from the
3 sytem, we don't have an effective justice system.

4 And it's the Bar's critical function in
5 protecting the public and protecting the system of
6 justice that we all depend on, both we as lawyers and
7 the public at large, that everyone have fair and equal
8 access to that system.

9 I'm glad to respond to any questions you may
10 have.

11 MR. HEBERT: Well, thank you for that eloquent
12 testimony.

13 Does anybody have any questions for
14 Mr. Rothschild?

15 Michael Tenenbaum.

16 MR. TENENBAUM: I have a quick question. It
17 may be more philosophical, but it sounds like you may
18 have thought about it a bit.

19 Have you thought about the inherent tension
20 between the fact that this is a body that restricts the
21 practice of law to people who meet certain criteria,
22 and, actually, punishes people that do it without
23 having met those criteria?

24 And then, at the same time, laments that there
25 are not enough people out there to help consumers,

1 helping people in many family courts and other places?

2 Have you thought about that and do you have
3 any recommendation as to how the governing structure,
4 which is what we're trying to look at here, would help
5 resolve that problem?

6 MR. ROTHSCHILD: I've thought a lot about the
7 issue. I haven't particularly thought about it in
8 connection with the governance structure of the Bar
9 'cause I'm not sure that's a critical function, the
10 critical issue.

11 And that's why I didn't address, is it better
12 to have appointed or elected or, you know, those
13 issues. And I have my own personal views, but I don't
14 think that the point I'm making really is dependent
15 upon the structure of the Board of Governors.

16 I think what it's dependent upon is the
17 definition that the board takes as to what public
18 protection is, and the conflict is a clear one.

19 I know the Bar has wrestled for a very long
20 time with what used to be called "legal technicians."
21 I remember there was a study some years ago, and I can
22 recall debating people on the issue of whether there
23 ought to be something called legal technicians, which
24 is something short of a lawyer, but with a lower
25 standard that could help people who otherwise would not

1 have access.

2 I think it's a definite quandary. I think we
3 have some protection, some availability of, I guess,
4 it's legal document preparers and unlawful detainer
5 assistance and other people.

6 But many of those far out step their authority
7 and their knowledge, and are harmful to the public
8 often -- more often than they help. So I think there's
9 a real quandary there.

10 And, maybe, there is some role for a junior
11 lawyer, if you will, something less than a pass-the-Bar
12 go-to-law-school full lawyer, but a certified licensed
13 parallel, if you will, maybe comparable to the
14 physicians assistant or nurse practitioner kind of
15 model, but, again, with some quality control and
16 protection of both the limits of their authority and
17 the quality of the work they do.

18 MR. HEBERT: Jon Streeter.

19 MR. STREETER: First, I'd like to thank you,
20 not only for your testimony, but, also, for your
21 service to the public for all these decades. It's an
22 example of the best of the profession.

23 MR. ROTHSCHILD: Thank you.

24 MR. STREETER: If we look around at the photos
25 around the room, to those of us who are close enough to

1 see those photos, the pattern is striking.

2 And I just want to ask you -- well, we have
3 managed to change that pattern to some degree,
4 certainly not enough. And you can see some of that in
5 evidence sitting around the table today which was
6 produced, by the way -- you know, what we're seeing was
7 produced based on the current system of selection
8 flawed as it may be.

9 And I want to ask you whether, in your view, a
10 system of appointment has the potential to, actually,
11 be less than constructive when trying to continue to
12 make the progress that we have in achieving modest
13 steps towards diversity because of the syndrome that
14 you must know somebody in order to become appointed?
15 Could you -- to be appointed.

16 Could you comment on that?

17 MR. ROTHSCHILD: Let me take off my legal aid
18 hat and put on my personal hat at this point and
19 respond to that as I see it not on behalf of the
20 organization.

21 Clearly, steps have been taken, if you look at
22 those pictures, but clearly, as you say, not enough
23 steps.

24 I think an appointment system properly done
25 probably could. I think a political appointment system

1 probably would not and, probably, would be negative in
2 that regard.

3 I think a, if you will, merit appointment
4 system that involves an open recruitment process that
5 involves a choice from a number of people by the
6 selecting body, whoever that is, might be able to
7 address that because they could look at that range of
8 diversity in how they make those selections.

9 But I think, again, this is me personally,
10 that a political appointment system would not be
11 helpful in addressing that.

12 MR. HEBERT: Anybody else?

13 Luis and then Michael.

14 MR. RODRIGUEZ: Thank you, Mr. Rothschild for
15 giving us this information. What I really appreciate
16 is that I think you've brought a very important factor
17 for all of us to consider in defining public protection
18 which is access to justice.

19 We as a board have thrown around that
20 sometimes loaded term of what is public protection, but
21 I think plainly said, as whether you're a consumer or
22 you're an attorney, it comes down to access to justice.

23 And if in the future you can provide us with
24 more guidance, more real examples of the kind of issues
25 that you're clientele deal with, I think that will

1 guide this board in deciding what is true public
2 protection. You're dealing with poor folks --

3 MR. ROTHSCHILD: Right.

4 MR. RODRIGUEZ: -- in dire situations --
5 losing a home, losing a family, or whatever it is, and
6 I think that, when it comes to the responsibility as
7 advocates, that we have, and that is something that we
8 should never forget.

9 But I think sometimes we get caught up in some
10 of these other terms. So if in the future you could
11 provide that, I would greatly appreciate it.

12 Thank you.

13 MR. ROTHSCHILD: Thank you.

14 MR. HEBERT: Michael Tenenbaum.

15 MR. TENENBAUM: I was just going to say that
16 looking at the portraits on the wall here, the only
17 pattern I really see is male pattern baldness.

18 I haven't noticed that --- I can give credit
19 to that observation to Loren Kieve, as well.

20 MR. ROTHSCHILD: Until you get over to this
21 panel way over here. You can't see from where you are
22 there.

23 MR. TENENBAUM: And I'm very proud that in a
24 system where we have been trying to social engineer the
25 composition of the board, we do have a diversity in

1 backgrounds and genders and all social standings
2 without any social engineering whatsoever.

3 We left that to the people and to the merits
4 of the members of this board.

5 MR. HEBERT: Anything else? Any other
6 questions? All right.

7 Mr. Rothschild, thank you very much.

8 MR. ROTHSCHILD: My pleasure, and I wish you
9 well in your discussions.

10 MR. HEBERT: Oh, we appreciate it.

11 Okay. Let me just take on a couple of
12 housekeeping matters.

13 No. 1, I'm going to call Douglas Crowder
14 again. Okay. Mr. Crowder, again, didn't respond.

15 Two, I want to admit for the record, a speaker
16 who was listed to be here, but then canceled and has a
17 written submission.

18 The speaker was Tepedino, and her name will be
19 on the e-mail that she's -- Francis Tepedino, and she's
20 submitted a short written statement that we will make
21 part of the record and make sure that all the members
22 of the Task Force receive.

23 Okay. Rather than take a break, if you don't
24 mind, I'd like to go ahead and continue with our next
25 speaker, and that is Roy Torres.

1 Welcome.

2

3 T E S T I M O N Y

4 MR. TORRES: Good afternoon. Thank you.

5 My -- can you hear me? Okay. First and
6 foremost I want to thank you for having me here and
7 allowing me this opportunity to address this body.

8 I was supposed to do this back in 2008. I
9 didn't get around to it, and it concerned a particular
10 attorney, which I filed a complaint with the State
11 Board -- I'm sorry, the State Bar, and it went nowhere.

12 You'll hear a little more about this subject
13 individual in a bit from another speaker, but I also
14 want to thank Amy Anderson. I don't know if she's here
15 today, but thank you, Amy, for answering my silly back-
16 and-forth question via e-mail, and hope you're enjoying
17 Los Angeles weather.

18 MS. ANDERSON: Thank you.

19 MR. TORRES: I downloaded some Google attorney
20 quotes yesterday. Henry VI, perhaps, I could be wrong.
21 "Kill all the lawyers."

22 We'll see if that's true or not at the end of
23 my presentation. And so for clarification, I was told
24 it was 15 minutes, but I spoke to someone, and they
25 said 30 minutes.

1 So which is it? 'Cause I don't want to go
2 over.

3 MR. HEBERT: Oh, no. It's 30 minutes, and
4 we'll let you -- we'll let you know.

5 MR. TORRES: And I probably won't because I'm
6 a jaded individual, and you'll find that out in a bit,
7 unfortunately, with my interface with the law and with
8 the attorneys over time. It hasn't been the experience
9 that I would have hoped.

10 With that said, a little bit about myself.
11 I'm a spoiled kid, grew up with the silver spoon, born
12 and raised in east LA, single parent, welfare
13 recipients, and I didn't like my beginnings at home.

14 I didn't like the environment that I was being
15 raised in so like a dummy, unlike my siblings, I
16 graduated from high school. And I did something even
17 worse, I went to college, and I graduated, which is a
18 no-no in my family because it hasn't happened in four
19 generations.

20 So I'm kind of the oddball, and then I wanted
21 to do something really silly, when I graduated from Cal
22 Poly Pomona, and I wanted to go to law school. And
23 that was an endeavor that, unfortunately, didn't come
24 to fruition, unfortunately, because of some ridiculous
25 decisions I made along the way.

1 I always had a high regard for attorneys, the
2 legal profession.

3 Somebody want to finish their lunch or
4 whatever?

5 Okay. When I was at Garfield High School in
6 East Los Angeles my senior year, we had a boy's week
7 program, and they took us over right here to the --
8 which is now the Stanley Mosk Courthouse.

9 Back then it was just the Central District
10 Courthouse on First and Hill, and I got to sit in with
11 a judge. I believe it was a probate case. I didn't
12 know the difference between probate and the pro
13 football.

14 I just -- a total novice to the law, and so as
15 things transpired over the years, I did my
16 undergraduate work in political science with an
17 emphasis in public administration.

18 And I picked up two minors along the way with
19 that bachelor's degree, one in criminal justice and
20 corrections and one in business administration, and
21 talking to different individuals in the legal
22 profession, over the years, through the East LA Rotary
23 Club, for example -- there was a gentleman, a
24 commissioner -- Stan -- not Stanley -- Harold Stanley.
25 Commissioner Harold Stanley.

1 He sat on the bench for, I think, 23 years in
2 East LA, and then municipal court, just a real solid
3 standup human being, and it just -- it really
4 intensified my desire to look at law as a profession,
5 and I kind of detoured along the way.

6 I ran for state assembly back in '94 and going
7 back to my irresponsible decisions, I became a father
8 in '94. So it was a big detour, and it kind of takes
9 me to this situation today 'cause I find myself in
10 family law court.

11 In between '94 and current, there's been a lot
12 going on. I've had to use attorneys for a number of
13 purposes, administrative law, criminal law, civil
14 law -- a variety of functions within the judicial
15 system, the tribunal system that we have from
16 administrative to the courts.

17 And in using certain attorneys, there's been a
18 great relief that you have these attorneys by your side
19 because it can mean the difference between, you know,
20 hell and heaven.

21 And I'm grateful to one attorney, who didn't
22 put up with the nonsense of a police agency and said,
23 "okay. Fine. You're not gonna respond to our
24 subpoena? We'll go to court, and we'll ask the judge
25 to issue a bench warrant for the entire department."

1 And he got it, and, of course, the documents
2 came thereafter. And then you have a situation where
3 you have another attorney pushing in a civil matter for
4 the production of evidence that, otherwise, a person
5 with no clue about the law, probably, wouldn't get.

6 So there's a lot to be said about the great
7 things attorneys do because they really do make a
8 difference in a lot of people's lives.

9 Then we have the other situation where you
10 have attorneys who -- in one particular case, which is
11 administrative in nature that I happened to be very
12 involved with -- in the last seven or eight months
13 hasn't done so much as pick up a phone and make a call
14 to the other side to say "what's going on with this
15 case."

16 It gets to the point where it becomes nasty,
17 and your advocate has now become your adversary. So
18 what I would say -- because I just caught a few of your
19 speakers here. They were very, like you said,
20 eloquent, and they addressed a lot of stuff.

21 Ms. Anderson was kind enough to send an
22 attachment that some of these things read like more
23 than moving papers that I've seen in a civil action.

24 I mean, there was a lot; so I'm sure that I'm
25 not going to skip anything that someone else hasn't

1 touched upon.

2 I would only say with my personal address here
3 in person is that we could look, perhaps, at one
4 instance, and that's the current instance that I'm
5 experiencing now.

6 I was told by one of the speakers, who will be
7 coming up in a bit -- not to mention any names so I
8 won't, but this individual licensed by the State Bar, I
9 believe, back in perhaps the mid-'80s took on an auto
10 accident case. And I guess it was an uninsured
11 motorist situation.

12 And the attorney representing the gentleman
13 that was injured, he basically sits on the case, and he
14 sits on the case to the point where the statute of
15 limitations runs out.

16 So with that knowledge, rather than call the
17 client and say, "you know, I really dropped the ball on
18 this, and we're gonna have to remedy it somehow
19 someday," he calls the client and says, "I got a call
20 from the insurance company, and this is what they're
21 offering to settle."

22 Now, he knows, pardon my French "damn well"
23 that that's not the situation. The situation is he's
24 trying to, basically, cover up for his dropping the
25 ball on the statutory timeline.

1 So what happens is the gentleman, the client
2 looking at all this is thinking, that's a pretty low-
3 ball settlement offer for this instance; so he calls,
4 on his own, the insurance company, and finds out that
5 there, in fact, was never any settlement offer made
6 simply because the statute had expired.

7 So what happens is the client hires counsel
8 on, I guess, it was a -- I don't know if it was a
9 breach of contract or a fraud cause of action, but he
10 brings it to the court. And he files this civil
11 action.

12 And the attorney, who did the fraudulent bogus
13 offer of the settlement just denies through and through
14 with his State Bar documentation.

15 And in the civil matter, he just -- he didn't
16 do this. This is just not true, and, eventually -- and
17 I don't know where they do the trials or the
18 administrative hearing for attorneys. I've never been
19 on this floor before.

20 But wherever that is, I guess he gets here and
21 realizes the jig is up. I lied. I committed fraud,
22 and he owns up to his mistake.

23 They settle on the civil matter to whatever
24 tune of whatever they settle on, and with the State Bar
25 he is subsequently disciplined. And I believe there's

1 a moral turpitude and some other language in there, and
2 he's given, I believe, a 30-day suspension for this
3 act.

4 Now, going back to what I was saying earlier
5 about the whole nuance notion and perception of my
6 perspective of attorneys growing up as a young man and
7 having a real strong sense of respect for attorneys,
8 when you see stuff like that, it just makes your
9 stomach turn because you wonder what in the world are
10 these people thinking.

11 I took the LSAT in preparation for certain law
12 school applications back in '93, '94 when I was
13 considering law school.

14 And attorneys, by and large, are very
15 intelligent people, and I'm not trying to be funny or
16 sarcastic with that, but they tend to -- and I admit
17 some of them are kind of, like, wow, and you passed the
18 Bar; so they're out there.

19 And it's not a disrespectful remark. It's
20 just my observation over time. And what I'm finding is
21 that, when you have a situation like that where this
22 attorney committed fraud, he gets a slap on the wrist,
23 and now what's happened is this very attorney on some
24 matters, he bragged about it.

25 He coined himself a quasi-judicial officer. I

1 guess, like, when a -- on a small claims matter,
2 perhaps, somebody can't make it, he'll fill in.

3 I don't know if that would be a pro tem or
4 otherwise. But he bragged about that, and now the
5 gentleman is -- I want to say servicing clients, but
6 he's not. He's destroying lives at the Stanley Mosk
7 Courthouse as minor's counsel, doing all kinds of just
8 wayward things.

9 There is -- I don't know if Judge Steinberg is
10 still the supervisor in family law judge over at the
11 family division there, but I know she was apprised of a
12 lot of these misgivings by this particular attorney.

13 I, actually, sat in with then
14 Commissioner Gordon -- I'm not trying to be funny. He
15 was Commissioner Gordon. Now, he's Judge Gordon so
16 that helps a lot -- where this same attorney who
17 committed the fraud with the automotive issue and is
18 representing children, as minors counsel, basically was
19 told by the judicial officer Commissioner/Judge Gordon
20 that he had to pay back \$9,000 for fees that were just
21 not -- there was no paper trail for how he accumulated
22 these fees.

23 Back in October -- and you'll see this if you
24 just Google his name on any Web site -- this same
25 attorney was a chief trainer, if you will, for minor's

1 counsel.

2 I guess you have some type of ongoing training
3 for attorneys, and this is part of it, and this was in
4 October of '09. So come April of '10, I'm sitting in
5 the courtroom, Department 88, I think it is, over at
6 the Stanley Mosk Courthouse, and you have the situation
7 where this attorney is, basically, just very
8 nonchalant, he's ripping off the taxpayers.

9 And he's not doing the service. Now, I know
10 for a fact -- because I've been working with one
11 mother, one grandmother on -- in family law. I thought
12 he had it in for dads but apparently he doesn't.

13 He just doesn't like -- if you don't go with
14 his program to help his billing cycle, you're the odd
15 man out, odd person out. So I've been working with
16 other interested parties on dealing with this
17 individual through the State Bar.

18 We'll see where it ends up, but the kicker
19 here is that I went online again in October of '10.
20 He's still training other minor's counsel on the
21 nuances of being a minor's counsel.

22 And I'm very concerned about that because,
23 ultimately, a lot of these attorneys who do what they
24 do become judges or some type of judicial officer,
25 commissioner or whatever, referee. And there's a lot

1 of disrespect now going back to the term I used "jaded"
2 about the whole legal system.

3 California's in trouble. We all know that.
4 No news there. We have Lee Baca cutting deals for big
5 donors, and it goes on and on. So I'm sorry? Am I
6 over time, sir?

7 MR. HEBERT: No. You're fine. You get to
8 speak --

9 MR. TORRES: Okay.

10 MR. HEBERT: -- your 30 minutes, and then when
11 your 30 minutes is up, if we've got questions, we'll
12 get questions.

13 MR. TORRES: Okay. Well, I saw him raise his
14 hand.

15 MR. HEBERT: You're fine.

16 MR. TORRES: It happened at a board of
17 education meeting, a long time ago, and I don't want it
18 to happen again.

19 We have the governor cutting deals with his
20 cronies on manslaughter, nice little package,
21 manslaughter cases.

22 I don't know what's happening in California, I
23 really, really don't. I was born here. My mother was
24 born here. My grandparents were born here.

25 And as soon as my kids turn 18, I'm out of

1 here because I'm just really sick and tired of what's
2 going on from Sacramento on down to the local level.

3 It's bad, and until bodies like the State Bar
4 and other sanctioning authorities really take these
5 things serious, things are just gonna get worse, and
6 I'm really, really troubled by what I'm seeing,
7 firsthand.

8 And I could go on. I'm sure you don't want me
9 to, but I could go on forever. Since '91 when I
10 procured my first attorney on retainer on a traffic
11 accident, and since, I've had some great experience,
12 and I've had some not so great experiences.

13 And I'm really hopefully -- because I'm going
14 to be honest with you. The only reason I'm here today
15 is because one of your speakers had the guts to be
16 here, and I didn't want to chicken-out because
17 honestly, I just -- I'm really tired with the whole
18 legal system.

19 It just wears me out. I mean, I used to have
20 a lot of the black hair, and it's just getting whiter
21 and whiter, and it's very frightening to see what's
22 happening.

23 I know there's a gentleman who spoke before
24 me. He addressed a lot of the economic concerns.
25 People in lower tier economic situations having access

1 to good legal representation, legal advise. But
2 that's, I guess, he spoke on that so I'm not gonna get
3 into that.

4 But there's -- one of the things -- one of the
5 things that I really just wanted to hit home with is
6 that -- since I did come down here and since I did take
7 the time, and since you were nice enough to have me --
8 is that, when somebody comes to you with a complaint
9 about an attorney, and they give you these types of
10 facts, not, "I don't like him because he didn't say hi
11 to me in the hallway," or "he's a Raider fan and I'm a
12 Steeler fan," none of that nonsense, I mean, some real
13 serious violations of the law.

14 And then you get a return letter saying, "we
15 don't see any problem here." That's very -- it's very
16 disheartening, and, I guess, that would be the word,
17 "disheartening."

18 So to kind of summarize, I started off with
19 "kill all the lawyers." No, we don't kill all the
20 lawyers because lawyers have a very noble place in a
21 civil society.

22 But do we get rid of the ones that are doing
23 all this damage to the very profession? When people
24 hear attorneys, they think of those types of phrases,
25 those types of quotes, yes, we do.

1 And we don't slap them on the wrist. They're
2 very intelligent individuals. I understand sometimes
3 you got to be creative in the field of law, but there's
4 a fine line between being creative and just being
5 corrupt and immoral and unethical. And I'd like the
6 Bar to consider these experiences that I've had and
7 these thoughts that I've had and put them to whatever
8 use might be useful.

9 So thank you very much for listening, and I'm
10 sorry if I put anybody to sleep.

11 MR. HEBERT: No. We appreciate your taking
12 the time to come down here. It's why we're here, and
13 why we're holding these public hearings.

14 Wells.

15 MR. LYMAN: Thank you, and thank you for
16 coming. And I just want to commend you. It took
17 courage to come here and tell us about what your
18 situation is and your relationship with these
19 attorneys.

20 And I just want to thank you that we don't
21 always get enough chance to hear from somebody giving
22 specifics on a real situation, a real-life situation,
23 and it's been very enlightening for us. So I want to
24 thank you for that.

25 MR. TORRES: Thank you.

1 MR. HEBERT: Anybody else have any questions?

2 Mr. Torres, thank you very much.

3 MR. TORRES: Thank you.

4 MR. HEBERT: All right. If you don't mind,
5 I'm just going to push ahead without the break, and our
6 next speaker is Tonja Jarrett.

7 Mike, you have a comment?

8 MR. TENENBAUM: I just have a comment. It's
9 more of a procedural comment, but I just think, we have
10 a lot of people who are taking time out of their day
11 here today. We've got persons from the supreme court.
12 We've got our executive director designate and our new
13 executive director, and we got a lot of people here.

14 And we're focused really on a problem that the
15 legislature is told us to focus on, which is the
16 Governance of the State Bar. And I would just suggest
17 that it would be a benefit not only to this group but
18 to the speakers themselves because they'll get more
19 attention from this group if they focus their comments
20 on the issues that we've called the public hearing on.

21 MR. HEBERT: Well, you know it's a pretty
22 broad topic, public protection, so I think that given
23 that we're holding these hearings, and these people
24 have taken the time out of their day, and luckily, I
25 think the Task Force members have set aside most of the

1 day.

2 I know some people have got to leave a little
3 early, but I appreciate that the members of the public
4 have come down here, and I think that they should go
5 ahead and speak their mind.

6 Okay. Ms. Jarrett.

7

8 T E S T I M O N Y

9 MS. JARRETT: Thank you. I'm very nervous so
10 please bear with me. I appreciate the comment of
11 Mr. Tenenbaum over there regarding public protection
12 being an issue.

13 I'm an insurance agent. I have been for over
14 25 years. I deal with public protection on a daily
15 basis.

16 MR. HEBERT: Yeah. If you could pull your mic
17 a little closer.

18 MS. JARRETT: I'm sorry. I deal with public
19 protection on a daily basis for my clients. As a
20 licensed insurance agent, we have an occupational
21 licensing board that overviews what we do.

22 The transparency in my field is 100 times
23 greater than the field of attorneys.

24 My fiance of 12 years is a LAPD officer and
25 has been for 22 years. They have an oversight

1 committee that is much more strict than what the
2 attorneys face.

3 So having said that, I've prepared a speech.
4 I'd like to read this first.

5 First of all, thank you for allowing me to
6 speak here today. I speak on behalf of a large group
7 of parents who have been united through a common
8 problem, and that is, the dysfunction in the California
9 Superior Court, specifically, the family law
10 department.

11 I'm not going to speak to the problem within
12 that area except for the problem created by lawyers who
13 work in this field.

14 Children are the most viable members of our
15 society. They're our future. Unfortunately, however,
16 they're also the tools used by a number of attorneys to
17 manipulate the court system to continue churning fees
18 with their unscrupulous unethical immoral and in some
19 situations, illegal behavior.

20 When these parents, myself included, go to the
21 California State Bar Association for assistance, we are
22 discounted. We are chastised. We are disregarded.

23 When overwhelming proof of an attorney's
24 misconduct is presented, it is ignored and complaint,
25 after complaint, after complaint goes denied or

1 rejected.

2 As I said, I have been a licensed insurance
3 agent for over 20 years. All of our accusations,
4 investigations are public record. Every accusation is
5 investigated thoroughly.

6 They're not hidden away and simply disregarded
7 out of hand. The transparency within my field and that
8 of other professions with an occupational license is
9 (sic) boards such as: Doctors, therapists,
10 pharmacists, realtors and so-on, is at a much higher
11 level than those of the California State Bar, and the
12 attorneys who work in the state.

13 As Mr. Torres pointed out, there is a
14 particular attorney in LA County, which is the reason
15 I'm here today.

16 When my daughter had a child at the age of 16,
17 and we entered the family court system, my fiance and I
18 both told her, "Tell the truth, be honest."

19 And you know what that got her? Nowhere.

20 We had a commissioner on the bench who looked
21 at my request to guardian ad litem, tore it to shreds
22 on the bench, and threw it in the garbage can.

23 My 11-month old grandchild, who had never met
24 his father, was immediately ripped out of our arms and
25 sent for overnight visits five days a week to the dad.

1 The attorney on that case -- we filed a State
2 Bar complaint on opposing counsel, it was denied. We
3 filed complaints with the commission to judicial
4 performance regarding the commissioner.

5 It only took them eight months to remove him
6 from the bench. He was in the San Fernando Valley
7 Bar -- or San Fernando Valley court system. He's now a
8 traffic pro tem, pending the completion of his
9 investigation with CJP.

10 So then we were sent downtown to the Stanley
11 Mosk Courthouse where my daughter received minor's
12 counsel appointed to her without her request, against
13 her wishes.

14 The particular minor's counsel received a
15 suspension for immoral turpitude. He has, also, in the
16 last five years received over 100 complaints to the
17 California State Bar Association. All of the
18 complaints alleging the same facts.

19 He lies to the judge. He lies to the parents.
20 He won't listen to the children. He overbills. He
21 won't show his bills. He carries a gun. He threatens
22 litigants, so on and so forth.

23 Every allegation is the same. Every complaint
24 is denied. Judge Gordon did recently make a ruling
25 that he was to return \$9,000 of fees that he could not

1 explain.

2 That took guts for Judge Gordon. I commend
3 him for that. In our particular case, I have nine
4 documented situations -- circumstances, where he's lied
5 to the judge, flat-out lied.

6 We filed a complaint with the State Bar, but
7 because minor's counsel has had the transcript sealed,
8 the State Bar sent back the complaint saying, "We
9 cannot investigate. There's no evidence."

10 We went to the supervising judge asking the
11 supervising judge to unseal the transcript so the State
12 Bar could review the complaint.

13 The supervising judge said, "You have to go to
14 the judge who appointed him." That judge denied it.
15 She sealed the transcripts. He -- we filed a Verified
16 Accusation with the State Supreme Court. The State
17 Supreme Court said the same thing.

18 "We can't review this case without a
19 transcript." We went back to the judge. The judge
20 denied it again. We were chastised from the bench for
21 "how dare you file a complaint against this man, who's
22 a hard working individual."

23 This man lied. We had subpoenaed three DCFS
24 workers, two sheriffs, two LAPD officers, and prior
25 minor's counsel who were all going to tell the judge

1 that he lied.

2 When he saw the witnesses in the hallway, he
3 went to the judge, and said "I want off this case."

4 We said, "No. We want the hearing."

5 The judge said, "Hearing denied. Request to
6 be relieved granted. I'm sealing the transcript, and
7 I'm sealing all minor's counsel portion of this file."

8 We're back to square one. We cannot expose
9 this individual because he sealed the transcripts.

10 Not surprisingly, this minor's counsel
11 received over \$1 million from the County of LA for
12 minor counsel fees in the year 2009 to 2010.

13 Any other field, this professional, who had
14 received this many complaints all with the same
15 allegations would have received a suspension pending
16 the outcome of this investigation.

17 Further, these complaints and accusations
18 would have been made available to the public.
19 Therefore, litigants could look them up on a Web site
20 and know what this minor's counsel or this attorney is
21 all about before he's appointed to your case.

22 The State Bar doesn't do that. They hide the
23 facts. The State Bar needs an oversight committee
24 working independently of the Board of Governors, with
25 all due respect, much in the way the ombudsman protect

1 consumers.

2 This would give us a check and balance for the
3 operation of the California State Bar Association.
4 Members of the oversight committee and the Board of
5 Governors should include members of the public, who
6 have been involved with the judicial system in some
7 fashion, and who have an understanding of the code of
8 professional conduct.

9 In my opinion the terms of these individuals
10 should not exceed three years, and each member should
11 have zero history of any disciplinary action or
12 criminal proceedings against them.

13 That was what I had prepared. As I sat here
14 and listened to Mr. Amster speak from the San Fernando
15 Valley Bar Association, I have to disagree with him.

16 The needs of the San Fernando Valley, where I
17 have resided for 25 years, are no different than LA
18 County or San Diego County or Orange County.

19 It's the same. We need to be listened to. If
20 you have an attorney who's violating the law, who's
21 unscrupulous, it doesn't matter what County he's in.
22 We need help.

23 Thank you for your patience.

24 MR. HEBERT: Thank you. We certainly
25 appreciate the time you've taken, and we appreciate

1 your remarks.

2 Does anybody have any questions for
3 Ms. Jarrett?

4 Lowell?

5 MR. CARRUTH: No. I have no questions.

6 MR. HEBERT: Ms. Jarrett, thank you very much.

7 MS. JARRETT: Thank you.

8 MR. HEBERT: We appreciate, again, your time
9 in coming down here.

10 Okay. We've got two more speakers, and so I
11 want to go ahead unless there's some sort of objection.

12 Seeing no objection, our next speaker is
13 Eileen Lasher.

14 Ms. Lasher.

15

16 T E S T I M O N Y

17 MS. LASHER: Thank you. I'm very happy to be
18 here, and I, actually, have a similar concern as the
19 two previous speakers.

20 I have been held hostage in San Diego Family
21 Law Court for 16 years. My family has spent over
22 \$440,000 in attorney fees. My children have been
23 victims of domestic violence. I have evidence --
24 medical evidence, police reports -- my children were
25 appointed a court appointed minor's counsel.

1 She continuously reported to the court that
2 there was no evidence of abuse. After seven years of
3 not having a trial or a judgment, I had lost physical
4 custody of my children.

5 I then hired another attorney who said,
6 "There's never been a trial. Let's do a trial."

7 The judge said, "okay. We'll do a trial."

8 The discovery process began. I was able to
9 obtain some of the evidence, which was consistent
10 with -- even the doctor for the Center For Children
11 Protection, in San Diego, went to the court on behalf
12 of my children's safety, and the judge ordered her to
13 leave.

14 The minor's counsel kept saying "These
15 children are very happy with their father. They should
16 not see their mother."

17 I did not see my children for six years. The
18 evidence was consistent that my children wanted to be
19 with me. They were safe with me.

20 Keep in mind, I was an employee with the City
21 of San Diego. I assisted the public on a daily basis.
22 I volunteered in my community, and p.s., in 2007, my
23 daughter finally dialed 911 after being assaulted
24 violently by her father who's a San Diego Police
25 Officer.

1 She also called her court appointed minor's
2 counsel, and my daughter was left on the street, by the
3 sheriff, barefoot, and no one knew where she was for
4 days, but the minor's counsel went to San Luis Obispo
5 on the taxpayer dime to tell them that she had no idea
6 where her clients were, and she wanted a change of
7 jurisdiction.

8 So for the past four years, I've met with Greg
9 Cox, the county counsel. I tried to report that this
10 person is billing for services never rendered. She has
11 failed to report a change of household.

12 I have no child support, and she continues to
13 bill and go to court without notifying me and without
14 wanting to hear from her clients and has failed to tell
15 the court that her clients have contacted her, asked
16 for her help, and she hung up the phone.

17 Now, my children have found me, and we are
18 together, and I'm trying to figure out how all of this
19 went wrong, and now I'm finding out my case is not
20 isolated.

21 I've met with 50 other litigants in San Diego
22 who have the same issues with the same group of
23 attorneys who deliberately churn cases, work in
24 collusion with the attorney on the other side to delay
25 resolution and bankrupt litigants.

1 Now I'm living on the Island of Coronado.
2 Five of my neighbors have the same situation that I'm
3 talking about and what that previous woman was talking
4 about.

5 I have met with the Chief Executive Officer
6 Michael Roddy, with my daughter, to explain to him that
7 he has a problem within his court, and there's an
8 organized crime ring of attorneys operating in
9 San Diego Family Law Court. He advised me that all he
10 does is keep the lights on.

11 I then met with these other litigants, and I
12 found out that Michael Roddy has not been in compliance
13 with the California Rules of the Court for the past
14 nine years.

15 I've met with Henry Coker of the San Diego
16 Public Defender's Office who previously had
17 responsibility over the minor's counsel, and he advised
18 me that your minor's counsel has committed fraud by not
19 reporting to the court an immediate change of household
20 which continues to delay resolution of my case,
21 prevents me from getting child support, and my
22 ex-husband's attorney is a judge in San Diego child
23 support services. And he is a minor's counsel.

24 His firm appoints the minor's counsel for the
25 cases in San Diego. So you have a racketeering ring in

1 family court because there's no oversight.

2 I attempted to get the copies of the bills of
3 the minor's counsel, and there is no individual
4 accounting. So if you can submit a bill to the
5 taxpayers for whatever amount you want, this is the way
6 to do it.

7 Go in family court, and you can churn cases,
8 and there's nowhere to go. I've gone to the
9 supervising judges office. I tried to sit down with
10 the presiding judge. I have no access.

11 And one would think that my concerns would be
12 met with concern. Is this really happening? Yes, this
13 is really happening. My children can come in and tell
14 you that they repeatedly said they were being abused.

15 Now I find out my children weren't even going
16 to school, and they were living with neighbors, and I'm
17 working, and my wages are being garnished and given to
18 a person who is not even having the children live in
19 his house.

20 These are very serious issues. These are
21 criminal issues. These are attorneys that are not only
22 stealing from litigants, causing harm, but they're
23 stealing from the taxpayers, and they are politically
24 positioned that they're on this list, that they keep
25 getting these appointments.

1 So they're supplementing their income, and
2 they're billing for services never rendered. I had the
3 opportunity to speak with Angela Davis, who is here,
4 and she indicated to me that what I am saying -- these
5 are criminal allegations, and these are very serious
6 criminal allegations.

7 And if you really want to protect the public,
8 you really need to have some sort of a compliance
9 officer when you have a so-called high-conflict case,
10 which really means this litigant has been skip traced,
11 and either the litigant has money or the family has
12 money, and we've got a gold mine here.

13 So what we're gonna do is we're gonna call
14 this a high-conflict case, and this case is going to be
15 churned. We're never going to reach a resolution. The
16 person is never going to get any due process, but we're
17 going to bill, and we're going to dangle the child.

18 You want to see your child? You pay this fee,
19 and none of the issues get resolved. I have attempted
20 to go into the District Attorney's Office so that my
21 children can report the crimes against them and still
22 in family court, all I get is one continuance after
23 another.

24 So the game of kick the can is played so that
25 the statutes run out, and they've had their way with my

1 children, my family, my wages, and now, no one wants to
2 speak with me.

3 And I'm finding out -- I went to George
4 Plescia's office in 2008, and it was determined that
5 San Diego Family Court has been determined to be rogue,
6 and an audit was supposed to happen, but because of the
7 state budgets, only Marin and San Mateo has been
8 audited and, apparently, Marin County has destroyed all
9 of its records.

10 So I know that what I'm saying is not
11 something that you guys have not heard of. It's,
12 apparently, a well-known fact that family law is,
13 basically, the rectum (sic) of law practice, and these
14 attorneys are allowed to take advantage of litigants
15 and cause irreparable harm.

16 I have no savings. I've lost two homes, and
17 now I have two children who have received no education,
18 but they had a minor's counsel that continuously
19 reported to the court that everything was great at the
20 father's home.

21 So now I have two children who do not have a
22 education -- high school education we're talking about
23 here. Meanwhile, I went to work every day. I assisted
24 the public. I was the top producer for the City of
25 San Diego Water Department. I was chosen by my peers

1 to be part of a task force to operate more efficiently.

2 So I'm not -- I'm not the sharpest tool in the
3 shed, but, you know, I have a college education. So I
4 have met other litigants that are nurses,
5 psychiatrists -- on Coronado we have an inspector
6 general with the same situation.

7 So there is a severe pattern of criminal
8 conduct with family law attorneys in San Diego, and I
9 have met with the commission on the status for women,
10 and I have spoken to Liz Fuller of the California State
11 Assembly, and everyone is well aware that this is --
12 and you know, I appreciate Mr. Tenenbaum, and it's not
13 easy for me to come up here and speak.

14 And I -- you know, it's not a joke, and, you
15 know, this is something that somebody really needs to
16 investigate this in a criminal capacity.

17 This falls under the jurisdiction of
18 government fraud. This needs to be investigated by the
19 US Attorney's Office that you have something that's
20 litigated for 16 years with no housekeeping issues even
21 addressed, no community property addressed.

22 Kick the can has been played with me and my
23 children, and I still can't resolve anything, and
24 Channel 10 did an investigation in San Diego as a
25 result of my visiting Michael Roddy to tell him that

1 the taxpayers are paying for this fraud.

2 And from that, the supervising Lorna Alksne
3 admitted San Diego has not been in compliance with
4 filling out the forms for the past nine years.

5 So Michael Roddy's getting paid \$440,000 a
6 year to report to the administrative office of the
7 court about what's going on in San Diego, and he's not
8 accurately reporting that there are families that are
9 being used simply as currency. And they're asking for
10 help, and this is just a source of revenue that -- I
11 mean, I've written to the Bar.

12 I've written to Senator Barbara Boxer, and it
13 seems that family law doesn't come under any scrutiny
14 at all. So if you're going to create an environment
15 where it becomes a haven for waste and corruption, then
16 I think at the very least you need to warn the
17 litigants and say, "if you walk through those doors,
18 you will lose your home."

19 "You will lose your savings. You will lose
20 your children, and when we're done with your children,
21 when they turn 18, you may leave."

22 But, ultimately, the taxpayers are then
23 burdened because my daughter is on Medi-Cal. Now, her
24 father is a San Diego Police Officer. We can't even
25 get medical. So the taxpayers are also burdened

1 with -- the court case is still there.

2 My daughter has the taxpayers paying for her
3 health insurance, and I've been unemployed because I
4 asked the City of San Diego -- "My daughter's been the
5 victim of a crime. I need 30-days leave."

6 "Sorry. We're not holding your job for the
7 family emergency after 18 years." So I'm unemployed.

8 So this is a by-product of family court
9 where -- I'm also told, now, after five years, you're
10 supposed to either have a judgment or a trial. Now, 16
11 years I haven't had either one.

12 Now, when I worked for the water department,
13 if you had a high bill, and your water bill went up,
14 there would be a mechanism that an investigator would
15 immediately go to the house and either tell you,
16 "you've got a bad leak" or what's happening.

17 How about a mechanism, if you're in court for
18 five years with a family law matter, and you've spent
19 almost a half million dollars, that, maybe, there needs
20 to be some sort of a red flag that goes up that says
21 for some reason these attorneys are unable to resolve
22 these issues. For some reasons there's no meet and
23 confer.

24 Maybe -- maybe we need to move it to a
25 different section to examine and, maybe, have everyone

1 sit down and try to figure out how to resolve it, not
2 only for the families but, also, the taxpayers that are
3 initially paying for this -- the court building.

4 MR. HEBERT: Now, Ms. Lasher, I'm gonna lose a
5 couple of my Task Force members here.

6 MS. LASHER: Okay.

7 MR. HEBERT: And so I just want to give them a
8 chance to ask any questions.

9 MS. LASHER: Okay.

10 MR. HEBERT: If anybody else has any
11 questions -- do you have anything that you want to add
12 to what you've said before I open it up?

13 MS. LASHER: Well, I just --

14 MR. HEBERT: Because I think we've got a
15 pretty good sense for --

16 MS. LASHER: Well, I think everybody's aware
17 that there are problems, and if you have attorneys that
18 are committing crimes with working in collusion to
19 delay resolution and deceiving the court record and
20 billing the taxpayers, it's not just about two people
21 fighting over a divorce.

22 It's a -- certain attorneys are looking at
23 this as an opportunity to take advantage of not only
24 the litigants but the taxpayers.

25 MR. HEBERT: Okay.

1 Does anybody have any questions?

2 Let's start with Dennis Mangers, and then
3 Wells Lyman, and then Gwen Moore.

4 MR. MANGERS: I, actually, just want to make
5 an observation, and before I do so I want to make sure
6 you don't think it's insensitive to the obviously
7 employment of personal issues which you've had to deal
8 with for so long.

9 But I think it's inappropriate in this
10 particular forum to kind of dissect your particular
11 case. As a public observation I'd like to make, if it
12 were not for this public hearing on governance and for
13 the Task Force, it seems to me that the Board of
14 Governors have on a day-to-day bases be shielded from
15 these kinds of confrontation with public protection
16 issues at the very grassroots level.

17 So what I'd like, and it may be just because
18 I'm relatively new to the board -- what I'd like to is
19 at the next board meeting, I'd like to ask that --
20 bring us to understand what the process is for the
21 State Bar for an individual person who apparently feels
22 they have suffered these kinds of indignities before
23 our courts and and with our attorneys.

24 What is the process that the State Bar engages
25 in to deal with this? What would be this woman's

1 route, as a matter of public protection, before the
2 court? Something in the orientation material, I
3 haven't read it.

4 I don't understand, but I would like to think
5 that we had some process that an individual person who
6 has concerns about an individual family court, and
7 jurisdiction under our purview or with individual
8 attorneys or there seem to be other litigants that have
9 similar concerns about the process.

10 Does that make sense?

11 MR. HEBERT: Yes.

12 MR. MANGERS: I would really like that to be a
13 good outcome even if it doesn't immediately address
14 this particular lady's concerns on behalf of the public
15 in general, it is something I would like.

16 MR. HEBERT: Yeah. I mean, just from my
17 perspective. I think that sometimes individual cases
18 do give you a sense for issues that do need to be
19 addressed on a broader or governance basis, and so
20 that's why I appreciate members of the public who have
21 come here today to talk to us about it.

22 MS. LASHER: I could have brought 50 other
23 people that have my same story, and it's the same
24 attorneys involved. When I went to this meeting,
25 everyone had to stand up, tell their story. It was the

1 same attorneys' names.

2 They're very big in San Diego, and the other
3 thing we had in common is we either had families that
4 had money, which Mike Aguirre, the former city attorney
5 said, "I notice you're not living in Southeast
6 San Diego."

7 So it's not people that don't have money.
8 It's -- the people that have the high-conflict cases,
9 they have access to money.

10 MR. HEBERT: And the other issue is that while
11 this is not a substitute for the hearings on the
12 discipline system that we do once a year in Los Angeles
13 and San Francisco, there is certainly a connection
14 between the discipline system, whether a lawyer needs
15 to be disciplined, how the system works, and this
16 Governance Task Force.

17 Wells Lyman.

18 MR. LYMAN: Thank you. Thank you for coming,
19 Ms. Lasher, and my apologies that this forum cannot
20 possibly effect directly your tragic situation, and the
21 people you know in that.

22 And at the same time, your courage in coming
23 here can help us do -- at least do something in the
24 long range in the future, and to that I'd like -- since
25 it has been brought forward in this Task Force -- the

1 Elkins Task Force is -- I've seen several times in
2 minor's counsel being brought up in testimony.

3 And the Elkins Task Force is looking directly
4 at the -- how the minor's counsel is conducted and the
5 process of that.

6 We originally, in my first report to the board
7 was that maybe not to weigh in on that, but considering
8 this testimony, maybe we can get together with Trial
9 Counsel and at least get some statistical information
10 on how many complaints are being made regarding minor's
11 counsel and try to provide information in that way to
12 provide more impetus to the Elkin's Task Force to try
13 to correct at least these problems in the future.

14 MR. HEBERT: Okay. Thanks, Wells.

15 Gwen.

16 MS. MOORE: My comments were going to be
17 similar to Dennis' in terms of bringing it forth at a
18 later time, and at least getting some kind of report or
19 understanding of what was happening there.

20 But also you made a -- you did make a
21 suggestion about something that could be done that
22 could be helpful, and I'd just like to get some
23 feedback from staff if it is possible.

24 Her notion that after a certain period of
25 time, if people have not received what they were

1 supposed to within that five-year period, that there be
2 some kind of red flag that elevates it to a different
3 level.

4 Does that make any kind of sense, and if so,
5 what can we do about it?

6 MR. HEBERT: Okay. We can try to address that
7 issue at the next board level.

8 MS. LASHER: And if I may, I used to work for
9 the police department. I actually come from a law
10 enforcement family, and it took many years for women
11 that were victims of domestic violence -- where the
12 police officer was required to provide information on
13 who to call -- hotline numbers.

14 What's happening is, when you go to family
15 court services, they have you watch a film, and they
16 say "In six months you're going to be divorced, and
17 you're going to have close and continuous contact with
18 both children."

19 It's antiquated, and everything that you are
20 doing has to be a living document, and you're talking
21 about what services the board should provide.

22 If the board knows the types of cases that
23 each county has, I believe it would provide assistance
24 with you knowing who you should have on the board.

25 If you have 100 family law cases, and 10

1 criminal cases, you, obviously, need to concentrate
2 your efforts on providing efficiency in the family
3 court.

4 If the family court cases are staying alive
5 for over ten years, obviously, there's a problem. And
6 the comparison with the doctor versus a lawyer, the
7 doctor has to keep the patient alive, and if the doctor
8 makes a mistake, the patient dies.

9 What's happening in the litigation area is the
10 attorneys are making the case sicker because there's an
11 incentive to make the case sicker and not heal the case
12 because then they're gonna make more money.

13 There really needs to be an incentive on
14 resolving the issues the way that they're supposed to
15 resolve the issues. And there should be someone
16 verifying that they are doing their job.

17 I'm currently training in the financial
18 industry, and there's compliance every step of the way.
19 You cannot rely on an attorney to be honest and say
20 "I'm doing my job."

21 Because, obviously, if you have cases in
22 family court that are -- mine is 16 years. All of the
23 other people I've met they're all over ten years.

24 Obviously, there's a problem. Obviously,
25 there needs to be a compliance officer in there to say

1 "Here we have a case. We're looking at seven years.
2 There's a problem."

3 We're gonna have to send it to some sort of
4 examination process. I mean, I'm speaking from
5 experience, and now I'm left with spending all this
6 money and realizing I'm not the only one they played
7 with.

8 They're having a great time, and all of these
9 attorneys now are on Facebook that they've all gone to
10 Las Vegas together fraternizing with the court
11 appointed minor's counsels and the evaluators.

12 So they're running their own private business
13 within this state building, which is completely
14 illegal, and they're covering up child abuse, and
15 preventing my children and other children from getting
16 services as victims of crime that they are legally
17 entitled to.

18 Criminal elements have no place in family
19 court. If a child is a victim of a crime, it needs to
20 be put in a court where people who can look at crimes
21 against children and provide those children with the
22 services that they are legally entitled to.

23 These minor's counsel and these family law
24 attorneys are holding on and holding these families
25 hostage because they want their money.

1 And they do not -- it's not in the best
2 interest of the children. It's in the best interest of
3 their bank accounts.

4 MR. HEBERT: Okay. Well, thank you for coming
5 and sharing your experiences. I don't see any other
6 questions.

7 Luis?

8 MR. RODRIGUEZ: Just a comment. And this is
9 really for Mr. Torres, Ms. Jarrett and you, Ms. Lasher.
10 Just like I indicated before to the gentleman from the
11 San Fernando Valley, contact us. If there is some --

12 MS. LASHER: I've pretty much --

13 MR. RODRIGUEZ: All right.

14 MS. LASHER: Believe me, I've looked on the
15 Web site, and I went down the line, and I've spoken to
16 Angela Davis, and she did say these are criminal
17 elements.

18 And I have spoken with Michael Wied of the US
19 Attorneys Office. I see this as a pattern of
20 misconduct. This is racketeering.

21 MR. RODRIGUEZ: Well, thank you because that's
22 what I meant. If you have that opportunity, and if
23 it's something --

24 MS. LASHER: Believe me, I work on this a lot.

25 MR. RODRIGUEZ: Let me finish, please, because

1 we have a reporter. If there's something that we can
2 interest you, as board members, with the investigation
3 of a complaint against an attorney, feel free to
4 contact --

5 MS. LASHER: I will do that.

6 MR. RODRIGUEZ: Hold on. Because we can't
7 speak over each other. There are attorneys. There's
8 public members on the board, and I'm sure all of us
9 will make ourselves accessible to you as well as the
10 other folks.

11 Thank you very much.

12 MS. LASHER: Okay. Thank you.

13 MR. HEBERT: Thank you very much.

14 MS. LASHER: Thank you.

15 MR. HEBERT: I know that we're losing a couple
16 of Task Force members, but we have one more speaker,
17 and that is Brad Henschel.

18 Mr. Henschel, on your way up here, I'm going
19 to make one more call for Douglas Crowder.

20 Last call, Douglas Crowder?

21 Mr. Henschel, welcome.

22

23 T E S T I M O N Y

24 MR. HENSCHEL: Thank you.

25 MR. HEBERT: And Mr. Henschel, before you

1 start speaking, I do want to just make an observation
2 of we're losing Jeannine English. We've lost Jon
3 Streeter, Loren Kieve, and Judge Remke, and the rest of
4 the Task Force members are still here.

5 So Mr. Henschel, please proceed.

6 MR. HENSCHEL: Okay. I want to identify some
7 fundamental problems that haven't been addressed here
8 at all. There's some of the things that the two
9 governors -- Governor Wilson and
10 Governor Schwarznegger -- both made comments on in
11 writing when they, on one hand, stopped the funding to
12 the State Bar in 1998, and when the
13 Governor Schwarznegger signed or just before he vetoed
14 the first of our Bar dues bill, I believe it was in
15 2010.

16 And I want to try to offer some practical
17 suggestions that the Bar could do to try to correct
18 these problems as I've both seen and experienced.

19 I've seen it happen in a lot of cases. In
20 fact, what the last witness testified to, I've seen
21 much worse in court when I was practicing law.

22 Okay. The first thing is this: A week ago I
23 was a witness in US Tax Court. There was a big sign
24 there in the federal building. There was a class for
25 pro pers. Chief Justice George had to install

1 self-help rooms in courthouses up and down the State.

2 And in a couple of his state of the judiciary
3 speeches he indicated that 90 percent of the family law
4 litigants were in pro per. The reason for that is
5 because the State Bar's Chief Trial Counsel's Office
6 has been in a war with sole practitioners over the last
7 five years or so.

8 During that time, the number of suspended and
9 disbarred attorneys went from 4,000, according to the
10 State Bar journal statistics, to about 10,000. Lawyers
11 were being disbarred at a rate of 20 a month. Many of
12 them were disbarred by default.

13 One such attorney, as an example, recently,
14 that is, in 2010, had to appear in criminal court on
15 the day -- and he was ordered to appear in criminal
16 court -- the same day that his State Bar Court trial
17 started.

18 Both the State Bar Court judge and the Chief
19 Trial Counsel's Office knew this. Knowing this, they
20 took his default anyway. That's not fair, and
21 according to the 1940 and '41 cases including Woodard,
22 any unfairness to the attorney has to be resolved in
23 his favor.

24 In other words, they should have continued it
25 knowing that, instead they took his default, and I can

1 supply -- I'm going to supply you with that information
2 after my talk because my wife is permanently disabled,
3 and she's been getting increasingly worse so I haven't
4 been able to do a lot of things other than help her,
5 and it's taking more and more of my time.

6 Because these sole practitioners are primarily
7 the ones that are generating your complaints, they're
8 also the ones that are providing the legal services to
9 the public. The large law firms, many of whom are
10 disappeared and downsized now, they are supplying the
11 legal services to the corporations and wealthy people.

12 The rest, about 45,000 of your members, are
13 inactive. They don't practice law at all.

14 The Bar lists on its Web site, judges, about
15 1,900 of them as members, when judges can't be members
16 under Article 6 Section 9 of the State Constitution.
17 They shouldn't be listed as members at all, but they
18 are.

19 So because of this war on these attorneys,
20 there's a small pocket of attorneys who are there
21 providing legal services to the public. As a result of
22 this, your statistics show that where there used to be
23 about 111- -- 110,000 complaints against attorneys
24 every year, in 2009, it went down to 11,000.

25 I don't know what it is for 2010 because, as I

1 said, I've been busy with my disabled wife.

2 That's a 90 percent drop in complaints. The
3 reason why it dropped seems to allude the Trial
4 Counsel's Office, even though I've told him, that is,
5 Mr. Drexel, before he left, and that is, that there
6 aren't enough attorneys supplying services to the
7 public.

8 A large portion of those attorneys work in
9 government. They work as public defenders. They work
10 as US attorneys. They work as district attorneys.
11 They work as counsel for cities. They work as county
12 counsel. They work as Bar ethics counsel.

13 So like I said, this pocket has dwindled in
14 the last five years by about 10,000. And as a result,
15 it's causing the courts to have a serious problem as
16 these pro pers are pouring in, not only to family law
17 court, but into bankruptcy court as well.

18 And you know what they say? I've read their
19 Web sites. It's slowing the courts down by 50 percent
20 or more because these people aren't getting the
21 self-help. The self-help departments are manned by
22 legally untrained people who are not supervised by
23 attorneys at all.

24 And you know who else does this? The State
25 Bar. The State Bar has a hotline. On the back of your

1 Bar card is that hotline number. And you know who's
2 manning that hotline? Paralegals.

3 Paralegals are on the line giving legal advice
4 on ethics, which is a violation of 6126 (a) of the
5 Business and Professions Code. That means the Bar is
6 complicit in the violation of that very statute.

7 Instead of taking these attorneys -- and
8 remember it takes about three years -- plus a fourth
9 year to pass the Bar -- to get one attorney out at a
10 cost of -- now it's over \$100,000 each.

11 So you can do the math. You multiply those
12 10,000 attorneys by \$100,000. And very few people in
13 their right mind are going to spend \$100,000 knowing
14 that their livelihood can be removed.

15 According to the law, in the Business
16 Profession Code on attorneys, the board is supposed to
17 be concerned with attorney rehabilitation.

18 For these people restitution should be the
19 answer. And by dangling that ticket in front of the
20 attorneys and having them do things to rehabilitate
21 themselves including making restitution to the clients
22 and volunteering in these self-help centers as lawyers
23 for various periods of time, this valuable legal
24 resource can be utilized to help the public, to help
25 the courts, and to show the public that you're serious

1 about helping them, not just disciplining attorneys.

2 The recent bankruptcy case of In Re: Findley,
3 I made the -- I took the pains to meet Mr. Findley and
4 make friends with him, and he supplied me with a lot of
5 documents.

6 And what Mr. Findley did was, he wanted to
7 discharge the cost amount that was imposed upon him to
8 pay for his discipline. So the Bar fought him tooth
9 and nail. Now, the Bar claims that this is not
10 punishment. That it's discipline.

11 Well, every time I was disciplined as a child,
12 I was punished. However, there's a particular section
13 of the Bankruptcy Code that the Bar utilized when it
14 fought Mr. Findley, and they said this was meant as
15 punishment.

16 That turns your quasi-criminal procedure into
17 a criminal procedure.

18 Under 6085 of the Business and Professions
19 Code and 6068 (I) of the Business Profession Code,
20 attorneys have certain rights, and they're denied them
21 under this criminal procedure.

22 In the Bar case of In Re: Wells, Ms. Wells was
23 supposedly -- committed a violation in South Carolina
24 of a criminal statute, but she was never charged, never
25 convicted. However, she had a California license.

1 So she was prosecuted by the State Bar Court,
2 and in that court, they applied the criminal reasonable
3 doubt standard so it became a complete criminal
4 violation.

5 Another thing that the Bar Court does is they
6 use an attorney's failure to admit that he erred or
7 committed errors or did something wrong against him.
8 This is in direct violation of 6068 (I) which says
9 that is forbidden. State law says it.

10 The Bar was doing this to such a degree that
11 the State legislature had to make three separate laws
12 saying that attorneys could claim the Fifth Amendment.

13 Before that, the Supreme Court of the State
14 said they couldn't because they, apparently, don't have
15 any rights. 6068(I), Fifth Amendment is a right.
16 6079.1, Fifth Amendment is a right. 6085(E) Fifth
17 Amendment is a right.

18 But they use it against the attorney if he
19 gives up his right to defend himself or herself and
20 instead puts up a fight.

21 And everybody that's gone in there and seen
22 that go on has been appalled including the Santa Clara
23 District Attorney's Office, who were going to go to the
24 legislature to correct some of these things when they
25 were observing the trial of one of the Santa Clara's

1 DAs that was disciplined.

2 There's a lot of problems there. In one case,
3 which I'm going to provide you, Judge Talcott ruled, as
4 a matter of fact, that the State Bar had submitted
5 multiple false declarations to him to prevent an
6 attorney from getting his license back.

7 For an ethics group to submit false
8 declarations, not only is a crime, but it's ridiculous.
9 How can you claim to be ethical if you submit false
10 declarations to a court?

11 Another problem is that, according to the
12 director of LAP Program, who I've discussed this with
13 on several occasions, attorneys have a high rate of
14 mental illness, alcohol and drug abuse.

15 And I've been told that they've discovered
16 that the reason for the alcohol and drug abuse, by and
17 large, is because they're self-medicating mental
18 illness.

19 Studies have shown that attorneys have
20 about -- in their population, about 40 percent
21 schizophrenia.

22 The guy that just shot the congresswoman,
23 that's what he's got. You're out of your mind at some
24 point. You don't see reality. People trying to help
25 you, you think that they're trying to hurt you.

1 It also encompasses paranoia. In the general
2 population it's about two percent.

3 Forty percent, that's four out of every ten
4 lawyers. The Bar isn't doing anything about this
5 except for the LAP Program, and under Mr. Drexel, he
6 was attacking the LAP Program, which was instituted by
7 the state legislature.

8 It was done at the insistence of Senator
9 Burton, I believe. It needs to be expanded, and
10 attorneys are needed to be encouraged to come in and
11 have their mental illnesses and addictions identified
12 and treated so they can perform the protection of the
13 public that this Bar is obligated to do.

14 If you leave these people out there that the
15 LAP Program knows are addicted to drugs and alcohol and
16 have mental illness, you're not protecting the public
17 at all.

18 You're letting these people have the public as
19 their victims or part of their illness.

20 I've gone to MCLA Programs at the other Bar
21 because we have to take or -- I used to have to take an
22 hour of MCLE and substance abuse. I don't drink
23 alcohol. I don't take drugs. Most of the time I don't
24 even take aspirin. For cold remedies, I use food.

25 And these guys would get up and talk about how

1 they were drunk in court. How they were addicted to
2 drugs in court. Some of them were judges, which makes
3 sense because that's where we get judges, from lawyers.

4 So when you protect the public, by identifying
5 and get (sic) treatment for these people, you're gonna
6 be helping the judiciary as you pick under the Jenny
7 Commission and identify people who should be judges
8 from the ranks of lawyers.

9 And these guys at the other Bar told us all
10 the ways they used to manipulate people and trick them
11 into thinking that nothing was wrong with them. That
12 has to -- the LAP Program needs to be expanded.

13 The Bar candidates: There's a high rate of
14 non-passage. It's about 50 percent, and there's a high
15 rate of discipline going on.

16 Although, lately -- because you've gotten most
17 of these consumer lawyers -- family law, bankruptcy and
18 so forth, the State Bar review department is now on
19 part-time basis because they don't have enough cases.

20 So starting to dwindle down as you get the
21 people that were supplying legal services to the
22 public. For the Bar candidates this is what you need
23 to do with them: Truck drivers have to take tests,
24 blood tests to see if they're drug addicted or
25 alcoholics.

1 You need to require, of Bar candidates, a
2 certificate from a doctor to clear them for three
3 things: Alcohol addiction, drug addiction, including
4 painkillers, like Oxycotin, (sic) it's abused a lot,
5 and mental illness.

6 You need to have the Bar candidates get
7 clearance on these three things. If you don't, then
8 you'll be ignoring the studies that show that this same
9 amount of mental illness is found in law school
10 students.

11 The new rules on ethical conduct: I was on
12 the list server for that committee, and I watched the
13 traffic go back and forth from all the members, and I
14 added my two cents every now and then.

15 I've also gone to most of the ethics
16 symposiums including the one held in San Diego in 2009,
17 where Dean Chemerinski gave a talk at lunch.

18 (Mr. Carruth, from the conference call left.)

19 MR. HEBERT: I think maybe our telephone
20 caller went off the line, so...

21 MR. HENSCHER: And not being paranoid, I'm
22 accepting that explanation.

23 MR. HEBERT: You were paranoid until I
24 answered.

25 MR. HENSCHER: Well, it's not paranoia when

1 they're really after you. It's only when it's an
2 unreasonable belief.

3 Where was I? I think I was on the Bar
4 candidates.

5 Okay. As far as the Bar candidates go, there
6 needs to be either a mentoring program or an
7 apprenticeship program.

8 When I came out of law school, I was prepared
9 to do one thing, pass the Bar Exam, and I really
10 enjoyed the law. I didn't like law school that much,
11 but I really liked the law, and I was lucky enough to
12 get Justice Jefferson -- Bernard Jefferson, the Justice
13 to teach me evidence.

14 And when I used to go up to my law school
15 classmates and talk about the law, they would all say
16 the same thing to me. "Get away from me. I just want
17 to get out of here. Pass the Bar and make a lot of
18 money."

19 They all said that except one, and that guy is
20 now a Torrance City Attorney.

21 They didn't want to talk about the law. They
22 didn't care about the law. They wanted to make money.

23 And what does the Bible say about the source
24 of problems or evil? It's the love of money.

25 So there needs to be something to redirect. I

1 think one of the other speakers mentioned that, that
2 there has to be some redirection a little bit.

3 The problems is not to force attorneys to do
4 it. There's a statute that the legislature passed two
5 years ago that requires attorneys to do pro bono work.

6 That's slavery, and it's prohibited by the
7 13th Amendment so the statute's unconstitutional, but
8 if they volunteered -- for example, if they were in a
9 discipline situation, and they rehabilitated
10 themselves, gave restitution, and they were allowed to
11 expunge their discipline by going out and volunteering,
12 they'd do it.

13 Not all of them would do it, human nature
14 being what it is, but most of them would.

15 And who would benefit? The poor that are,
16 practically, not just underrepresented but practically
17 not represented at all and who, generally, are the ones
18 that end up in prison.

19 Expungement is a proven system. It's been
20 working and quite effectively for decades in the
21 criminal justice system in California, and it's used to
22 rehabilitate people.

23 Who here didn't make dumb decisions when they
24 were teenagers? I made a lot of them, and I know most
25 people, who will admit it, made a lot of dumb

1 decisions. And a lot of people in their 20's made a
2 lot of dumb decisions, and they get to enjoy the
3 results of those decisions when they get to be in their
4 50's, 60's 70's, and so forth, but it's too late then,
5 you can't change it, but you can rehabilitate.

6 And in doing so, you're gonna help everybody.
7 It's a win, win, win situation by going for
8 rehabilitation instead of punishment. When you punish
9 people, you take revenge on them, and you take out
10 anger.

11 When you rehabilitate people, you use the
12 golden rule. You treat people the way you'd like to be
13 treated, and people tend to respond the way they're
14 treated.

15 So if you follow the mandate that's already in
16 the law and go for rehabilitation of the Bar members,
17 you're going to solve a plethora of problems all at the
18 same time.

19 You're gonna drive down the cost of the
20 discipline system. You're gonna help the public.
21 You're gonna turn some people that have made some
22 unfortunate decisions into people that feel good about
23 themselves and then want to spread that feeling out to
24 their clients.

25 And by submitting false declaration to judges

1 like Judge Talcott, that's not quite the way to do it.
2 It shouldn't be done that way.

3 There are some clients that make false claims,
4 in one of my cases, a man had made false declarations
5 in the Bar -- I'm sorry. He made false statements to
6 the Bar.

7 He said he hadn't signed papers. The Bar
8 hired a handwriting expert, which I helped pay for,
9 half of it. Handwriting experts said it was his
10 genuine signature so he lied.

11 What did the Bar Chief Trial Counsel's Office
12 do?

13 MR. HEBERT: Mr. Henschel --

14 MR. HENSCHEL: They put him on the stand.

15 MR. HEBERT: -- five minutes.

16 MR. HENSCHEL: They put him on the stand.

17 That's an ethical violation that subjects people to
18 disbarment.

19 I believe in 6128 of the Business and
20 Profession Code, you make false representation in the
21 court, and the State Bar Court is a court. It's a
22 referee for the State Supreme Court. That's a
23 disbarable offense.

24 So far as I know -- and I've been able to
25 research -- nobody who's made false claims against an

1 attorney has ever been prosecuted or even referred for
2 prosecution. I believe that statute is Section 6044.5.

3 LegalZoom, why do you think that's there?
4 Legal service are too high. A lot of people can't
5 afford them. It's been said that some lawyers can't
6 even afford to hire another lawyer because legal
7 services are so expensive.

8 What could be causing that? Well, if you use
9 the law of supply and demand, if you take out too many
10 lawyers, and there's only a few lawyers and a whole
11 bunch of people that need the services, what happens to
12 the price? It goes up.

13 If there's one car, and there's ten buyers and
14 they all want that one car, what happens to the bidding
15 war that results? Price goes up.

16 That's what's happening here, and the
17 government lawyers can't help because they're not
18 allowed to do pro bono. It's a conflict of interest.

19 I have other issues. I've written them down
20 in a format -- in an outline format. I gave it to
21 Cathy. She has it there for you to read. I apologize
22 to the board for not having done this sooner, earlier,
23 but, again, my wife takes priority as well as her
24 condition.

25 And so I'm, basically, doing the best I can.

1 My intention to come here is not because I'm angry
2 about anything because I'm not. I've had a great life.
3 I enjoyed being a lawyer while I was doing it. I
4 helped a lot of people.

5 I am afraid because my two children watched
6 what the Bar did with me, and how they did it, and they
7 ran away from being lawyers.

8 My daughter would have made a great lawyer,
9 instead she's in Korea teaching English to Korean
10 Airline pilots and making a good living at it.

11 People are not stupid. If they see tickets
12 being pulled, and they've got \$100,000 student loan to
13 pay off, and they know they won't be able to because
14 they might lose their livelihood, they're gonna go
15 someplace else.

16 The doctors don't get their license pulled
17 like this. 10,000 doctors? What do you think would
18 happen to our medical system if 10,000 lawyers (sic)
19 were pulled out in five years? I'll tell you what
20 would happen. People would be dropping like flies, and
21 there would be nobody to help them.

22 Well, that's what happens -- that's what's
23 happening now in the legal realm so the vacuum is being
24 filled by LegalZoom and legal document preparers.

25 We have to reverse that, and you'll do it by

1 taking a different attitude and going with the mandate
2 to rehabilitate lawyers, and if you do it in the manner
3 that I've suggested, you will get that result. 'Cause
4 like I said, people respond the way you treat them,
5 generally speaking.

6 Thank you.

7 MR. HEBERT: Okay. Thank you, Mr. Henschel.
8 I just -- for the record, I just want to note that Beth
9 Jay had also -- I didn't want to interrupt you -- Beth
10 Jay had also left before your testimony began so she
11 didn't hear any of it.

12 And is there anybody else who I haven't
13 caught? Okay. I just wanted the record to be correct
14 there.

15 Does anybody have any questions for
16 Mr. Henschel?

17 MR. HENSCHEL: I'm going to submit proof of
18 everything I've told you online or by mail depending on
19 which is more appropriate or convenient for the board.

20 MR. HEBERT: Yeah. We've been -- we've been
21 having all the submissions go to Amy. So if you look
22 in the Web site, you'll you go to the Task Force page.

23 MR. HENSCHEL: Amy Anderson?

24 MR. HEBERT: Amy Anderson, you'll be referred
25 to the request for information, and it has her e-mail

1 address there.

2 So if you want to submit anything else --

3 MR. HENSCHER: Oh, one last thing, this will
4 just take me a couple of seconds. There's somebody in
5 the general counsel's office that's been making
6 declarations under penalty of perjury that they're paid
7 \$150 an hour.

8 That's \$288,000 a year for a 40-hour week. I
9 don't think they're getting paid that, and under the
10 law that created this Task Force, the salaries of these
11 people have to be revealed to the public.

12 I think they should be put on the Web site so
13 everybody can see them so that won't happen again.

14 Thank you.

15 MR. HEBERT: Okay. Thank you very much. If
16 we have nothing else, any other business from the Task
17 Force members?

18 MR. TENENBAUM: I have a -- I don't want to
19 keep anybody here, but I have something funny and
20 informative.

21 MR. HEBERT: Well, can we adjourn and then you
22 can tell us?

23 MR. TENENBAUM: Yeah, of course.

24 MR. HEBERT: Okay. This Task Force meeting is
25 adjourned.

1 (Whereupon, the proceedings recessed at
2 the hour of 3:29 p.m.)

3 STATE OF CALIFORNIA)
4 COUNTY OF LOS ANGELES) ss

5

6 I, WILLIE ANDERSON, JR., Certified Shorthand
7 Reporter qualified in and for the State of California,
8 do hereby certify:

9 That the foregoing transcript is a true and
10 correct transcription of my original stenographic
11 notes.

12 I further certify that I am neither attorney or
13 counsel for nor related to or employed by any of the
14 parties to the action in which this proceeding was
15 taken; and furthermore, that I am not a relative or
16 employee of any attorney or counsel employed by the
17 parties hereto or financially interested in the action.

18 IN WITNESS WHEREOF, I have hereunto set my hand
19 this _____ day of _____, 2011.

20

21

22

23

WILLIE ANDERSON, JR.

24

25

CSR No. 13385