

IN RE:

GOVERNANCE IN THE PUBLIC INTEREST TASK FORCE

REPORTER'S TRANSCRIPT

PUBLIC HEARING

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4 LOWELL CARRUTH, Second-Year Lawyer

5 LOREN KIEVE, First-Year Layer Member

6 WELLS LYMAN, Second-Year Lawyer Member

7 DENNIS MANGERS, First-Year Public Member

8 GWEN MOORE, Second-Year Public Member

9 JON STREETER, Third-Year Lawyer Member

10 MICHAEL TENENBAUM, Third-Year Lawyer Member

11 GRETCHEN NELSON First-Year Lawyer Member

12 BETH JAY

13 JUDY JOHNSON

14 GAYLE MURPHY

15 HONORABLE JOANN REMKE

16 STARR BABCOCK

17 RICHARD ZANASSI

18 TRACEY MCCORMICK

19 CATHY TORNEY

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APPEARANCES (Continued)

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ROYAL GLAUDE

PATRICK MISSUD

CONNIE VALENTINE

HELEN LYNN

AFTERNOON SESSION

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P R O C E E D I N G S

1
2 PRESIDENT HEBERT: Good morning, ladies and
3 gentlemen. My name is Bill Hebert. And as president of
4 the State Bar of California, I'd like to welcome all of
5 you to the second and last public hearing of the
6 Governance in the Public Interest Task Force.

7 As you are aware, Assembly Bill 2764 added a
8 new Section 6002.1(b) to the Business and Professions
9 Code, which created the Governance Task Force AB2764
10 required me to appoint a Task Force of 11 members and to
11 preside over the Task Force and to submit a report to
12 the Supreme Court, the Governor and the Assembly and
13 Senate Committee and Judiciary that includes its
14 recommendation for enhancing the protection of the
15 public and ensuring the protection of the public gets
16 the highest priority in the licensing, regulation and
17 discipline of attorneys.

18 The law requires the Task Force to submit its
19 report on or before May 15, 2011 and every three years
20 thereafter.

21 Also present with me are the following members
22 of the State Bar of the Board of Governors who are also
23 members of the Governance Task Force: Lowell Carruth, a
24 Second-Year Lawyer Member from Fresno; Loren Kieve, a
25 First-Year Lawyer Member from San Francisco; Wells

1 Lyman, a Second-Year Lawyer Member from San Diego;
2 Dennis Mangers, a First-Year Public Member appointed by
3 the president pro tem of the Senate; Gwen Moore, a
4 Second-Year Public Member appointed by the public
5 speaker of the Assembly; Jon Streeter, a Third-Year
6 Lawyer Member from San Francisco; Michael Tenenbaum, a
7 Third-Year Lawyer Member from Ventura.

8 Not in attendance today, but members of the
9 Task Force, include Luis Rodriguez, a First-Year Lawyer
10 Member from Los Angeles; Angela Davis, a Third-Year
11 Lawyer Member from Los Angeles. And we had anticipated
12 that Jeannine English, a Third-Year Public Member
13 appointed by the Governor would be present here today,
14 and she may be here.

15 In addition to assist the Governance Task Force
16 in performing its duties in making the recommendations,
17 I appointed the following ex-officio members who are
18 also with me here today: Beth Jay, principal attorney
19 to the Chief Justice of the State of California; Judy
20 Johnson, the immediate past Executive Director of the
21 State Bar; Gayle Murphy, senior executive of admissions;
22 and the Honorable JoAnn Remke, presiding judge of the
23 State Bar Court.

24 This committee is supported by the Office of
25 the General Counsel of the State Bar, including the

1 following people who are with us here today: Starr
2 Babcock, general counsel; Richard Zanassi, the chief
3 assistant of the general counsel; Tracey McCormick,
4 assistant general counsel; Cathy Torney, who is in the
5 audience, director of administration, Office of the
6 General Counsel. And Amy Anderson, administrative
7 assistant to Starr Babcock, and Cathy Torney. In
8 addition I appointed as an ex-officio member, Jim Towery,
9 who is the chief trial counsel; and he's with us here
10 today.

11 The staff has caused notice of this hearing to
12 be given by circulating a press release to the media
13 posting notice on the State Bar's website giving notice
14 to the State Bar's regular meetings. Distributing
15 notice to all locals, specialty and minority bars in
16 California, distributing notice to all subscribers to
17 the State Bar Listserv for the Governance Task Force
18 soliciting input generally from consumer advocates and
19 public interest groups, and sending notice and requests
20 for information to 20,000 members of the State Bar
21 chosen at random.

22 The notice specified the time, place and
23 purpose of the hearing. We will attach to the record a
24 list of the recipients that were noticed other than the
25 20,000 attorney members selected at random. We have a

1 court reporter present to transcribe all of the oral
2 testimony presented today. This testimony, together
3 with any written comments that are received, will be
4 made available to the full Governance Task Force, to all
5 members of the Board of Governors and will be made part
6 of the record available to the Supreme Court, the
7 Governor and the Legislature in connection with the
8 submission of the Task Force's report in May 2011.

9 If you have any supporting documentation you're
10 going to refer to which has not previously been
11 submitted for photocopying prior to the hearing, please
12 provide the material to Amy Anderson, Cathy Torney or
13 the court reporter so that photocopies can be made and
14 included in the public record of the hearing.

15 Now, some of you may be here today to discuss
16 your experiences with a specific attorney. While it's
17 not the purpose of this hearing to register complaints,
18 we understand that you've taken the time from your busy
19 schedules to be here. Therefore, we respectfully
20 request that if you discuss your experiences with a
21 specific attorney, and you have filed a complaint with
22 the State Bar's office of chief trial counsel, please
23 refrain from using the attorney's name. Until a
24 complaint is filed in the State Bar Court, your
25 complaint is a confidential matter. Because the

1 transcripts from these hearings will be made available
2 to the public, we would appreciate your cooperation by
3 not mentioning the attorney by name, but please feel
4 free to describe or discuss your experiences.

5 If you've not previously registered to speak
6 and you want to speak today, please see Amy Anderson
7 here to my right, or Cathy Torney in the back of the
8 room or one of the staff members at a break; and we will
9 set aside time for you to speak either before lunch or
10 at the end of the day.

11 We ask that you complete your testimony within
12 30 minutes or less because we want to allow time for
13 questions by members of the Governance Task Force. You
14 will be notified when your time is up.

15 I will call out names in the order in which you
16 are scheduled to speak. To ensure that the court
17 reporter is able to hear clearly, please come to the
18 chairs at the front of the room when your name is called
19 and begin by identifying yourself for the record. The
20 speaker list will become part of the record and the
21 court reporter will verify the spelling of your name by
22 checking the sheet.

23 Because this public hearing is also scheduled
24 as a regular meeting of the Governance Task Force, we
25 have a few administrative matters we need to address

1 before we call our first speaker.

2 I want to go ahead and take role because things
3 may have changed since I went through the list of
4 attendees, and I want to make sure that everybody who is
5 here either personally or on the phone from the Task
6 Force or the staff or the Board of Governors is
7 identified. So let's go ahead and take role.

8 MS. ANDERSON: Lowell Carruth.

9 MR. CARRUTH: Here.

10 MS. ANDERSON: Angela Davis.

11 MS. DAVIS: Here.

12 MS. ANDERSON: Jeannine English.

13 MS. ENGLISH: Present.

14 MS. ANDERSON: Loren Kieve.

15 MR. KIEVE: Here.

16 MS. ANDERSON: Wells Lyman.

17 MR. LYMAN: Here.

18 MS. ANDERSON: Dennis Mangers.

19 MR. MANGERS: Here.

20 MS. ANDERSON: Gwen Moore.

21 MS. MOORE: Here.

22 MS. ANDERSON: Luis Rodriguez.

23 MR. RODRIGUEZ: Here.

24 MS. ANDERSON: Jon Streeter.

25 MR. STREETER: Yes.

1 MS. ANDERSON: Michael Tenebaum.

2 MR. TENEBBAUM: Here.

3 MS. ANDERSON: Joe Dunn.

4 MR. DUNN: Here.

5 MS. ANDERSON: Beth Jay.

6 MS. JAY: Here.

7 MS. ANDERSON: Judy Johnson.

8 MS. JOHNSON: Here.

9 MS. ANDERSON: Gayle Murphy.

10 MS. MURPHY: Here.

11 MS. ANDERSON: Judge JoAnn Remke.

12 JUDGE REMKE: Here.

13 MS. ANDERSON: James Towery.

14 MR. Towery: Here.

15 PRESIDENT HEBERT: In addition, we have the
16 staff members that I identified from the Office of
17 General Counsel. Also with us today is Gretchen Nelson
18 who is a First-Year Lawyer Member on the State Bar Board
19 of Governors.

20 And are there -- is there anyone who is on the
21 phone or who I haven't identified here today?

22 Okay. Chair's report. There is none.

23 Reports. We have two reports that we will
24 accept: The Task Force report from the December 3rd,
25 2010 meeting of the Task Force, and the report from the

1 January 20th, 2011 public hearing.

2 There are no action items on the calendar
3 today.

4 There are no consent items on the calendar
5 today.

6 Now, I'd like to turn to our first speaker.

7 MR. DUNN: I'm just curious.

8 PRESIDENT HEBERT: Yes?

9 MR. DUNN: We didn't have a video in Los
10 Angeles. Is this one supposed to be more exciting?

11 PRESIDENT HEBERT: This was requested by the
12 first speaker.

13 Now you regret being on time.

14 MR. TENENBAUM: I was going to make that joke.

15 PRESIDENT HEBERT: And for all the speakers
16 today, I just want to make a couple of reminders, and
17 really for everybody in the room. First of all, turn
18 your cell phones off. We should have the microphones at
19 the speakers' desk on.

20 Let me give you sort of the standard
21 admonitions that we give at the beginning of any
22 proceeding that has a court reporter. Please speak
23 slowly and clearly so that the court reporter can take
24 everything down. Only one of us can speak at a time, so
25 try not to speak over each other. And I'm giving this

1 admonition generally now because I may remind some of
2 the speakers as we go along to please slow down. And
3 I'll make a hand motion or just tell you to slow down.
4 I'm also going to grant authority to the court reporter
5 to tell any of the speakers to slow down if you are
6 speaking too fast. Typically that happens when you read
7 your remarks or you just get a little too much
8 adrenalin, so I'm going to try to keep everything
9 relaxed; and I want to make sure that we have a nice
10 clean record of what happens here today.

11 Okay. So if there's nothing further, I'd like
12 to call the first speaker, Rodd Santomauro, Executive
13 Director of HALT, Help Abolish Legal Tyranny.

14 Mr. Santomauro, welcome.

15 MR. SANTOMAURO: Thank you, Mr. Chair. Thank
16 you for having us today.

17 PRESIDENT HEBERT: Of course, I -- just, again,
18 for all the speakers, to the extent that you submitted
19 written materials, you should assume that the Task Force
20 members have read the materials. We know what's in your
21 materials. There's no need for you to reread your
22 materials. You may want to summarize points that aren't
23 in the materials, but the Task Force members would
24 probably be just as interested in the opportunity to ask
25 you questions if they have any clarifications or issues

1 that they think are of special importance in the
2 materials. Okay?

3 All right. Now, with that, Mr. Santomauro.

4 MR. SANTOMAURO: Thank you for inviting us here
5 today -- this morning. The weather in San Francisco is
6 considerably nicer this morning than it is in
7 Washington, D.C., so I have heard. So thank you for
8 this opportunity. The timing works out well.

9 I am testifying today in the capacity as
10 Executive Director of HALT. We are a national nonprofit
11 out of Washington, D.C. I do want to state, though,
12 even though I'm currently not practicing, I am a Florida
13 licensed attorney in good standing. So even though I am
14 not testifying in that capacity, I am cognizant of some
15 of the conversations and the feelings that I have had
16 former clients express to me when I was in private
17 practice regarding transparency within the disciplinary
18 system and within the legal system at large.

19 This hearing -- this Task Force, we believe, as
20 a national organization, is critical and is a very
21 positive step in relationship to open government, in
22 relationship to improving the public perception of
23 lawyers and the legal system as a whole. There are some
24 that may say we're putting the cart before the horse;
25 meaning what are the problems that need to be identified

1 so that they can properly be addressed. We do not feel
2 that way.

3 Our organization has many members and has been
4 around 32 years and has done extensive studies on what
5 needs to be corrected and how it should be corrected.
6 Certainly, the kinds of questions the Task Force is
7 asking is of great importance to us as an organization
8 and, we believe, the public at large.

9 I was looking over some information in
10 preparation for the hearing in regard to the size of the
11 California Bar being the largest integrated bar in the
12 country. And, indeed, the California Bar has made some
13 great strides in lawyer accountability, lawyer
14 discipline, educating the public; but we believe more
15 can be done.

16 So to that end, we respectfully request that
17 the information that we provided in addition to the
18 information that I'm providing here today on behalf of
19 HALT is taken into consideration when moving forward.
20 Specifically, there's three areas that I'd like to
21 discuss this morning.

22 No. 1, the fact that there should be more
23 nonlawyers on the Board of Governors. Specifically,
24 there should be at least 51 percent of that particular
25 membership on the Board should be that of lay -- lay

1 people or -- or nonlawyers. And we'll talk this morning
2 about why we believe that should be that way and also
3 how procedurally we can be doing that.

4 No. 2, that we advocate for abolishing private
5 reprimands within the Bar grievance system. We'll talk
6 about how we can go about doing that and why that's
7 important.

8 And thirdly, briefly -- time permitting -- talk
9 about having a mandatory malpractice insurance for the
10 lawyers in California. It's my understanding that
11 recently the California Bar made it a requirement during
12 the disclosure -- a mandatory disclosure requirement
13 regarding an attorney that was hired did not have
14 malpractice insurance, that they needed to notify their
15 client. We want to talk about going a step further; and
16 we'll talk briefly about that, time permitting.

17 But first having more lawyers on the state's
18 Board of Governors. There are some that would say to
19 counter my earlier statement about having the majority
20 of members on the Board being nonlawyers, that, well,
21 all the Board members should be lawyers because only
22 lawyers can really relate to the fiduciary
23 responsibilities of being a lawyer, the trials and
24 tribulations of what goes into the practice of law; and
25 there exists a relationship where there are so many

1 rules, whether they're the rules of civil procedure, the
2 rules of criminal procedure, the ethics rules, we need
3 to have lawyers in those chairs.

4 And what I would humbly and respectfully submit
5 to this Task Force is some of you are not lawyers. Yet
6 you're more than qualified to sit on this Task Force.
7 And the message it would send if you were ready, willing
8 and able to serve the great State of California to be
9 told that you can't do that because you're not a lawyer.

10 So I start with that because we talk about the
11 perception of lawyers and the perception of lawyers to
12 the public. So as we explore this issue, and we look to
13 see what the public thinks about us as a profession --
14 this self-regulated profession, to have more nonlawyers
15 on the Board, we believe, would instill confidence
16 within the public. There would be more diversity.

17 And in addition to that along with public
18 protection of the public, which I understand this Task
19 Force is tasked with doing that, we believe that in
20 part, public perception can add to the public
21 protection. People will be more willing to listen.
22 People are going to be more willing to engage.

23 We sometimes hear from members -- and I've
24 certainly heard when I was in private practice -- that
25 some individuals are leery about filing a complaint

1 against an attorney 'cause they feel that the cards are
2 stacked against them. They feel that if a lawyer has
3 done something wrong and they're going to go to a group
4 of lawyers, if they make it that far to talk about that,
5 where is neutrality?

6 In addition to that, we think that when we look
7 at the composition of the Board and we talk about who
8 those members are, part of the argument about not having
9 all the lawyers -- having 100 percent of lawyers on the
10 Board of Governors or any disciplinary committee would
11 be, well, again even if they're educated -- they have a
12 certain amount of education or they've had like
13 experiences, it comes back to being a lawyer to be on
14 the Board, whether it's all Board members being lawyers
15 or the majority of Board members being attorneys which
16 we stand in opposition of.

17 I would also submit to all of you, let's look
18 at our -- our jury system. We have -- we have juries
19 made up of lay people that decide complex multimillion
20 dollar civil cases that decide life-and-death situations
21 in criminal cases.

22 Generally speaking, the majority of jurors, if
23 not all of them on any particular jury, are not lawyers.
24 We trust the public with our judicial system insofar as
25 making decisions that affect people that are accused of

1 crimes, that are going in front of the Court to make
2 claims. Why can't we extend the same to the Board of
3 Governors that looks at the entire system insofar as
4 what the California Bar seeks to accomplish?

5 The California Constitution, Article 6, Section
6 8 on the commission, there's 6 of the 11 on that
7 judicial commission that are nonlawyers. And we approve
8 of this, and we think this is a very positive step, and
9 that -- that be extended to the Board of Governors.

10 Certainly, we do not believe it flies in the
11 face of the California Constitution to have the majority
12 of members of the Board of Governors be laypersons. And
13 just as a gentle reminder, when we talk about lay people
14 or nonlawyers, we're talking about people from all
15 different walks of life, all different backgrounds.

16 And my earlier comment about some may take the
17 position that only lawyers can understand the rules
18 involved and the ethics involved, I would humbly submit
19 to all of you that we have people -- for instance, we
20 have in Vermont on their discipline Board, three of the
21 seven seats of that lawyer-discipline bar are
22 nonlawyers. You have professors, you have doctors, you
23 have accountants, you have bankers. You have
24 professionals from all walks of life. Certainly, they
25 understand what ethics rules are because a lot of them

1 have their own ethics rules that they have to subscribe
2 to.

3 And we understand that in certain situations
4 you need to have a lawyer come in to give expert
5 testimony to guide the Board, and that's fine. But
6 please understand, as I'm sure you do, that it doesn't
7 take a lawyer to be able to tell whether a lawyer did
8 something that's right or wrong. Right is right, and
9 wrong is wrong. And the sooner we allow the public to
10 come in and have a more active part of this system, I
11 think the more receptive the public will be to listening
12 to what the various bars across the country have to say.

13 This -- these issues are not isolated to
14 California. We see it all across this great country of
15 ours day in and day out. We see it in the courtrooms.
16 We see it in the law offices. We see it when they call
17 us in Washington, D.C., with their perception of how
18 they've been treated. So I ask all of you to please
19 consider that.

20 Right now it's our understanding that in
21 California only 6 of the 23 members of the Board of
22 Governors are nonlawyers. We would, of course, advocate
23 that that number is increased.

24 ABA model rules for lawyer disciplinary
25 enforcement previously stated the internal politics of

1 the Bar Association should not influence the discipline
2 process. I'll submit to all of you that it's hard not
3 to even have the appearance of a conflict when you have
4 the majority of members of the Board appointed by the
5 Bar.

6 Solutions. We believe that the State Bar
7 respectfully should not have a role in nominating or
8 selecting Bar members. It should be the Supreme Court.
9 These individuals can be nominated by spreading the word
10 through the state's client -- the state's client
11 population. The nomination process can be publicized in
12 courthouses, legal-service clinics, State Bar and court
13 websites.

14 There are so many people out there that are
15 interested in the law. There are so many people out
16 there that want to serve. There are so many people out
17 there that want to reach their hand out to say I want to
18 be part of the process, but either they feel too
19 intimidated to do so or they're just not allowed. And
20 we think that should change.

21 The next issue I'd like to discuss is
22 abolishing private reprimands. Why? The public, we
23 believe, has a right to know when a lawyer has been
24 disciplined for an ethics violation or a violation of
25 the law.

1 Private reprimands, we believe, do not serve
2 the legal consumer well. We believe, as in many states,
3 you have -- if you're going to see a doctor, you're
4 investigating that doctor, you want to know about the
5 doctor's credentials. You want to know if the doctor
6 has ever been disciplined in regards to your health.
7 It's very easy in many states to get that information.

8 Yet, what we found through our investigation in
9 our research, that it's not the same as when you're
10 investigating a lawyer. The California Bar has made
11 great strides in that department with an easy navigable
12 website, having an open disciplinary process; but there
13 are many states that have not abolished private
14 reprimands.

15 We believe for the legal consumer to make an
16 educated decision about which lawyer they want to
17 choose, which lawyer they entrust their finances to,
18 their marital situation to, their career to insofar as
19 an employer dispute, that they should have access to the
20 lawyer's full disciplinary records.

21 Again, it's not just because it's the right
22 thing to do, it's because it's the appearance -- the
23 appearance of a conflict of interest. The appearance
24 that the public is not fully engaged, and that there's
25 this disconnect, the appearance that somebody is hiding

1 something. It doesn't mean that it's always true in all
2 cases, but it's the public's perception.

3 We do see the abolishment of private
4 reprimands. We do see a -- somewhat of a positive trend
5 in that currently we know that 15 states discipline
6 lawyers out in the open. But we believe this reinstills
7 confidence in the legal system. We also believe that
8 this satisfies the duty of public protection.

9 And while I'm speaking about this, I do want to
10 talk about money for a minute. And the reason why I
11 bring that up is the other reason why we believe in
12 abolishing private reprimands, it serves as a deterrent.
13 It serves as a deterrent because a lawyer knows if they
14 do something wrong, that it's going to be out there in
15 the open.

16 And as we all know, even with a private
17 reprimand, you -- at the California Bar, you have a
18 disciplinary process in place. You have a
19 checks-and-balances system in place. By the time you
20 ever get -- a lawyer ever gets to any sort of a
21 reprimand, private reprimand/public reprimand, we go
22 higher up and we talk about suspensions, then
23 disbarment. There has been an investigation. There has
24 been notice. There has been a hearing.

25 So it's not as if, well, a private reprimand is

1 different than a public reprimand. They're both
2 reprimands. The only difference is the level of
3 severity as far as the nature of the error or the
4 mistake or whatever happened in that particular
5 situation.

6 And I say that because I was looking at the
7 2009 report on the State Bar of California discipline
8 system, and part of it -- when we talked about
9 significant trends in 2009 -- and I don't know what it
10 is for 2010. I assume that report -- haven't seen that
11 yet, and it's only end of January. But at the end of
12 2009, it -- part the report says, quote, "In addition,
13 almost 20,000 attorney files had been removed" --

14 That's when the adrenalin kicks in, Mr. Chair,
15 that we were talking about.

16 PRESIDENT HEBERT: It's the adrenalin reading.

17 MR. SANTOMAURO: Yes.

18 PRESIDENT HEBERT: You tend to speed up; so --

19 MR. SANTOMAURO: "In addition, almost 20,000
20 attorney files had been removed from the offices of
21 attorneys whose loan modification practices had been
22 shut down." In addition -- and this will tie into my
23 point about mandatory malpractice insurance for lawyers.
24 In addition, in regard to the client security fund in
25 2009, dollar amount paid \$3,461,950. That's a lot of

1 money.

2 And I would ask the Committee to ask themselves
3 if there was an ethical, legal, additional deterrent in
4 place to provide lawyers from doing bad things, maybe
5 next year that number won't be so high. Maybe that
6 number would be dramatically cut down because lawyers
7 that are deterred from doing bad things can seek to
8 self-educate. They can seek to reflect on their actions
9 more carefully.

10 And maybe if private reprimands were not
11 private anymore, some of the lesser or, in this context,
12 minor offenses, we could do away with altogether because
13 we're not just educating the public when we do that, but
14 we're also educating other lawyers.

15 There's also some that may say the lawyers that
16 commit violations of the law, either the statute or they
17 have an ethical violation, we don't really need to worry
18 about private reprimands; they're okay and the
19 disciplinary system is okay because it's just a few bad
20 apples in the whole bunch.

21 My comments are not meant to be antilawyer here
22 this morning. They're meant to be pro consumer and pro
23 legal consumer. But if you look at this same report
24 that I referenced earlier, there was approximately 550
25 lawyers in 2009 in cases that were closed that ranged

1 from reprimands to disbarment.

2 Referencing the American Bar Association's
3 latest survey on lawyer discipline, how many lawyers
4 were disciplined in some form or fashion in 2009 -- I
5 added up all the columns on the flight over from D.C. to
6 California yesterday -- 12,000 -- and math was never my
7 strong suit. That's why I went to law school. But I've
8 checked my math, and I think this is accurate. 12,284
9 cases across this great nation of ours. That is not a
10 large ratio when you look at the number of lawyers
11 practicing law in the United States.

12 But each one of those 12,000 and some odd
13 cases, that negatively affected a person. That
14 negatively affected a family. Something bad happened
15 that a lawyer was disciplined. Regardless of whether or
16 not harm was caused to the client, one of the things you
17 look at when determining what the appropriate sanction
18 would be. But those are -- those are marks against the
19 public perception of lawyers. The oath that is taken by
20 lawyers, that's not something that's temporary. That's
21 something that's supposed to stay with you, and the
22 public should know that.

23 So with those comments, thank you again for
24 allowing me to speak this morning. I welcome your
25 questions. And if there's any question I don't know the

1 answer to, I will tell you that. And I assure you when
2 I get back to Washington, I will do the appropriate
3 research --

4 Oh, mandatory malpractice insurance. I'm
5 sorry. It's our understanding that now mandatory
6 malpractice insurance -- we have that in only one of 50
7 states, Oregon. And in 25 of the 50 states, you have a
8 notice requirement which California recently put into
9 place.

10 Wouldn't it be nice to have mandatory
11 malpractice insurance so that your client's security
12 fund didn't take this kind of a beating every year?
13 Mandatory liability insurance has to do with public
14 protection. We think it assures the public, Hey, if my
15 lawyer does something wrong, there's going to be
16 insurance to cover it. Just like we would have in a
17 medical-malpractice case if a doctor does something
18 wrong. Now -- it's not in all states. But there's that
19 reassurance that if something goes wrong, there will be
20 a way to compensate me for my outstanding medical bills,
21 for my lost wages, for my loss of ability to enjoy life.

22 Why don't we extend the same across the Board
23 to lawyers and law firms as a professional organization
24 -- professional organizations, mandatory liability
25 insurance, we believe, is a good thing. It keeps the

1 public reassured. And it protects the public because
2 when lawyers do something wrong, what good is a
3 discipline system -- a disciplinary system and a
4 checks-and-balances system if a member of the public is
5 harmed financially, seriously, gravely in respect to
6 their finances, and there's no way for them to get paid?
7 It's like an empty judgement. It's a piece of paper.

8 What does that say about our system?

9 What does that say about the public perception
10 of lawyers?

11 What does that say about the protection of
12 public?

13 So with that, I thank you. I'm open to your
14 questions. And, again, as I began to state previously,
15 if I don't know the answer to a question, when I get
16 back to D.C., I will research it; and I will get you an
17 answer. Thank you.

18 PRESIDENT HEBERT: Mr. Santomauro, I do want to
19 say that if there were a prize being given out for the
20 person who traveled the farthest, you would win it. I
21 thought that was going to be Sacramento, but you really
22 beat them hands down.

23 So does anybody have any questions for
24 Mr. Santomauro?

25 Let's start out with Loren Kieve.

1 MR. KIEVE: Good morning.

2 MR. SANTOMAURO: Good morning, sir.

3 MR. KIEVE: And welcome to sunny California.

4 MR. SANTOMAURO: Thank you.

5 MR. KIEVE: And also thank you for coming. I'm
6 looking at your website. It's got some interesting
7 information on it. HALT is an acronym for Help Abolish
8 Legal Tyranny.

9 MR. SANTOMAURO: Yes, sir.

10 MR. KIEVE: Okay. And on -- about HALT, it
11 says: Your self-help service includes Do-It-Yourself
12 Law, the Easy Way to Probate, If You Want to Sue a
13 Lawyer and other pamphlets. And then I go to something
14 else on here. You have a section on -- in memory of one
15 of your founders and, quote, "The organized
16 law's practice of prosecuting the
17 'unauthorized practice of law' is one
18 of the major things that HALT should
19 challenge. That challenge is today
20 central to HALT's reform agenda."

21 Is that an accurate statement?

22 MR. SANTOMAURO: I think it's one of things
23 that our organization is working on. I think the -- the
24 unauthorized practice of law -- in the context -- to
25 answer your question directly: It's in -- one of things

1 that we look at as an organization is having nonlawyers,
2 paralegals, legal assistants play a greater role in the
3 -- our legal system. And what should happen is there
4 should be -- responsibly, they should have -- be
5 afforded -- to be able to do more for legal consumers
6 that can't necessarily hire lawyers, and fine-tuning
7 what the unauthorized practice of law is.

8 The unauthorized practice of law is what the
9 Bar says it is. And it can change from state to state.
10 I'll give you an example, and I hope this helps to
11 answer your question. I was practicing law in Florida
12 for several years.

13 I relocated to Washington, D.C., about a year
14 and a half ago. I had some family members that
15 requested some help -- they live in Florida -- regarding
16 Florida law. I could not help them because -- because I
17 was not a member of the D.C. Bar. If I was in D.C.
18 proper, living, and I was giving legal advice on a
19 Florida case, for Florida law, that would be the
20 unauthorized practice of law.

21 So I use that as an example because we believe,
22 as an organization, that the unauthorized practice of
23 law, that issue should be fine-tuned and the definition
24 should be narrowed so that nonlawyers, paralegals, legal
25 assistants, legal document assistants can play a more

1 active role in helping the public either in combination
2 with being supervised under a lawyer or working
3 responsibly, independently, depending on the situation.

4 MR. KIEVE: And immediately following that on
5 your website it says; "People seeking legal

6 services should be able to dial a

7 number where a lawyer who sits by a

8 word processor calls the appropriate

9 form of up on the screen, fills out

10 the information and mails the form to

11 the client with filing instructions.

12 That's one alternative whose day should

13 be just around the corner."

14 PRESIDENT HEBERT: You need to speak up, Loren,
15 or you need to turn your -- you need to turn your
16 microphone up or speak up for the court reporter.

17 MR. KIEVE: It doesn't work.

18 Let me repeat. "That's one alternative whose
19 day should be just around the corner."

20 Is that also something your organization
21 advocates?

22 MR. SANTOMAURO: We do not advocate that in all
23 situations individuals can handle their own legal
24 affairs. Our organization -- we do not provide legal
25 advice. We provide education. And I'm sensitive that

1 there may be individuals out there that think they can
2 handle their own legal affairs, where really some
3 situations call for hiring a lawyer.

4 So to answer your question directly: We do not
5 advocate that in all situations that individuals should
6 not seek the advice of a lawyer, should handle things on
7 their own. That's not about what our organization
8 stands for.

9 I will also say this -- and I will not continue
10 to use this as an excuse during my testimony -- I've
11 been privileged to lead HALT now for three months. One
12 of things we're doing is going through our website,
13 which contains, it's my understanding, over 1000 pages,
14 and revamping it and making it more user friendly.

15 So, Mr. Kieve, your points are well taken, and
16 I understand your questions. We are fine-tuning some of
17 the information on there, but we do not believe that
18 lawyers do not play a very important role in our
19 society. We believe that they do, and they're
20 necessary. But that -- with that -- with that oath
21 that's taken and with those obligations comes
22 responsibility. But in certain situations, we do
23 believe that it's certainly possible that individuals
24 can handling their own legal affairs, or consult with a
25 lawyer, or do their own research to help themselves.

1 MR. KIEVE: Thank you. One question I have is,
2 are you familiar with any state that has a condition of
3 practicing medicine that requires a doctor to have
4 medical malpractice insurance?

5 MR. SANTOMAURO: The answer is no. However, I
6 do want to research that issue for you because there
7 are -- I do know several states, such as Florida, that
8 if you don't carry insurance, you must have a minimum
9 bond or a minimum assurance of -- basically, coverage
10 the individual would have. I think the amount -- and,
11 again, I'm not positive on the amount. I think it may
12 be \$250 -- \$250,000.

13 But like in Florida, it's my understanding, if
14 you don't have malpractice insurance, you have to be
15 able to post a bond so that if you -- if you -- if
16 you're negligent and if you injure an individual, then
17 -- if there's no malpractice insurance, then you would
18 have to pay out of your own pocket. And you basically
19 have a bond that says I've got this amount of money to
20 cover it.

21 But that's certainly something I'm more than
22 happy to look into, sir. And we do know that there's
23 many states that have such a requirement.

24 MR. KIEVE: Thank you.

25 MR. SANTOMAURO: Thank you.

1 PRESIDENT HEBERT: Mr. Tenenbaum.

2 MR. TENENBAUM: Thanks.

3 So I've listened to your idea about having the
4 proposition of the Board be a majority of public
5 members, and I -- you're not the first person to suggest
6 that. And I think there's a presumption in that
7 suggestion that somehow all public members would decide
8 something differently than all lawyer members when it
9 comes to an issue based on lawyers.

10 The value I think from the public members on
11 this Board comes not necessarily from their expertise in
12 the legal ethic rules, but from their political
13 experience, their management experience, things that
14 lawyers who run a law practice don't necessarily have
15 the same structures.

16 But my question is: If you've thought about
17 the system here, the Board doesn't actually prosecute
18 lawyers. We don't make the decision on who prosecutes a
19 lawyer. We actually have a lawyer do that for us. So
20 we have a lawyer going after lawyers, and that lawyer
21 has a whole team of lawyers who prosecute lawyers.

22 When they go in front of the discipline agency
23 -- or the disciplinary tribunal, it's actually a State
24 Bar court made up of a lawyer and other lawyers, and --
25 so everybody in that situation is a lawyer. Even the

1 rules revision commission -- I mean, talk about making
2 the rules. If the lawyers wanted to slant the rules in
3 favor of the lawyers, well, groups like yours and others
4 have just given us a free pass because the 13 member of
5 rules and revision commission, I think, has only one
6 nonlawyer on it. So if you want to make the rules in
7 favor of the lawyers and then have them prosecuted by
8 your fellow lawyers and judged by fellow lawyers, you
9 have the perfect system for that.

10 Have you thought -- do you have any empirical
11 evidence to suggest that somehow public members, if they
12 were in these positions, would reach a different result
13 -- come up with a different rule in any way?

14 MR. SANTOMAURO: I don't have any empirical
15 evidence here with my today. I can tell you that --
16 whether it's the Board of Governors or the State
17 Disciplinary Agency Committees that we believe should
18 have the majority of -- of nonlawyers on them -- we
19 believe that it doesn't just have to do with what kind
20 of a result would be reached. It has to do with the
21 perception to the public.

22 In other words, we believe that having more
23 nonlawyers on the committees, on the Board, gives the
24 public more reassurance that there is more nonlawyers
25 involved and somehow they could better relate to that

1 system. They would be more open. They would be more
2 vocal.

3 So I don't have any evidence here in front of
4 me that says there would be a different result reached.
5 But we have heard of individuals that have commented on
6 the fact that there's a bunch of lawyers on the Board.
7 What about the regular public? How is the public
8 represented? And then --

9 Go ahead.

10 MR. TENENBAUM: I understand what you're saying
11 'cause you made that point earlier about the public
12 perception. Supposing I have a complaint about a court
13 reporter. We have a court reporter here. They have
14 their own Board. I don't know that I would
15 automatically assume that -- if you told me the court
16 reporter Board was a majority of court reporters, I
17 won't get a fair shake 'cause they're gonna just protect
18 their own. I don't know that I'd assume that.

19 But isn't the right response -- if there's
20 actually no problem, if you can't point to a problem
21 within the existing structure -- for example, if you
22 have all the access and resources to -- our Board
23 meeting minutes, you could look and take a look at all
24 of our Board meeting minutes and say has there ever been
25 a vote where all the public members have been in the

1 minority and the -- all together, right? Wouldn't that
2 tell you something? Like all the lawyers voted for X,
3 and then the six public members voted for Y, and they
4 lost? Maybe some lawyers joined them, but they were all
5 in the minority. I'd be shocked. I'd be shocked. I
6 certainly don't personally recall a vote like that, but
7 I'd be surprised if there was one like that.

8 You have access to that. Isn't the better a
9 result -- isn't a better approach to inform and educate
10 the public about what we do; that the lawyers that we go
11 after and the kind of offences we go after them for, so
12 that the public realizes the Board itself is serious
13 about public protection and not to just change the
14 composition of the work?

15 I personally don't care -- I personally don't
16 care if there's 23 public members or 23 lawyer members
17 on this Board. I don't have the -- I don't have a dog
18 in that race, but I want the people to be informed on
19 the Board maybe during that time. I want the public to
20 accurately perceive what's going on, not to cater to
21 some misconception.

22 MR. SANTOMAURO: Sure. And -- and your point
23 is well taken. That's one of the things our
24 organization does, is we do seek to -- to educate
25 consumers and -- about that -- just what you said about,

1 you know, the lawyers that are out there that are not
2 following the law, so -- but you have a great point
3 about the Board minutes. I have not done that.

4 I think that's -- I mean, I think that's a
5 great idea, to look back and see, well, have any
6 decisions -- would they have been different if you had a
7 majority of Board members that were nonlawyers or even
8 if you did and there was a different result. You know,
9 the California Constitution -- they felt there was a --
10 good reasons behind having so many members on the
11 Judicial Commission aspect.

12 But to answer your question directly, I think
13 that's a great point, Mr. Tenenbaum, about looking at
14 the Board minutes. And also we are not here this
15 morning just to say this is wrong. It needs to be
16 revamped.

17 We are here to say that, you know, one of
18 things we pride ourselves on as an organization as a
19 whole is to -- is to educate and empower consumers and
20 to help make a positive difference and draw alerts and
21 criticisms to the disciplinary; system. How can we
22 better serve the public and be more transparent, i.e.,
23 the eliminating private reprimands.

24 PRESIDENT HEBERT: Do you want to go ahead and
25 let --

1 MR. TENENBAUM: Yeah.

2 PRESIDENT HEBERT: Go ahead.

3 Beth Jay.

4 MS. JAY: I just had one general -- general
5 thing because I think there's been a lot of confusion
6 expressed in some of these meetings. And perhaps it
7 relates to how we sent out some of the information when
8 they solicited information -- when we solicited
9 responses from the public and others.

10 The State Bar of Governors is not a
11 disciplinary board. There is a professional Bar court.
12 And the professional Bar court is selected with the
13 review department comprised of three judges selected by
14 the Supreme Court and then a hearing department of
15 judges who individually hear cases.

16 So it's much more akin to a professional court
17 -- a regular court, and the judges are vetted and are
18 subject to the discipline, and to the code of judicial
19 advocates, which is disciplined by the commission on
20 judicial performance or something akin to that. So
21 there is a very different system than in other states
22 where you have a disciplinary Board of Governors.

23 In other words, this is not -- this body that
24 is being addressed here is not a disciplinary board. It
25 is a Board that's sort of an oversight function over the

1 disciplinary system, to some degree, over the State Bar
2 court, but not in ways that it's at their discretion in
3 terms of cases that they choose to prosecute or with the
4 decisions that are rendered by the State Bar Court. And
5 I think this is a very important distinction because I
6 think we've seen in a lot of the -- the speakers, some
7 confusion about the role of the Board of Governors.

8 And I just wanted to clarify that because I
9 think we're talking more about an executive board here
10 as opposed to a disciplinary board. And -- thus I think
11 it would be helpful if people have comments or responses
12 to that, rather than to discipline by discipline because
13 that's not really the purview of this court -- of this
14 -- of this Board. Would that be --

15 MR. SANTOMAURO: I think that's -- I think
16 that's very helpful. The other point which I thought
17 Beth was going to make is the distinction between the
18 Commission on Judicial Performance and the State Bar
19 Board of Governors. I think this is an important
20 distinction which is implied in some of Beth's comments.
21 I -- having met with the Commission yesterday, I know a
22 lot more about what they do than I did 36 hours ago.
23 The Commission on Judicial Performance, yes, does have a
24 majority of public members.

25 But the Commission actually hear -- receives

1 the complaints itself, hears the evidence and makes the
2 disciplinary determinations, as opposed to the State Bar
3 Board of Governors which has no direct involvement
4 whatsoever in any disciplinary complaint or hearing.

5 And you mentioned earlier about the -- any
6 influence by the local bars on the discipline system,
7 and I would be interested to see any evidence that any
8 local bar has ever influenced the outcome of either a
9 decision by the chief trial counsel whether to
10 prosecute.

11 The decision by the chief trial counsel and a
12 respondent on the terms of a resolved, settled
13 discipline hearing or disciplinary matter, or a decision
14 by the State Bar Court, the review department or the
15 California Supreme Court, I have never seen any evidence
16 of that. And if there is such evidence, I think we
17 ought to consider it.

18 MS. JAY: Can I just finish one thing?

19 MR. SANTOMAURO: Sure.

20 MS. JAY: And let me finish by noting that the
21 decisions of the State Bar Court are then
22 recommendations or then sent to the Supreme Court, and
23 the orders imposing discipline in California are entered
24 by the California Supreme Court, not -- so we have a --
25 several layers of professional judicial system relating,

1 which is very unusual and has been actually highly
2 commended by many of the people who study -- who study
3 this area. And I agree, I -- that was actually a point
4 that I had ma -- meant to make because the commissioner
5 of judicial performance is a disciplinary board member
6 in the much more traditional sense of the word than is
7 this Board of Governors. So I just thought that might
8 be helpful.

9 MR. SANTOMAURO: And it is. Thank you. I
10 appreciate those comments. Thank you.

11 PRESIDENT HEBERT: Anybody have any other
12 questions?

13 Mr. Mangers.

14 MR. MANGERS: I would just like to reenforce
15 something my colleague Michael Tenenbaum said. While I
16 think you made a very good case that there ought to be a
17 better balance ratio of public to attorney members of
18 the Board on the basis of public perception, we would
19 nonetheless be better served if that were not the only
20 arrow in the program.

21 If you're representing a consumer organization,
22 it seems to me it might be well if you actually did go
23 back and look at the record as members of our own
24 legislative committee staffs have done, and then guide
25 us, if you will, of -- with exact examples of how you

1 think something in your mores to the benefit of
2 attorneys than to the public of protection in terms of
3 actual behaviors here.

4 I mean, not that I'm quibbling with your
5 conclusion because I think there is a public perception
6 that has a great deal to do with public connection. But
7 it would be better served if you actually did some
8 homework in that regard and then, in subsequent written
9 commentary, provided that.

10 MR. SANTOMAURO: Sure. I'd be happy to. Thank
11 you, sir.

12 PRESIDENT HEBERT: Okay. Well, thank you very
13 much and have a safe flight back.

14 MR. SANTOMAURO: Thank you. Thank you everyone
15 for your time. I appreciate it.

16 PRESIDENT HEBERT: Stay warm.

17 Okay. Our next speaker is Michael -- is it
18 Levy or Levy?

19 MR. LEVY: Levy.

20 PRESIDENT HEBERT: Levy, President of the
21 Sacramento County Bar Association.

22 Welcome, Mr. Levy.

23 MR. LEVY: Thank you very much.

24 PRESIDENT HEBERT: And while Mr. Levy is
25 getting settled, as -- as you all have seen, some of us

1 have been speaking a little too quickly for the court
2 reporter, so let's try to keep it slow and a good pace;
3 and keep your voices up so that she can get everything
4 down. Okay?

5 MR. LEVY: Thank you.

6 THE COURT REPORTER: Could I make a comment?
7 Your microphone seems to be nice and succinct. Everyone
8 else's is very, very soft. I don't know if that --

9 PRESIDENT HEBERT: They each -- No. 1, they
10 need to be on. And 2, the Task Force members need to
11 speak into their mics. They're speaking into their
12 computer screen.

13 THE COURT REPORTER: Thank you. There is a
14 tremendous difference. That's why I comment. And the
15 quicker I grab the sound, the faster I can write it.

16 PRESIDENT HEBERT: Right. And that may be the
17 difference, but we'll try to get everybody to speak into
18 their mics.

19 THE COURT REPORTER: Thank you.

20 PRESIDENT HEBERT: I know this is not an easy
21 task, so I appreciate your patience with us.

22 THE COURT REPORTER: Sorry to interrupt.

23 PRESIDENT HEBERT: Please do. We want to make
24 sure we have a good record of the proceedings.

25 THE COURT REPORTER: Thank you.

1 PRESIDENT HEBERT: Mr. Levy.

2 MR. LEVY: Thank you very much. President
3 Hebert, members of the Task Force, my name is Michael
4 Levy. I am President of the Sacramento County Bar
5 Association. And I greatly appreciate, on behalf of the
6 legal community in Sacramento, the opportunity to speak
7 with you today. I would like to start my remarks by
8 responding to an inquiry that Mr. Tenenbaum just asked.

9 Ask yourself if it would really be a good thing
10 if the public members came up with a different
11 resolution of a case than the lawyer members. Ask
12 yourself whether an uneducated -- not that I'm
13 suggesting that the public members' point of view is
14 uneducated, but ask yourself whether --

15 I am not suggesting the public members' view is
16 uneducated. Ask yourself whether a perspective that may
17 be not be as familiar with the rules of professional
18 conduct and the fiduciary responsibilities of lawyers
19 should yield -- should yield a different result.

20 The rules under which we operate are complex.
21 They're not simple, and they are very difficult for a
22 lay public to grasp and understand. And I fear, as I
23 have seen in communities that want to swap citizen
24 review boards for police review boards, that we may be
25 moving towards an effort to remediate perception with an

1 uneducated perspective rather than true education.

2 My predecessor's comments repeatedly focused
3 upon perception is the problem. Perception is a
4 problem. Perception of the legal community and the
5 services that we provide, and our functions is a huge
6 problem. To be certain there are, indeed, problems with
7 the discipline system of the State Bar.

8 But can they reasonably be tied to the
9 governance structure of the State Bar? In Sacramento we
10 submit that no analytical link has been made to draw
11 that conclusion as yet.

12 In Sacramento we believe that most lawyers are
13 ethical. That we take our responsibilities seriously
14 and professionally. We believe that the attorney
15 community has every interest in vetting out the
16 derelicts among us who would bring down our prestige and
17 reduce our capacity to fulfil our constitution with
18 recognized mission, which includes the protection of the
19 public.

20 One of earliest supposed swipes at lawyers from
21 Shakespeare: The first thing we do, let's kill all the
22 lawyers, was not actually an assault on lawyers. It was
23 the butcher's comment in support of Jack Cade's
24 revolution in Henry VI. The purpose being, we shut down
25 the lawyer's voice, then we can fulfill a revolution.

1 We give voice to the people. We give voice to the
2 public. Certainly not everybody is pleased with their
3 interaction with the legal community.

4 What is that based upon? Is it based upon
5 dereliction of lawyers? It could be.

6 Is it based upon incidents of an inherently
7 difficult system, adversarial in nature and our
8 adversarial system of justice? Perhaps that's the cause
9 of our perception problem.

10 People go to lawyers when they need them. In
11 other words, they already are suffering from some kind
12 of dispute, some kind of inter -- interaction with the
13 law that is negative, some type of need where they're in
14 problem -- they're in a problem circumstance, personally
15 or professionally; and that's when they come to see us.
16 And so we already see them when they're in a strained
17 circumstance. We cannot jump to fixing perception by
18 exchanging governance structure.

19 In Sacramento we are wondering how we got here,
20 because 2764, nor 6001.2 mandates an assessment, per se,
21 of the governance structure. We are wondering how this
22 Task Force concluded that central to its mission is
23 analyzing the governance structure rather than public
24 protection in the licensing, discipline and practice of
25 law.

1 It seems you've skipped a myriad of -- of
2 steps. And I am heartened to hear some of the comments
3 from some of the Task Force members earlier.

4 First, you must ascertain what are the places
5 in which the State Bar is failing to protect the public
6 or failing to do so optimally. Then you must ask why.
7 You haven't asked why. You were asked in your
8 questionnaire whether or not what -- what it means to
9 protect the public in the governance in the practice of
10 law. And the remainder of your questionnaire skips to
11 how we should select governors.

12 How did we get here? I submit to you that
13 that's not proper legal analysis. First, you must
14 ascertain the facts. There may be a governance problem.

15 President Hebert, I believe the State Bar Board
16 of Governors funds the office of chief trial counsel;
17 isn't that correct?

18 PRESIDENT HEBERT: Well, the state -- the
19 lawyers pay the dues, and then the State Bar Board of
20 Governors approves a budget every year.

21 MR. LEVY: Which includes the office of chief
22 trial counsel?

23 PRESIDENT HEBERT: And -- yes, we do -- we do
24 approve the budget for the office of chief trial
25 counsel; that's correct.

1 MR. LEVY: It could be that our discipline
2 system is failing in large measure to the extent it is
3 because we have failed to give adequate resources to our
4 office of chief trial counsel to prosecute the difficult
5 cases. And so there must necessarily be a focus on
6 low-hanging fruit, perhaps. I don't know. But I think
7 you need to assess those before you tinker with the
8 governance structure of the Board of Governors.

9 Let's talk about the public members for just a
10 moment. Five of them appointed by the Governor can be
11 reappointed for successive terms, could vote as a block;
12 could already be overwhelmingly marginalizing the
13 elected members of the district representative lawyer
14 members on the Board.

15 Do we want the Ginny system where the Ginny
16 Commission is staffed solely by people beholden to the
17 Governor of the State of California? Certainly,
18 confidentiality in the Ginny process is extremely
19 important.

20 Do we want the risk that the executive branch
21 of government might have the capacity to skew the
22 evaluations of the judicial candidates based upon what
23 the appointing authority, the Governor might want? I
24 submit we do not.

25 I submit that our judicial ties are far more

1 significant that have been reflected by some of the
2 commentors. I believe that we do need to analyze all of
3 the problems inherent in our system, including
4 perception, but we must respond to misperception with
5 education. We must respond to legitimate criticism with
6 an analysis of what solutions there may be to address
7 that legitimate criticism. That may include changing
8 the makeup of the Board of Governors, it may not.

9 And now from December 3rd until January 10th,
10 with the small time I submit over the holidays, for the
11 vast majority of us to identify that you have submitted
12 or published a survey and asked for our input, has
13 precluded us, the volunteer legal community especially
14 and the professional lawyers throughout the state, from
15 engaging in a meaningful dialogue with you about what's
16 really going on here.

17 You have a survey money. Why only 20,000
18 members? Why not 250,000 members, or at least everyone
19 with e-mail? Why not survey all of the local bar
20 associations and their ethics sections? Why not engage
21 us in what we're really trying to do, which is to
22 enhance the protection of the public, which, again, we
23 in Sacramento believe is the vested interest of every
24 single one of us, as is routing out the derelicts among
25 our ranks.

1 We did not have adequate time -- my own Board
2 of Directors did not have a Board meeting between
3 December 3rd and January 10th to consider your survey.
4 So now on March 15th you're poised to take the results
5 of this survey and the previous -- the two hearings and
6 your research and submit a recommendation to the
7 Legislature, to the Governor and to the Supreme Court,
8 ostensibly on how to change the governance structure of
9 the Bar, irrespective of whether it's actually designed
10 to fix any problems; and you will have vetted your
11 recommendations with any of the members of the State Bar
12 at large.

13 I submit that's not acceptable. We're entitled
14 to notice and comment. We're entitled to weigh in on
15 the recommendations that are being proposed that are
16 designed to promote protection of the public interest,
17 and to give your opinions about whether or not they will
18 actually do that. And we believe you must consider
19 those before you're making recommendations in your first
20 of many triennial reports about enhancing public
21 protection.

22 Your questionnaire has stimulated considerable
23 dialogue. Some of it reasonable, some of it ill
24 conceived. We need the opportunity to meaningfully
25 assess our recommendations before you submit them to the

1 Legislature in a report that has the capacity to
2 fundamentally alter the governance structure of the
3 practitioners who are the guardians of our
4 constitutional protections in the State of California.

5 How many instances, I would ask, has the Board
6 of Governors been held -- that are accused of making
7 decisions that are not in the public interest?

8 How many are in your record?

9 How recently are they?

10 We submit from Sacramento that the case has not
11 been made that the governance structure is key to this
12 inquiry. And we submit that if this Task Force jumps
13 from analyzing public protection to governance structure
14 instead of public protection, you are statutorily
15 ultra vir because your charge is to assess public
16 protection, not the governance structure.

17 And, again, assessing whether there should be
18 more public members versus lawyers members, or whether
19 the district system is appropriate, or the terms of
20 office, or whether there should be more parody, there is
21 certainly value in that inquiry.

22 But let's not -- as was previously said, let's
23 not put the cart before the horse merely to address
24 public perceptions or merely to address concerns that
25 may not be attributed to the governing structure of the

1 State Bar.

2 With that, I thank you very much on behalf of
3 the Sacramento community for the opportunity to speak
4 with you today.

5 PRESIDENT HEBERT: Thank you, Mr. Levy, for
6 your comments. We appreciate that.

7 Let me start with Mr. Lyman.

8 MR. LYMAN: Thank you very much. I can't see
9 you around the microphone and get into the microphone at
10 the same time. I really appreciate your coming. And I
11 think everybody on this Board knows I come from a local
12 bar association, and I -- I appreciate the efforts that
13 your bar association does, and your responsibilities, by
14 the way, is -- as president of that association.

15 I'm not going to go through all the areas that
16 I completely agree with you, but let me play a little
17 devil's advocate and put yourself in the -- where the
18 public members are or the Legislature. I've read the
19 history of everything that's gone on with the State Bar,
20 and there's been deficits for years as far as backlogs.
21 I never saw the word "backlog" so much in my life as
22 reading a very good history of the activities of the
23 State Bar.

24 I would submit -- and whether it's my view or
25 not, I would submit, at least, the view of public

1 members of the Legislature is -- well, the lawyers have
2 been in charge for 50 years, and it hasn't been fixed.
3 I think that's what they're saying, whether I agree with
4 that or not. But I would like to know your response to
5 that when you said let's fix the problem, because I
6 think that there's a frustration that we've been here,
7 and our responsibility is to fix the problem, and maybe
8 it hasn't been fixed, if you could respond to that.

9 MR. LEVY: Certainly. I'll respond in two
10 ways. The first is, what is "it" that requires fixing?
11 You've now shifted the focus to deficits. We're talking
12 about protection of public. At least that's what the
13 statute charges the Task Force with. If you'd like to
14 fix the deficit problem, let's --

15 Mr. LYMAN: I'm sorry. I don't know what you
16 mean by "the deficit problem"?

17 MR. LEVY: You said years of deficits.

18 MR. LYMAN: I'm saying years of backlogs.

19 MR. LEVY: That's what I'm talking --

20 MR. LYMAN: Prosecutions of discipline. I
21 misquoted myself.

22 MR. LEVY: Let's put that issue out for public
23 consumption. Let's put that issue out for the Bar
24 Associations and the lawyers' comment. I know many,
25 many lawyers who are unhappy with the discipline.

1 For ten -- for eight years I've been on the San
2 Francisco Bar Association's Ethics Committee. Lots of
3 people are unhappy with the discipline structure. Lots
4 of people are really unhappy. Lots of lawyers are
5 really unhappy with getting a stinger letter in the mail
6 merely on the -- or perceivedly to be on the basis of a
7 complaint without an initial adequate investigation and
8 shifting the onus to the lawyer to defend themselves
9 prior to a case having been effectively made against
10 them. That's not fair. And lawyers and members of the
11 public alike should be unhappy with that.

12 But is that attributed to the governing
13 structure of the Bar? I don't know. It may be. But we
14 need to ask that question first.

15 MR. LEVY: Any more questions?

16 MR. LYMAN: No.

17 PRESIDENT HEBERT: Mr. Mangers.

18 MR. MANGERS: Well, I was slightly taken aback
19 by your suggestion that you wonder how we got here when
20 you're from Sacramento. And I just wonder, did you have
21 an opportunity to observe the discussions around the C
22 Bill before the Legislature? Because if you did, I
23 would wonder why you wonder what you wonder.

24 But to get to the point, what would be the
25 harm, let's say, if -- if attorneys maintain a majority

1 in a governing structure for the Bar, but there were
2 fewer of them and so the public perception might be
3 better served by simply a better ratio or a better
4 balance of public to members of the profession?

5 I'd like to hear kind of a brief litany of the
6 harm we would expect since I, as a public member, have
7 benefitted from the expertise of the attorney members
8 here before I make a vote or a decision about how much
9 expertise do I need from attorneys in order to make an
10 informed decision as an uneducated member of the public.

11 MR. LEVY: Well, first of all, Mr. Mangers, I'm
12 not suggesting that you or any other public member is
13 uneducated. I am suggesting, though, that the lawyer
14 members do have unique expertise. The public members'
15 voice is necessary and valuable to the process -- to the
16 governing structure because, yes, we are insiders.

17 But to conclude from the fact that we are the
18 lawyers; and therefore, we have an interest in not
19 prosecuting each other, is a wholly different thing and
20 is devoid of any evidence. And so my question is -- my
21 question back to you isn't what is the harm? I don't
22 know yet what the harm is. I know we've not studied
23 what the harms might be, and you've not asked us to
24 assess what the harms might be.

25 And the direct answer to your question may well

1 be it depends upon who the appointing authority is and
2 under what circumstances. You have not given us the
3 opportunity to address that answer to you as yet. And I
4 would hope that this Task Force would allow us to do so
5 before recommending that particular proposal, ostensibly
6 in the name of public protection, when what you're
7 talking about is public perception.

8 MR. MANGERS: Well, then the follow-up
9 question: What are the benefits from your per --
10 perspective of having as many attorneys members of this
11 body as we do and having them elected by local bars as
12 opposed to one suggestion we've heard being appointed by
13 the Supreme Court?

14 MR. LEVY: Well, then there could be a variety
15 of benefits. Those include representation by the
16 various areas among the state. Mr. Mangers, I'm not
17 suggesting that there might not be ways to -- to tweak
18 or revamp the governance structure that may well be
19 appropriate. I'm not suggesting that at all. Indeed,
20 there may be.

21 It may be a better system to have the Supreme
22 Court be appointing authority. I strongly believe it
23 would not be a better system to have a majority of
24 public members.

25 I do believe that lawyers are uniquely

1 qualified to understand our fiduciary obligations and
2 what it means to actually try to implement them in
3 practice when we're representing a client; and when our
4 duties to the Court differ based upon what type of law
5 we practice, whether public, prosecutorial, defense --
6 criminal defense or administrative. It's not a static
7 obligation.

8 And our duties of candor to the Court or
9 zealousness in our practice vary depending upon what we
10 do. How much of the public perception problems are
11 actually borne of the State Bar Act's failures? How
12 much of them are borne of our civil litigation
13 courtrooms failure to impose sanctions or inability to
14 rein in aggressive behavior by civil lawyers?

15 It's fairly well agreed in many legal
16 communities actually that the most uncivil and vitriolic
17 lawyers are the civil litigators. But the criminal bar
18 is one of the most civil because they sit in the same
19 courtroom across from the same lawyers day in and day
20 out in front of the same judges, and they have to bear
21 responsibility for their reputation and their
22 relationships.

23 With 260 judges in Los Angeles County -- I
24 haven't done the count in the greater San Francisco
25 Area, we have 60 in Sacramento and fewer and fewer civil

1 trials going to trial -- civil cases going to trial, you
2 may never come up against the same attorney or appear in
3 front of the same judge ever again. And so you, the
4 lawyer, may not have an interest in protecting your
5 reputation in front of the judge that you're sitting in
6 front of or with the party across whom -- the attorney
7 across from whom you're litigating.

8 Is the State Bar Court really in the best
9 position to deal with those issues, or are judges who
10 are witnessing the behavior and who are numb to it
11 because they see it and read it day in and day out? I
12 don't know.

13 MR. MANGERS: I have a few a follow-up
14 questions, if I may.

15 MR. LEVY: Please do.

16 MR. MANGERS: One, you seem to be really
17 alarmed in your testimony about the prospect of public
18 members voting as a block. But I wonder if public
19 perception is the No. 1 objective of this body. Why you
20 would be any more alarmed at public members voting as a
21 block than you would be as all the attorneys as a block?

22 If public protection be the only objective
23 here, why are you more alarmed at the prospect of the
24 public members voting as a block than the attorneys
25 voting as a block perhaps in dissidence against the --

1 the view of the public?

2 MR. LEVY: Two reasons. One, if -- and I'll
3 preface my reason by saying I'm not sure that it's a
4 practice -- in fact, I don't think it is that the lawyer
5 members actually do vote as a block, but on some
6 occasions the public members do.

7 Why does it concern me? Because by being a
8 representative, the lawyer members are not coming in
9 with a common agenda. But to the extent the public
10 members are appointed by the same appointing authority,
11 they might be coming in with an agenda. And the agenda
12 may or may not be protection of the public. It may be
13 to ensure that the govern -- that the Governor -- the
14 state governors, judges get appointed to the bench.

15 There may be any number of things that really
16 concern me about separation of powers and the role of
17 the judiciary and our ability to actually practice our
18 trade and profession in a way that allows us to actually
19 protect our clients.

20 MR. MANGERS: Do you think of yourself as a --
21 and your colleagues in your local bar as constituents of
22 your distinguished Sacramento member of this body?

23 MR. LEVY: We think of our distinguished
24 member, our District 2 Governor as our representative.

25 MR. MANGERS: And, therefore, you as what?

1 MR. LEVY: I suppose you could call us
2 constituents. I haven't thought about it in that way.
3 She is there to represent us. I believe she does, and
4 she does so well.

5 MR. MANGERS: Would you say that you think of
6 her representation here of more your -- your
7 representative as you a constituent or her single
8 purpose to be that for public protection?

9 MR. LEVY: I don't understand your question.

10 MR. MANGERS: Is she here more to -- for the
11 public protection, or is she here as your elected
12 representative and expected to be responsive to your
13 local bar's view of what ought to happen here?

14 MR. LEVY: Mr. Mangers, I believe those are
15 aligned. I don't believe those are in dissonance. I
16 believe that our interests, which she is representing,
17 it as public protection is access to justice.

18 It's fairness for our clients. And it is our
19 ability in harmony to be able to represent our clients
20 effectively. I don't believe those are at odds with
21 each other.

22 MR. MANGERS: No more questions. Thanks.

23 PRESIDENT HEBERT: Okay. Mr. Tenenbaum.

24 MR. TENENBAUM: Thanks. One of my favorite
25 quotes in the world comes from Martin Luther King, and

1 he said, "Nothing in all the word is more dangerous than
2 sincere ignorance and conscientious stupidity." And I
3 think that's true in every context.

4 We're talking about public members voting in a
5 block, attorney members voting in a block.

6 Again, I just submit that somebody should
7 undertake the analysis if this Board votes as a block.
8 I'll tell you how it votes as a block. It votes
9 unanimously on 95 percent of the issues that come before
10 the Board. We just substitute in the role call for
11 everybody who voted in favor of public members and
12 lawyer members -- most of that stuff. If you want to
13 look at controversial votes, my policy -- controversial
14 votes --

15 PRESIDENT HEBERT: Slow down a little bit for
16 the court reporter.

17 MR. TENENBAUM: -- controversial votes for -- or
18 policy votes -- public policy votes, that might be a
19 different story, but I still submit without any data, we
20 are talking about this in a vacuum.

21 Your written papers and remarks make an
22 interesting point, which is we've got this process a
23 little bit backwards. We're trying to figure out who
24 should sit in these chairs and how they should get here
25 on how many chairs there should be. That's the --

1 that's pretty much the mission of the charge of this
2 Task Force -- that the Task Force decided. That wasn't
3 a unanimous vote, by the way.

4 There was a lot of discussion about should we
5 interpret our charge in the words that the Legislature
6 put out to look at, how we could protect the public in
7 admission and regulation and discipline. But we have
8 decided to, at least, either delay those or take them
9 off the table completely so that we can look at
10 literally just the composition of this Board and how
11 people get here.

12 So that was the discussion we had, I think, in
13 November, but it's a policy decision of the Board. Not
14 everyone was in agreement with that, and -- and -- so
15 given that's our charge now, we've defined our charge as
16 looking at who is going to sit here.

17 Do you have -- do you have particular thoughts
18 about -- do you have any particular thoughts about who
19 should get here and how?

20 MR. LEVY: Not as yet, I don't. I do -- I do
21 say that I represent the Sacramento County Bars -- Bar
22 Association in objecting to your charge as you've
23 defined it. We do not believe it's appropriate to first
24 assess who should sit here and how they should be
25 selected when your mission, according to the statute, is

1 to consider protection of the public.

2 MR. TENENBAUM: And I share your concern. I
3 think you put it right when you said our efforts
4 demonstrate a processes inherently backwards. We're
5 focusing on changes to the governing structure without
6 you first identifying the problems that the changes will
7 be designed to correct, so that point is very well
8 taken.

9 MR. LEVY: I would very much like, and I know
10 my colleagues would, to see your recommendations and
11 have the opportunity to provide meaningful input upon
12 them before you submit them if you're going to make a
13 recommendation on changes to the governance structure of
14 the Bar.

15 MR. TENENBAUM: Bill, this is a process
16 question. I'm just curious. I know our report is due
17 in less than four months. We have a couple of meetings
18 set up. What is the process? Just -- I think for
19 everyone's benefit if I were to have a report that
20 circulates a draft form for people to comment on --

21 PRESIDENT HEBERT: I was going to talk about
22 the process at the end of the meeting because I'd like
23 to -- I'd like us to consider recommendations on
24 February 8th -- that's why it's a pretty long meeting --
25 and discuss those different alternatives, and then we

1 will start drafting our report.

2 It is not my understanding that this is a
3 report or recommendation that would go out for public
4 comment. There is no legal necessity for it to go out
5 to public comment.

6 Jeannine and then Gwen.

7 MS. ENGLISH: I too would like to thank you for
8 coming. I looked through your testimony, and I'm not
9 sure -- maybe I missed it -- did you comment on the
10 integrated bar and whether, in fact, we should have an
11 integrated bar or whether we should have a separation of
12 the membership elements and the -- the regulatory
13 discipline elements?

14 MR. LEVY: I did not do so, but California is
15 one of 38 states that has an integrated bar. That's 76
16 percent. We're in the vast majority. And if you want
17 to entertain the inquiry about whether we should be in
18 an integrated bar, I would ask you first to tell me why
19 you're asking the question. What is failing about the
20 integrated system that -- that is going to be furthered
21 by public protection by disintegrating the Bar?

22 MS. ENGLISH: So you haven't -- you haven't
23 commented on that, and you have no thought on that at
24 this point other than that --

25 MR. LEVY: I think that generally speaking the

1 integrated system is working. I believe that there are
2 certainly reforms that can be made, and -- I think that
3 fixes problems with our discipline system, perhaps
4 problems with our licensing system.

5 But I think this Task Force is charged --
6 statutory charge, it's mission is to figure out the
7 problems first and then let's look together and let's
8 work out -- let's give you some -- let us have the
9 opportunity to provide you with suggestions that
10 actually address the problems, specifically focus
11 suggestions that may include disintegrating the Bar. It
12 may not. It may include vesting our judges and charging
13 them with more authority to respond to aggressive
14 behavior. It may include changing our licensure
15 structure. It may include giving more resources to
16 Mr. Babcock's office to allow him to do the
17 investigations --

18 PRESIDENT HEBERT: Mr. Towery's office.

19 MR. TOWERY: I'll give it to him.

20 MR. LEVY: Mr. Towery's office. Thank you.
21 That's my -- my point is, is 6001.2 says consider public
22 protection. It doesn't say consider the governance
23 structure. The governing structure may be an integral
24 part of that. I don't know. It may not be. But not
25 having seen the problems, we can't get there yet.

1 MS. ENGLISH: Thank you.

2 PRESIDENT HEBERT: When -- and I've got a
3 question and then I'm going -- I want to move on to give
4 the court reporter a break.

5 MS. MOORE: I was just going to follow up on --
6 I was going to follow up on your -- on your request that
7 you be given an opportunity to see the report before
8 it's submitted. What would you do if we did have a
9 public comment period? Would you respond?

10 MR. LEVY: We would certainly try to if given
11 the added -- if given an adequate opportunity to do so.
12 But, again, I -- I believe your report should not be
13 making recommendations on structural changes to the
14 governance of the Bar. I believe it's premature.

15 I don't believe that anyone has made the case
16 that the Board of Governors structure needs to be
17 changed to promote any public protection. And I don't
18 believe it's this Task Force's mission to make the case.
19 This Task Force's mission is to sit as arbiter in
20 assessing whether the case has been made.

21 MS. MOORE: Have you looked at the comments
22 that the Legislature made in setting forth this -- the
23 Task Force to look at the bill that was -- that was a
24 part of this? Have you looked at that?

25 MR. LEVY: I'm aware of it.

1 MS. MOORE: And have you commented to the
2 Legislature that they might be overreaching a little?

3 MR. LEVY: We have not.

4 MS. MOORE: That might be a step that you want
5 to look at.

6 MR. LEVY: Thank you for the suggestion.

7 PRESIDENT HEBERT: Jon Streeter.

8 MR. STREETER: There have been -- and I thank
9 you, by the way, for joining the robust conversation
10 that we've been having in the course of this
11 conversation. There have been, from time to time,
12 suggestions that I would put in the category of if it
13 ain't broke, don't fix it. And I understand you to be
14 suggesting that before we undertake a task of trying to
15 fix it, figure out what's broke; which does have some
16 common sense resonance.

17 But we do hear in response to that, that the
18 serious point that there are public perception concerns,
19 and I -- we -- I think we would be unwise to turn away
20 from that. So I'm -- while I understand what you're
21 saying, and there's a great deal of sense to it, I guess
22 I'm -- I'm interested in what you would say about how to
23 tackle this overriding concern about public perception.

24 MR. LEVY: The first I would say is to some
25 degree we may not be able to combat it. It may be

1 inherent, as I said, in the adversarial system of
2 justice that we have. But to the degree that's it's
3 based on misperception, I think we should combat it with
4 education.

5 To the degree that the perception problem is
6 based in fact, we should figure out what the facts are
7 that give rise to the perception problem, and we should
8 attack those individually. To the extent that they are
9 based in a failed discipline system that's not
10 aggressive enough, we should focus our resources there.

11 MR. STREETER: Thank you.

12 PRESIDENT HEBERT: I just have one question,
13 and then we're going to take a break.

14 You mentioned a concern that the four public
15 members appointed by the Governor could somehow
16 interfere with the Ginny process and it -- the
17 Governor's judges, judge applicants or preferences
18 appointed.

19 I guess I'm -- that caused me some concern,
20 because I have -- I, myself, have never seen any
21 evidence that any member of the Board of Governors,
22 public or lawyer member, has been able to interfere
23 whatsoever in the Ginny process. I don't see how a
24 change in the composition of structure of the Board
25 would in the future permit any member of the Board of

1 Governors to interfere in the Ginny process.

2 The Governor appoints applicants who have been
3 in the Ginny process regardless whether they're rated
4 qualified, exceptionally well qualified or unqualified.
5 And it doesn't seem to have any affect that there are
6 four appointees on the Board of Governors who are
7 appointed by the Governor.

8 Can you give me any evidence that you have that
9 there has been any kind of tampering in the past by any
10 member of Board of Governors in the Ginny process or
11 what might happen in the future if the structure of the
12 Board of Governors were changed that might affect the
13 Ginny process 'cause that does give us concerns given
14 that, in our view, Ginny is completely independent of
15 what we do.

16 MR. LEVY: So two comments there. First, is I
17 did not say in any way that the four public members have
18 tampered or have the ability to tamper with the Ginny
19 process. I did suggest that if the Board of Governors
20 was perhaps composed of a majority of the Governor's own
21 appointees, there is the possibility that that could
22 happen, because then a majority of the Governor's
23 appointees, the majority of the Board of Governors,
24 would be in the position to appoint Ginny commissioners.

25 In terms of your question about tampering, the

1 tampering, I would say, might reasonably be from leaked
2 Ginny reports that have concerned the governors in the
3 past.

4 The Governor certainly has an interest when
5 he's appointing a chief justice -- a justice of the
6 Supreme Court or a -- the Court of Appeal where the
7 Ginny report is disclosed and not being accused of
8 appointing someone who is not qualified; and therefore,
9 ensuring that the Ginny process is favorable to the
10 Governor's recommendations, might be viewed by one or
11 another Governor to be in his or her interest; and that
12 concerns me fundamentally.

13 PRESIDENT HEBERT: So as long as we don't end
14 up with a Board that's a majority appointed by the
15 Governor, it sounds like you'd be okay with it.

16 MR. LEVY: I didn't say that, Mr. Hebert.

17 PRESIDENT HEBERT: Okay.

18 MR. LEVY: I said that I'm concerned about the
19 independence of the Board of Governors. I want to
20 ensure that its independence and that its members fairly
21 and accurately understand the roles and responsibilities
22 of the professionals who practice law in the State of
23 California.

24 And I don't want the Board -- this Task Force
25 to propose changing the structure of the Board of

1 Governors merely out of public perception without first
2 understanding whether it's going to remedy a specific
3 problem or set of problems, and understanding what the
4 harms might be that may come from it; and this body has
5 not done that analysis.

6 PRESIDENT HEBERT: Thank you.

7 MR. LEVY: Thank you for the opportunity to
8 speak with you today.

9 PRESIDENT HEBERT: Great. Thank you, Mr. Levy.

10 At this point, I'd like to take about a
11 five-minute break for all the members and, of course,
12 the court reporter. We'll be back in five minutes.

13 (Recess taken.)

14 PRESIDENT HEBERT: Our next speakers are
15 Shannon Stein and Christine Burdick.

16 Shannon Stein is the President of the Santa
17 Clara County Bar Association, and Ms. Burdick is the
18 executive director and its general counsel.

19 Welcome. It's good to see you again.

20 MS. STEIN: Nice to see you as well.

21 As the Chair stated, I'm Shannon Stein, and I
22 am the current President of the Santa Clara County Bar
23 Association. And I'm here in my representative capacity
24 on behalf of the Santa Clara County Bar Association.
25 Accompanying me today is Chris Burdick who is our

1 executive director and general counsel of the Santa
2 Clara County Bar Association. She'll be able to provide
3 additional comments and assist in answering questions
4 you may have about the input of our association.

5 I want to thank the Board of Governors and Task
6 Force for the opportunity to provide input to you on the
7 very important role of the State Bar, that of public
8 protection. And I want to thank all of you for taking
9 the time today to attend, to listen and to engage in
10 this important conversation with those of us here
11 representing various viewpoints.

12 First, we agree with others who have provided
13 comments to you, and some who have and will testify that
14 the current government's motto of the State Bar may not
15 be a threshold question or the issue that should be
16 addressed in trying to determine how the State Bar can
17 continue to effectively discharge its responsibility to
18 protect the public, particularly in the areas of
19 admission, regulation and discipline of attorneys.

20 Form and structure should always flow from
21 clear and identifiable functions and objectives.
22 Underlying the identification of these elements is the
23 question of the overall government structure of the
24 State Bar. It is this government structure that we
25 believe needs to be addressed first, and that addressing

1 the larger governance issue is long overdue.

2 In brief, our position is that the Supreme
3 Court should be exercising more direct responsibility
4 over certain activities of the State Bar; in particular,
5 those involving public protection in areas of admission,
6 regulation and discipline of attorneys.

7 Further, the California Supreme Court should be
8 overseeing and providing direction to the State Bar in
9 all matters involving public protection issues. It is
10 the Supreme Court that has the constitutional authority
11 over the public protection rules and functions of the
12 State Bar.

13 The Legislature and the Governor, over the
14 years, has become increasingly involved in the setting
15 of policy and management of the State Bar through their
16 authority to approve the dues of the State Bar.

17 It is our position that this encroachment by
18 the Legislature and Governor presents a separation of
19 powers problems that should be addressed before any
20 other substantive matters mandated by the Legislature.
21 We understand that realigning the authority and
22 responsibility of the California State Court -- of the
23 California Supreme Court, the Legislature and the
24 Governor may not be easy or simple; but that should not
25 inhibit a thorough and thoughtful review.

1 Thus, I want to candidly, but respectfully
2 convey to you our concern about the increasing
3 involvement of the Legislature and Governor and the
4 oversight and management of the State Bar. This
5 involvement has become -- occurring more and more often
6 over the past two decades, causing significant
7 disruption to the State Bar, the operations of the State
8 Bar, particularly in areas of attorney regulation and
9 discipline to the State Bar Dues Bill being vetoed or
10 delayed for periods of time.

11 That is generally followed by some kind of
12 commission or task force being mandated to address
13 issues outlined by the Legislature and Governor, or in
14 the process of negotiating the State Bar Dues Bill even
15 where there is no delay or veto.

16 The Legislature more and more has exacted
17 concessions from the State Bar either in how certain
18 operations are handled or having the State Bar agree to
19 stop engaging in certain functions or policy matters, or
20 having the State Bar address management and government
21 issues as directed by the Legislature.

22 This changing perspective of the Legislature,
23 particularly Governor, on aspects of the State Bar
24 serves only to keep the State Bar off balance and
25 constantly trying to determine how the Legislature or

1 Governor may react. We believe that how the Legislature
2 and Governor becomes involved in the operation and
3 management as sort of a de facto governing body of the
4 State Bar only creates institutional dysfunction in how
5 the State Bar operates and how it is governed.

6 It is not the current governance model of the
7 State Bar Board of Governors. You can change that every
8 year if you want, and the dysfunction and
9 dissatisfaction from the Legislature and Governor will
10 continue.

11 Let me add, at this point, that we think there
12 is a role for the Legislature and Governor to provide
13 input on various activities of the State Bar,
14 particularly the primary public protection function of
15 attorney admission, regulation and discipline. To
16 further test our position about whether there is a
17 separation of powers problem in the governance of the
18 State Bar, perhaps the following analysis or framing of
19 the question will help.

20 If the Legislature or Governor legitimately
21 have had the kind of oversight that they exercise to the
22 State Bar Dues Bill, how would the State Bar Board of
23 Governors, the Supreme Court or attorneys react if the
24 Legislature or Governor did any of it outside the
25 context of the Dues Bill?

1 There is a reason they haven't, and they
2 probably wouldn't do so, though, it accentuates and
3 makes glaring the separation of powers problem.

4 So everyone, the Supreme Court, the State Bar
5 Board of Governors, the Legislature and Governor have
6 tactfully agreed to this governance structure for many,
7 many, many years, even though it is incredibly
8 dysfunctional for the State Bar. An organization cannot
9 simply achieve excellence under this kind of
10 arrangement. An organization needs more clarity,
11 vision, predictability and stability that occurs under
12 de facto governing structure.

13 In closing, the Santa Clara County Bar
14 Association strongly encourages the State Bar to
15 maintain the Board of Governors as it is under and to
16 make a recommendation to the Legislature, Governor and
17 Supreme Court to address the real governance issue.

18 Thank you for this opportunity and this time.
19 And I'm now going to turn over the remainder of time to
20 our executive director and general counsel, Chris
21 Burdick, for any additional comments she would like to
22 make.

23 MS. BURDICK: Thank you very much. I
24 appreciate the opportunity to be here. I want to give
25 you all that don't know me very well or know about my

1 background a little bit of information about my
2 background so that you can assess some of my comments
3 and have some idea of -- of where my perspec -- from
4 where my perspective comes.

5 I have been in my current position as general
6 counsel, executive director with the Santa Clara County
7 Bar Association for 21 years now, which means I came
8 into the position in 1990. I came from Utah.

9 PRESIDENT HEBERT: Chris, can you pull the
10 microphone -- when you turn the other way, the court
11 reporter is having a hard time hearing.

12 MS. BURDICK: Oh, I'm sorry. Sorry. I want to
13 look in everyone's eyes. I apologize.

14 I came here from Utah where I was chief
15 disciplinary counsel and general counsel for the Utah
16 State Bar. In that capacity at the time, as many of you
17 may recall, was -- 1990 was the year Keller came down.
18 And prior to that as, an integrated State Bar Utah has
19 been dealing with the very issues that California Bar
20 has been dealing with, and we had actually 17 lawsuits
21 by the same attorney dealing with different aspects of
22 the integrated State Bar.

23 Prior to that, I was in private practice and
24 also managing attorney for Idaho Legal Aid. So I've
25 been dealing with a lot of these issues and the issues

1 of discipline and ethics for the -- almost the entirety
2 of my 30, 31 years. I have great passion for the legal
3 profession. It is the third branch of our government;
4 the judiciary which includes attorneys, that is the
5 hallmark of our constitutional democracy. It is what
6 sets us apart as attorneys from attorneys in other
7 countries.

8 PRESIDENT HEBERT: Typically that's an artifact
9 of a cell phone being on and being --

10 MS. BURDICK: My apologies.

11 PRESIDENT HEBERT: See how ethical she is. She
12 stood up and took responsibility --

13 MS. BURDICK: That's right. That's right.
14 Taking responsibility is important, which is the
15 underpinning of our positions actually.

16 But as I was saying, I -- and I believe
17 fervently and strongly in the -- in underpinnings for
18 our judiciary and the role the lawyers play both within
19 the judicial branch in our society. And I think it's
20 critically important that -- that those roles and
21 obligations are honored. And I think it's critical to
22 the ongoing vitality of the legal profession as a
23 profession and as officers of the court.

24 Those of you who have not been sworn in to the
25 Bar, I want to tell you that when we take our oath, we

1 take an oath as officers of the court. And there's a
2 reason that we do that. And the reason is because we
3 are part of the judiciary -- it is the judiciary, the
4 State Supreme Court, that has authority over attorneys.
5 And it's a special role of attorneys in our society
6 because of our training and because of our
7 constitutional democracy that has imbued the court and
8 the attorneys with the special obligation of
9 self-governance and self-regulation.

10 And along with the self-governance and
11 self-regulation comes a number of very critical
12 responsibilities that the judiciary and attorneys have
13 to discharge. And some of those -- the real high
14 profile ones have been discussed by almost everyone
15 today, obviously discipline. And then there's
16 admissions and disciplinary rules, and competence.
17 That's one of other areas that attorneys have to
18 discharge is competence. That's also a public
19 protection issue.

20 And then there are a couple of others that we
21 don't talk about very much. They're actually the
22 cornerstone of our constitutional democracy and our
23 separation of powers. And those two areas are improving
24 the administration of justice and ensuring access to the
25 courts. Those are the key cornerstones of what

1 separates our judiciary and attorneys from other models
2 in other countries.

3 And attorneys are charged and the Court is
4 charged with this because of our -- it's not mine --
5 because of -- although it may be my iPad.

6 PRESIDENT HEBERT: There we go. There you go.

7 MS. BURDICK: THAT -- that maybe -- that that
8 has required us to take on this special role and special
9 objection. It's why the Santa Clara County Bar has
10 taken the position it has, which is that there is
11 something amiss and an imbalance in the Legislature and
12 the Governor's role in the judiciary functions and the
13 Supreme Court.

14 And I'm not singling out the Governor and the
15 Legislature because we -- we think the court has either
16 explicitly or by default or -- you know, you can give it
17 the worst spin. You can give it the best spin -- and I
18 don't know anyone's motivations 'cause this is something
19 that's occurred over the years. I don't think it's
20 attributable to any one person.

21 But institutionally, we have continued to move
22 further and further away from how the branches are
23 supposed to work. And, yes, we do -- are involved in
24 public protection.

25 And as a result, I think that there clearly is

1 a role for the public to have input, for the Legislature
2 to have input and for the Governor to have input; but
3 it's ultimately the Supreme Court. And in most states
4 and, indeed, in ours, the Supreme Court has delegated
5 that responsibility. Not the oversight, but delegated
6 the day-to-day responsibilities of that to an integrated
7 State Bar.

8 California is a little unusual, and it's where
9 California has gotten messy, is because for some reason,
10 at some point, the Legislature was given oversight over
11 the dues. And it's my belief that the reason for that,
12 the public-protection reason for that was to ensure that
13 the State Bar was spending sufficient amounts of money
14 in the right places in public protection, i.e.,
15 discipline, admissions, regulation and some of these
16 other public protection areas that we don't talk about
17 as frequently. That is what I -- that's what we believe
18 the role is.

19 And we think before you start tinkering with
20 this -- the Board of Governors' model, we need to step
21 back and look at the entire governance -- the real
22 governance model and ask ourselves whether or not that's
23 working, 'cause it's our position that it's not working.
24 And that to a large degree, it's contributing to what
25 many of us think is continuing dysfunction of the State

1 Bar.

2 Now, you know, we can have debates on what the
3 State Bar is supposed to do, what it's not supposed to
4 do. And we've had those debates for 20-some-odd years,
5 and there are areas of legitimate difference. But in
6 the core areas of responsibility that the judiciary and
7 the attorneys, as officers of the court that involve
8 public protection, I think the overarching government
9 structure, i.e., the relationship between the Supreme
10 Court and the Legislature and the Governor and the State
11 Bar is out of balance.

12 And I do, before I end my general comments,
13 just want to correct a comment that was made earlier,
14 which is that the local bars electing the court -- the
15 local bars don't elect the governors from their
16 district. There are many attorneys in the district that
17 aren't members of the local bar. It is the district,
18 all the attorneys in a particular district, that elect
19 the Governor of that district, so I just wanted to
20 clarify that.

21 So we would be happy to answer any questions
22 that you have.

23 PRESIDENT HEBERT: Okay. Well --

24 MS. BURDICK: Thank you all again.

25 PRESIDENT HEBERT: Thank you for those remarks.

1 Before I open it up to the questions, I just want to say
2 that during my time on the State Bar Board of Governors,
3 we have looked to the Santa Clara County Bar Association
4 again and again as a model for how a local bar
5 association should work. And also for some of the
6 specific things that the Santa Clara County Bar
7 Association has done in terms of stability rules, in
8 terms of its attempts to bring civility, fairness and
9 impartiality to judicial elections, it's ombudsman
10 program, the existence of the court; and so I just want
11 to make sure that everybody is aware, as I'm sure that
12 those of you who have sat on the Board of Governors are,
13 that again and again we look to the Santa Clara County
14 Bar Association for its innovation and the work that it
15 does every day. So I just want to thank you for that.

16 MS. BURDICK: Well, thank you very much. I
17 really appreciate those comments.

18 PRESIDENT HEBERT: Does anybody have any
19 questions?

20 Gwen.

21 MS. MOORE: Thank you. Since it appears that
22 -- I shouldn't say "it appears" -- it's quite clear that
23 -- that you believe that the Legislature has overstepped
24 its bounds in the thing that it does. Do you have any
25 recommendations how that could be corrected?

1 MS. BURDICK: Well, I -- you know, I think
2 that's where, you know, the devil comes in, the details
3 of dealing with that.

4 But -- but I'll tell you what -- this is not
5 necessarily the position of our bar, but I'll tell you
6 what I think personally and -- and I will say that
7 Mr. Towery reminded me this morning of the, you know,
8 the four years I served on the -- the commission on the
9 future of the State Bar that was appointed in the
10 mid-'90s. I think it was supposed to be an 18-month
11 gig, and it turned out to be almost four years. Great
12 group of 30 people.

13 We had the -- you know, it was really
14 wonderful, but it was a long tenure -- dealing with all
15 of these same issues. You might want to go back and
16 look at the report from that commission.

17 MR. BABCOCK: Actually, I have a copy of the
18 report, and I've read it; and anybody who wants it, you
19 really should read it.

20 MS. BURDICK: Yeah. It's very inter -- it is
21 very interesting.

22 MR. BABCOCK: It's about this thick
23 (indicating).

24 MS. BURDICK: Yeah, right.

25 MR. BABCOCK: Bill, is it in the record?

1 PRESIDENT HEBERT: If it isn't in the record,
2 we can certainly put it on the record.

3 MR. BABCOCK: Can I request that it be placed
4 in the record?

5 MS. BURDICK: So to answer your question
6 directly, you know, I think it's going take some
7 leadership from the Court. And I know Beth is probably,
8 you know, turning -- going, you've got to be kidding me.
9 Do you know what we're dealing with? And I do.

10 And, you know, the reality is, you know, when
11 these kinds of things -- or excuse me -- we're dealing
12 with, you know, whose authority is what; and there's
13 never a good time to do it, frankly.

14 But, you know -- but given the history of what
15 the State Bar has been through and how these issues come
16 up, and how they get dealt with over and over and over
17 again, and not really resolved -- we spend -- you know,
18 the State Bar spends an enormous amount of resources;
19 not just money, but -- but time -- your time, staff
20 time. You know, those of us who are very committed to
21 these issues, dealing with them, you know, over and
22 over, you know, again.

23 So I think that the -- you know, I think that
24 the Supreme Court, the chief and the Judicial Council
25 need to be involved in the discussion with the

1 leadership of the State Bar and with the Legislature.
2 And I -- you know, I think we should be direct, and not
3 that I -- you know, I have a reputation of being very
4 direct, but I think that simply -- you know, in a civil,
5 nonconfrontational setting ought to have an honest
6 discussion about these issues.

7 PRESIDENT HEBERT: Gwen, anything else?

8 MS. MOORE: No. I could add a few things, but
9 I won't.

10 MS. BURDICK: I'll give you my e-mail.

11 MS. MOORE: Thank you. We can talk.

12 MS. BURDICK: Okay.

13 MS. MOORE: Hopefully, this will be a part of
14 the record that we submit to the Legislature to give
15 them some idea of how people perceive their actions.

16 PRESIDENT HEBERT: Beth, and then Dennis.

17 MS. JAY: Yeah. I'm not going to be announcing
18 that the Court is going to be planning on taking a
19 wholesale leave of this issue right now. And I,
20 frankly, am waiting to hear more about what goes on in
21 this committee and report on those, looking forward to
22 seeing some of the recommendations that the committee is
23 going present to us.

24 I have a very specific question. One thing
25 that's been raised is the idea of having the Supreme

1 Court make some of the appointments to the Bar Board,
2 attorney members, possibly public members. What would
3 you -- do you feel that would have any impact, or do you
4 think that's a good idea?

5 MS. BURDICK: Well -- and, again, our executive
6 committee and Board has not discussed this specifically,
7 so this is not the position of our Bar Association. We
8 have talked about it, but we don't have a particular
9 position. So, you know, I'll give you the -- some of
10 that input and my personal opinion.

11 I think that having some members appointed by
12 the Supreme Court would not be a problem. I think
13 having the Supreme Court appoint all of the members is a
14 problem. After all, it is attorneys who are charged
15 with self-regulation. And if you disenfranchise the
16 entire Bar by not engaging them or trying to engage them
17 in their own self-governance by, at least, you know,
18 letting them be elected -- or elect a number of the
19 Board members, I think it -- I think it lets the
20 attorneys off the hook, frankly.

21 We want, you know, to -- to be frank -- I mean,
22 yes, you know, we obviously have some issues with
23 overall governance but to be frank, you know, attorneys
24 individually, many of them -- and certainly none of them
25 here, because your presence here indicates otherwise --

1 you know, don't discharge their overall professional
2 obligations and responsibilities. And we have moved
3 unfortunately -- and I think as a result of the Keller
4 decision, in large part -- but I think we've moved too
5 much from a profession to a trade. We're not a trade.
6 We're a profession, and we have professional
7 obligations.

8 And all attorneys are charged with discharging
9 these professional obligations. It's very difficult for
10 individual attorneys to discharge them is why the
11 organized Bar was created because we have to do it
12 together under the auspices of the Supreme Court, but
13 attorneys need to be engaged. And I think having them
14 vote for governors to whom then they -- they feel like
15 they can directly communicate is really, really an
16 important part of the governance of self-regulation as
17 well.

18 PRESIDENT HEBERT: Dennis, and then Jeannine.

19 MR. MANGERS: I add my thanks for your coming
20 here and presenting your testimony, especially after the
21 comments of the President made about your role that your
22 Bar has played in improvements to the profession.

23 I just want to explore with a little more depth
24 what sounded to me like too much of an
25 overgeneralization to go unchallenged with regard to

1 this supposed imbalance issue here.

2 I can recall when Ms. Moore and I took an oath
3 of office from the Chief Justice of the Supreme Court as
4 we became legislators. I know of -- which is similar to
5 that that attorneys take, I think. And that we took, I
6 think, as -- as seriously as. You know that --

7 Yet, there's a suggestion here that somehow
8 these people who have taken an oath similar to yours,
9 the way you put it -- and correct me if I'm wrong -- the
10 way you put it: The way we take our oath makes it
11 possible for us to self-regulate ourselves.

12 The oath, however, that legislators take
13 apparently leads to unwarranted interference in what we
14 do. So I just want to -- I want to suggest that if we
15 take a similar oath if we're legislators, and that body
16 is considerably a closer level of government to the
17 people in terms of our town halls, the public input that
18 we receive, the Legislature and so forth, that is, in
19 fact, the Supreme Court.

20 Why is it having 6 public members and 17
21 attorneys an imbalance that leads to interference of the
22 people's elected representative?

23 MS. BURDICK: Well, that's not the imbalance --
24 that's not the imbalance I'm referring to. The
25 imbalance is not an imbalance in how this Board is

1 composed. The imbalance is in the legislat -- what the
2 Legislature does with the State Bar, vis-à-vis, the Due
3 Bill -- the Dues Bills.

4 So, for example, to be specific, we believe
5 that there's no authority for the Legislature to mandate
6 this Task Force. We think it's an unconstitutional
7 exercise of authority. It's only the Supreme Court that
8 can do that. But there has been some acquiescence in
9 allowing the Legislature and Governor to dictate certain
10 things to the State Bar because of the due -- because
11 the Legislature approves the Dues Bill.

12 So to do -- to go back a little further, so
13 maybe it won't have as much charge, when you look at the
14 -- when Governor Wilson vetoed the Dues Bill back in the
15 '90s, in order for that Dues Bill to pass, the Governor
16 and the Legislature exacted some -- some very
17 significant concessions from the State Bar about what it
18 would continue to do and what it wouldn't continue to
19 do.

20 And our position is, is that -- is that there
21 is no constitutional authority for that with the
22 Legislature or the Governor. It's the Supreme Court
23 that has to do it and should, and has the constitutional
24 obligation to be involved in that. So it's not -- so
25 I'm not talking about the imbalance here. I'm fine --

1 you know, we -- we actually think it's fine, the current
2 composition of this Board.

3 We're looking at the bigger -- the bigger
4 picture.

5 MR. MANGERS: So it's your position that there
6 is no legislative oversight role constitutionally for
7 the Legislature over the Bar?

8 MS. BURDICK: Just with respect to the Dues
9 Bill, and that that is as it relates to public
10 protection and ensuring that the State Bar is expending
11 adequate resources.

12 Now, that's not to say that the Legislature and
13 the Governor shouldn't have input, and that the Supreme
14 Court shouldn't seek that input, and that input
15 shouldn't be considered. But, yes, it is our position
16 that the Legislature does not have the authority to do
17 many of the things that they've done through the State
18 Bar Dues Bill over the years.

19 MR. MANGERS: So where you're compelled to go
20 before the Legislature and get approval to go out and
21 require every attorney -- mandate that every attorney
22 pay you a certain fee, this is not from your viewpoint
23 an opportunity for the people's representatives to
24 exercise over itself?

25 MS. BURDICK: No. No, I -- that's -- I think

1 it constitutionally lies with the Supreme Court.

2 MR. MANGERS: This will come as a shock to the
3 Legislature.

4 MS. BURDICK: Oh, I'm sure -- I -- it doesn't
5 surprise me. And I think it's because we have allowed
6 it to get out of skew. This is the only state -- this
7 is the only state in the country that has this kind of
8 skewed relationship, and there's a reason for that.

9 I mean, I'll tell you -- when I was at the
10 State Bar as general -- or the Utah State Bar as general
11 counsel, we had a money issue. And the money issue was
12 that they had built this gorgeous building, and they
13 have taken out some substantial loans -- thank god, I
14 was not a executive drafter -- and there were balloon
15 payments that came due, and there was no money to -- and
16 there was not sufficient funds to pay for that.

17 Well, we had to trot up to the Supreme Court
18 and ask the Supreme Court for a dues increase in order
19 to deal with these loans.

20 Now, I can tell you that was no fun at all, but
21 that was the right place for that conversation. And it
22 was the Supreme Court who approved the State Bar dues so
23 -- and, you know -- so, yes -- you know, I want to be
24 very clear about our position. I think that it -- that
25 -- that is, is the Supreme Court's responsibility to

1 regulate --

2 MR. MANGERS: Okay. I get that. I just have
3 one final question. At the end of your testimony you
4 alluded to the fact that you thought we were becoming
5 more of a trade and less a profession.

6 MS. BURDICK: Right.

7 MR. MANGERS: And I'm wondering if that's the
8 case, and I -- I hope it's not. I mean --

9 MS. BURDICK: Me too.

10 MR. MANGERS: -- I think of it more as a
11 honored and noble profession. But how do you feel then
12 about the regulatory body being, in essence, your trade
13 association unlike anything else in California where
14 they have -- the doctors, for instance, now have a
15 regulatory body and they have a separate trade
16 association with lobbyists and all the paraphernalia of
17 a trade association.

18 For becoming more of a trade, perhaps, you
19 should consider that the integrated Bar is no longer
20 what you need; you need a trade association.

21 MS. BURDICK: Well, I don't think we need a
22 trade association because I don't think lawyering is a
23 trade. I think that lawyering is a profession. And I
24 think the profession has a duty to our society and to
25 the court that no other profession has because of the

1 unique role of rule of law and because the judiciary is
2 one of the three branches of government. No other
3 profession occupies that role, so it's very unique.

4 And I don't -- and I don't believe -- I don't
5 like the Keller decision. I think it was the wrong
6 decision. And I think that there is a really important
7 place for the integrated State Bar because there are
8 lots of things that attorneys by profession, given their
9 unique role, are supposed to discharge related to public
10 protection, and to their own obligations as a
11 professional, that fall outside the area of admissions,
12 seeley and discipline; and that all ought to be under
13 one roof.

14 Now, simply because the Governor or Legislature
15 may disagree with the position that the State Bar may
16 take, doesn't mean that -- you know, that the integrated
17 State Bar shouldn't be taking that position. It should
18 be -- you know, it -- it can and it should; and I think
19 it can only be done effectively through an integrated
20 State Bar.

21 If you look at states where they have separated
22 the core public protection functions of admissions,
23 seeley and discipline and have created a, quote/unquote,
24 "voluntary State Bar" is very weak -- the voluntary
25 State Bar is very weak; so all these other obligations

1 the attorneys are supposed to discharge do not get the
2 attention they need, don't get the resources they need
3 because everyone is only concerned with those core
4 responsibilities. And those -- that's only part of it,
5 so -- so I think it needs to be integrated.

6 MR. MANGERS: Yet in California when the
7 doctors did it, no one would argue that the CMAs are now
8 one of the more powerful trade associations, unlike the
9 weak ones you characterize in other states. I don't
10 mean to be argumentative.

11 MS. BURDICK: Right.

12 MR. MANGERS: That was my only question.

13 MS. BURDICK: And I'm not -- I'm not arguing
14 for the profession as an advocacy group, you see. I
15 think we have some unique responsibilities that we have
16 to discharge.

17 MR. MANGERS: I hear you. That's all.

18 PRESIDENT HEBERT: Thank you. Jeannine, and
19 then Jon Streeter.

20 MS. ENGLISH: Thank you for coming. I think
21 your testimony has been very enlightening. You have
22 mentioned that you thought it was important for the
23 lawyers to elect members of the Board of Governors
24 because they have that involvement. Why do you think
25 only 13 percent or 14 percent of those lawyers are

1 involved in the election process?

2 MS. BURDICK: Well, I -- you know, I think it's
3 a terrific question. And it's the same issue at the
4 local level we deal with --

5 THE COURT REPORTER: I'm sorry.

6 MS. BURDICK: I'm sorry. Thank you. Just yell
7 at me. Excuse me for not looking at you directly.

8 You know, it's the same issue we deal with at
9 the local Bar level of the participation. And,
10 unfortunately, over the years, and particularly -- you
11 know, given the numbers -- you know, given the size and
12 numbers of attorneys that we have in the state, it's a
13 lot easier for attorneys not to step up and fulfill
14 their obligation.

15 But -- so, you know, I -- it concerns me. I
16 think more should participate. I think that it's an
17 obligation of the State Bar to do a better job of
18 communicating with the full -- you know, with the
19 constituent -- with its constituency, which is the
20 admitted attorneys. It's a difficult job. It's
21 difficult on the local level, and we don't have some of
22 the sticks that the State Bar has.

23 But -- but my concern is, is that, as
24 attorneys, more and more slack off in stepping up in
25 engaging, even if it's by the casting of a vote. It

1 weakens us as a profession. But I don't think that in
2 and of itself says that we should do away with it simply
3 because attorney -- not -- you know, not -- that we
4 don't have sufficient -- enough attorneys that engage.
5 I think that's something to be addressed, not -- not
6 simply done away with.

7 PRESIDENT HEBERT: Jon Streeter.

8 MR. STREETER: Thank you, Christine. I always
9 find your comments to be very helpful no matter what the
10 issue is that we have before us. This time, you know,
11 among the things you've said, I heard something that --
12 where you put your finger on an underlying, and quite
13 frankly, profound issue having to do with the separation
14 of powers. And in your exchange with Dennis Mangers, I
15 think we've flushed this out a bit.

16 And I've been thinking a lot about this 'cause
17 it is at the back of a lot of what we're doing here.
18 And I'm -- what I was intrigued by was your view that
19 the Legislature, under our system, with an integrated
20 Bar has its annual Dues Bill authority that gives it a
21 certain amount of authority in -- as you've stated it,
22 properly construed, that's quite narrow.

23 Now, ultimately, I think this
24 separation-of-powers question on whether what we're
25 currently engaged in is constitutional, is a question

1 that -- you know, we can't know the answer to. Only the
2 Supreme Court can answer that, and various people could
3 have opinions about it. But I think it is something
4 that -- that should be kept in mind.

5 Frankly, I'm -- I'm not there in terms of
6 whether we crossed the constitutional line, you know. I
7 mean, I think that you -- you could think of lots of
8 examples of -- of government, either at the federal or
9 the state level, where there's overlapping spheres of
10 authority. And rather than decide things when we have
11 questions of how we should constitute ourselves, you
12 know, put them in the ultimate terms of separation of
13 powers, you should always shrink back and not get to
14 that question because, you know, it's -- it's a little
15 bit -- it's like pressing the nuclear option, okay. And
16 it doesn't happen very often. There hasn't been very --
17 very many Keller decisions.

18 And I would submit what we're doing here is not
19 significant enough ultimately to result in some kind of
20 decision like that. And really what happens is you get
21 involved in discussions between branches where you come
22 up with compromises about how things should be done.
23 And that's actually what we're engaged in here. And --
24 you know, it's a healthy process from time to time.

25 This question of who should sit on the Board is

1 something that's opened a fair debate on how we should
2 get here. You know -- and I'm -- I'm interested in how
3 you think this question of our current structure being
4 out of balance that you -- as you put it, affects -- was
5 the right policy answer is to the question of who should
6 sit on the Board, how we should structure ourselves.
7 That's really, as a practical matter, what we're all
8 trying to get at.

9 And, you know, if the answer is don't -- you
10 know, it's unconstitutional, but -- you know, could be
11 changing things at -- you know, that's -- frankly, that
12 -- that's a pretty radical suggestion; and -- and we do
13 need to come up with a good practical solution that
14 improves all of these things that we're very much
15 concerned with, the effectiveness of the disciplinary
16 system, ensuring access to justice, things that Dennis
17 and Gwen and Jeannine care about just as much as anybody
18 else.

19 And -- you know, how could we improve things
20 here on the Board in terms of the selection of governors
21 in a way that gives us a more optimal structure for
22 dealing with -- with those issues; rather than going
23 right to the -- you know, the pressing the nuclear
24 button and saying -- Well, don't even go there. Let me
25 think about that.

1 MS. BURDICK: Well, there are lots of things I
2 could say, but let me see if I can distill a few down
3 given the timeframe.

4 PRESIDENT HEBERT: Given the time, I'm
5 conscious of a lot of speakers waiting, and Mr. Dolan
6 needs to speak before we have lunch.

7 MS. BURDICK: You know, I -- get to the -- to
8 get to the core of, you know, what it is you're talking
9 about specifically -- or trying to, which is the
10 composition of this Board. Our position is -- I don't
11 think there needs to be a change in the composition of
12 this Board necessarily because there's nothing --
13 there's nothing to suggest that this Board can't do and
14 perform the functions that it is charged with
15 performing. You know, what I -- what I -- what I -- my
16 fear is -- and the reasons why I think at some point,
17 whether it's now or at some other time, I -- you know, I
18 advocated this back in the '90s with the Future's
19 Commission. I thought it should have been dealt with
20 then.

21 It may seem like the nuclear option. But the
22 reality is this is a very -- the very fact that you're
23 sitting here and the very fact that you're dealing with
24 a very specific issue that really only came out in the
25 survey questions as opposed to the legislative -- as

1 opposed to the statutory language. You know, the
2 statutory language doesn't say, you know, set up a Task
3 Force to look at the governance model of the State Bar
4 Board. That wasn't -- that isn't the language that the
5 statute used.

6 But clearly, that was -- you know, clearly,
7 that became an issue somewhere. My guess is -- this is
8 just my guess -- having been around a while, my guess
9 is, is that there was a discussion with the Legislature,
10 some of the legislators or legislative staff that says
11 that this is the issue. We want to do X, and so you're
12 going to have to address this.

13 So I think there's not -- there's not
14 transparency -- and I think this is what Mr. Levy from
15 Sacramento was trying to get at. There's not
16 transparency in what's really going on between the State
17 Bar and the Legislature and the Supreme Court.

18 Now, you know, should there be? Well, yeah, I
19 think to some -- to the degree that you're asking all of
20 us to spend our time providing input; and to get the
21 right kind of input, I think there should be. So we
22 made a strategic decision at the -- at our Bar to
23 provide this input this way and not address the specific
24 questions of the survey because -- because they're only
25 an example of an ongoing problem.

1 PRESIDENT HEBERT: Okay. Could I move on to
2 Beth Jay and then Lowell. We really need to keep moving
3 here because I've got to get Mr. Dolan on before lunch,
4 we need to take a lunch; break, and then we need to
5 listen to our speakers this afternoon. So let's just
6 very quickly, two more; and then we're going to have to
7 wrap up so that Mr. Dolan can speak.

8 MS. JAY: Mine is just a very basic sort of
9 background description of how the Bar came to be created
10 in the State Bar Act which was in 1927. In the creation
11 of the State Bar Act, the Legislature was endowed with
12 certain authority, but -- and this is expressed within
13 the act itself. It states that the Supreme Court
14 retains plenary authority.

15 In other words, the Supreme Court may step in.
16 But over the years the relationship between the State
17 Bar Act and the role and the ultimate plenary authority
18 of the Supreme Court has been discussed in a number of
19 instances.

20 And I think the relationship between the Court
21 and the Legislature is more collegial than adversarial
22 in most instances, which does not mean that the Supreme
23 Court has not on occasion changed things that are
24 written in the statute that it does not agree with.
25 This includes selection -- the mode of selection of

1 State Bar Court judges. This includes the standard of
2 proof for review of State Bar disciplinary matters which
3 the Court did not agree with the statute, the Court
4 changed it. By the Court rule, eventually the
5 Legislature then changed the statute to comport with the
6 Court rule.

7 For a good discussion of these, I recommend to
8 you In Re Attorney Discipline and the O'Brien cases,
9 both of which contain results of discussions by the
10 Supreme Court of the relationships among the
11 constituting boards and why the State Bar Act has not
12 been construed by the Supreme Court in challenges to the
13 State Bar Acts very being as a challenge or an -- an
14 improper use of patience of the Supreme Court's
15 authority under the notification of separation of
16 powers.

17 So I just wanted to note that this has been an
18 ongoing, dynamic dialogue since the State Bar Act was
19 adopted. And -- so I just want people to be aware that
20 this is not just a static relationship. It's one that
21 has changed and morphed in many directions over the
22 years.

23 PRESIDENT HEBERT: Lowell Carruth.

24 MR. CARRUTH: I just have one simple question.
25 It's your opinion that the very creation of this Task

1 Force is an unconstit -- is unconstitutional; is that
2 correct?

3 MS. BURDICK: That's correct.

4 MR. CARRUTH: Okay.

5 MS. BURDICK: And in closing, can I just
6 reemphasize what Mr. Levy suggested in his testimony and
7 that is that the -- I think it doesn't really matter to
8 us whether we get an opportunity to provide input on
9 recommendations before they go to the Court and the
10 Legislature and the Governor, or whether after they go
11 before they get acted on, there is an opportunity for
12 further input. I think it's really important that that
13 opportunity be provided, given sort of, you know,
14 everyone's positioning in this. So that would be a
15 request that we'd make on behalf of the Bar.

16 PRESIDENT HEBERT: I want to make clear that
17 there is -- there are Task Force meetings scheduled.
18 There's one on February 8th; there is one on March 2nd.
19 I think we have one set in April. If we haven't, we
20 probably will. And then our report is due May 15th --
21 on or before May 15th, which is a Sunday, so -- and I'm
22 fighting with my general counsel as to whether or not
23 that means I can wait till the 16th, or I have to submit
24 it the 14th or whatever. But anyway --

25 So there will be discussion at public hearings

1 that anyone can attend about the recommendations. There
2 will be time at the end of the February 8th meeting for
3 members of the public to comment on our discussions and
4 deliberations. And certainly as we begin to write the
5 report, it will be posted on the website because we have
6 to if we're going to consider and take any actions.

7 So what I said earlier that we aren't actually
8 going to send it out for public comment, the way we do
9 is say the rules of professional conduct or other things
10 that we do, there is going to be opportunity for input
11 before we finalize the report.

12 MS. BURDICK: I appreciate that. I just think
13 that there should be -- that there should be notice
14 given to all members of the Bar about whatever the
15 recommendation is to provide input. I mean, we follow
16 this stuff, so -- you know, I know that -- you know,
17 that we're going to find out.

18 I just think it's just one of the shortcomings
19 of the State Bar Board in not providing enough notice
20 and opportunity on things where you don't have to
21 provide it. That doesn't mean you shouldn't provide it.
22 And -- and, you know, I don't think it makes any
23 difference whether you do it now or whether -- you know,
24 whether the Supreme Court when it -- when the report
25 gets filed, provides a period of time for notice and

1 input. But I think that there should be a -- one of
2 those stages, an opportunity for formal notice and
3 written input.

4 PRESIDENT HEBERT: And just so I think we're
5 all clear, it's no mystery as to why the Legislature
6 picked May 15th.

7 MS. BURDICK: Right. No, I understand that.

8 PRESIDENT HEBERT: Because the Legislature
9 wants an opportunity to review the report and make a
10 decision between May 15th and whenever it acts on our
11 Dues Bill as to whether or not to make any sort of
12 changes --

13 MS. BURDICK: Right.

14 PRESIDENT HEBERT: -- in the law.

15 MS. BURDICK: Right. And with that, I think it
16 underscores our concern.

17 PRESIDENT HEBERT: Well, again --

18 MS. BURDICK: So I think they should put off a
19 decision on this till after the Dues Bill.

20 PRESIDENT HEBERT: Again, this is a -- this is
21 another opportunity for comment because anybody can
22 lobby the Legislature after it gets our recommendations.

23 Okay. Well, thank you very much.

24 MS. BURDICK: Thank you.

25 PRESIDENT HEBERT: Okay. Our next speaker, and

1 the last one before lunch, is Chris Dolan.

2 Mr. Dolan, I'm going to let you go ahead and
3 let everybody know a little bit about your background
4 and titles you've held because I will assuredly get it
5 wrong. And so I think that would elucidate a little bit
6 your testimony here today.

7 MR. DOLAN: Thank you. I've got my iPad on
8 airplane mode, and I will keep my comments brief. I am
9 a trial lawyer. I don't get the luxury of all this
10 time. So I am a trial lawyer. I represent individuals
11 in civil-right cases, in employment cases, in injury
12 cases.

13 I am the past president of the Consumer
14 Attorneys of California of which I've been a board
15 member for 15 years. I am the current Executive Board
16 Member of the San Francisco Trial Lawyers Association.
17 I have sat on numerous committees with the Judicial
18 Council, including budget committees. Last year we
19 thought we solved the budget problem. I testify
20 regularly before the State Legislature. I was the
21 president of a trade association of lawyers. That's how
22 we do consider ourselves. And I have an interest in
23 this because I am regulated, and I am also motivated by
24 the State Bar to conform my behavior in certain ways.
25 That's a little bit of background.

1 I must be clear on that today I'm not a
2 representative of the Consumer Attorneys of California;
3 although, I remain on that executive board. And the
4 comments that I make today should not be attributed to
5 that Board. They may be attributed to the San Francisco
6 Trial Lawyers Association and to me. I'll stand behind
7 them.

8 So I have eight questions. I want answers to
9 eight questions because that's what I thought we were
10 here to do today is answer eight questions. The answers
11 to these questions will be different than the ones that
12 you received from the association. We've had a change
13 in leadership since they were written, but they will be
14 very briefly different than the association.

15 I just first want to indicate that as to the
16 perception of what the Bar does, the public perception,
17 I ask the lawyers in my office, and I asked people on
18 the sidewalk how did they perceive the State Bar. They
19 said they liked the mojitos. So I want to be perfectly
20 clear that whatever this perception is that we're
21 talking about, it is not a widely-held public
22 perception.

23 We're talking about a perception amongst people
24 focused on the institution, which are less than 13
25 percent who vote, if that many. So cut that in half and

1 then look at the interest group that have an interest in
2 controlling what this group does, and that's the public
3 perception. So I just wanted to be clear about that
4 'cause that's the 800-pound invisible elephant in the
5 room; and who is the perception, is people who have an
6 interest in what this group does and who controls it.

7 So it's interesting that I've heard some
8 comments about the profession has a negative impression
9 or that -- no offense -- but civil lawyers are the less
10 civil than the criminal folks. The perception I have is
11 a person who is retained by people, is that we help
12 people. And they come to me for assistance, and they
13 perceive us as being an instrument of change. So I
14 don't think that there is a perception that we are
15 dishonest or unethical.

16 I try cases in front of juries. They walk out.
17 They say it was the best experience they've had. It's
18 the most participatory experience in government. So I
19 have to agree that there is a -- an issue relating to
20 perception. And I think we need to remind -- I'm sorry.
21 I'll slow down. I just have time constraints. The
22 court reporter is usually burned into your head with
23 laser eyes.

24 I think we need to be careful that we don't
25 make this a popularity contest. The administration of

1 justice is never a popularity contest.

2 Question No. 1, what does it mean to protect
3 the public from the State Bar? You make sure the right
4 people get admitted. You make sure they get the right
5 education that they're required every year. You make
6 sure that the -- there are ethical rules that are
7 adopted to conform to changing social norms. I believe
8 one of the most valuable things you do is foster the
9 bench/bar. That's the relationship between the judges
10 and those who practice in front of them. And if there's
11 a public perception problem, you're responsible for
12 changing that.

13 So how do you protect the public? Protect the
14 system that I use to protect the public every day.
15 That's what I would ask of you. Give me the right to a
16 jury trial. Have me be ethical. Hold me accountable.
17 That's how you protect the public, period. You can get
18 into the esoterics of it, but that's the mission I
19 believe.

20 Who should serve on your Board? Lawyers,
21 members of the public, judges.

22 Why? Those are the people affected by our
23 system. The public has a place. I have been listening
24 to members of the public. If you have law degrees, I
25 give you jobs. You ask better questions than a lot of

1 lawyers would. It doesn't seem to me that the members
2 of the public are incapable of understanding how we
3 function.

4 But when -- when the concept comes up about the
5 representation of public versus private, I would -- I
6 would tell you to look at a portion of what you do that
7 is one of the most valuable ways that the public is
8 protected. If there's a conflict between my client and
9 me about my fee, I am obligated to submit it to
10 mandatory State Bar arbitration, period. I don't have
11 the choice of suing them first. I've got to tell them
12 about this.

13 If they say they want to go there, I don't have
14 an opt out. I'm there. They can choose if it's going
15 to be binding or nonbinding.

16 Who sits in that room? I've sat there folks.
17 I represent people who've been disgruntled. They tend
18 to be disgruntled at the end of the day sometimes too.
19 You know, limited selection.

20 Who's in that room? Two lawyers and a member
21 of the public. Nobody squabbles about there's
22 two-thirds lawyers there because they're dealing with
23 issues of the law. And I think it's important for us to
24 remember that the public is a jury system, which I've
25 heard about, is a trier of fact. And they don't do it

1 in a vacuum without a judge and two lawyers there who
2 deal with the issues of law.

3 So I do think that it's important to remember
4 that there are issues of fact and policy, and there are
5 issues akin to how we administer justice, which are
6 unique to our profession. But I'm not just a lawyer --
7 I can hear this public lawyer. I am hold Master's in
8 Business Administration. I'm a landlord. I own rental
9 property. I am an employer. I employ 40 people. I am
10 a husband. I am a father. When this lawyer is a
11 one-dimension individual, I think what you fail to
12 realize is the discussion goes on that the lawyers are
13 also members of the public with many varied interests
14 that we bring to the table. So I think that answers the
15 who should serve on the Board.

16 Our organization would encourage you to strive
17 for diversity both in color, background, race, sex.
18 Diversity is extremely important to the application and
19 administration of justice today. Because in this
20 society we're 52 percent Latino. The white majority is
21 decreasing. And if you're going to protect society,
22 have a diverse Bar and have a diverse organization that
23 represents all the constituents because that's where
24 you're going to get credibility.

25 If somebody looks like me, I can have trust in

1 them. If somebody has some background, I can have trust
2 in them.

3 Item No. 3, how members should be selected? I
4 have to tend to agree that I believe there should be
5 some deference to the separation of powers. I don't
6 want to get into the full constitutional argument. It
7 could be the subject of an entire day. It is a class in
8 law school. But I think there should be some difference
9 there.

10 It is important to note that there are
11 extremely few legislators who are lawyers. But when you
12 look on the committees, such as the ones that we live
13 and die in front of, and our whole group does, the
14 Assembly and Senate Judiciary Committee, there are
15 lawyers and nonlawyers. The Chair is a lawyer. Most of
16 the members are lawyers, but conspicuously the president
17 pro tem and the speaker put nonlawyers on those groups.

18 So there -- there is another model you can look
19 at as to how is the Legislature -- if they're saying,
20 geez, you need more members of the public go to their
21 judiciary committees and see what the composition is
22 because those are selected by the leaders of the
23 Assembly, and for a reason because they're dealing with
24 matters of law and judicial administration.

25 Item No. 4, what qualifications are required?

1 I think you need to be careful of politicizing the
2 administration of justice. I was asked about -- someone
3 was asked about trade associations versus this Bar -- or
4 this group. If you make this group a lobbying force, I
5 think that you marginalize its effectiveness because you
6 have brought it down into the public debate in which it
7 will become upon and in which you will have to finance
8 it so as to have people elected.

9 Why do only 13 percent of the people vote?
10 I've been listening, as you can tell in the back,
11 because we don't know who the people are on the menu.

12 Why? Because they're not out running
13 campaigns. And the people who are voting, are the
14 people who know them. So I know Bob, I vote for Bob. I
15 don't know Joe, I'm not going to put in a vote for Joe.
16 I need to know one of the people before I'm going to
17 vote. And I'm one of the more-educated folks on the
18 planet in this capacity. Generally my teachers disagree
19 with that.

20 So I do think the qualifications should be
21 published, apparent and that they should be outreached
22 to the minority bars, the trial bars, the criminal bars
23 to bring everybody to the table.

24 And who do you outreach to? Outreach to me. I
25 was the President of the Consumer Attorneys of

1 California. We are being outreached to right now.
2 Let's get people on our Bar. I'm a member of other
3 organizations and we are now being outreached too; so
4 we're telling our members to be a part of what's
5 happening here.

6 Item No. 5, size? Two heads are better than
7 one. This group has functioned well. You've got more
8 people than the composition of the group that you're
9 talking about currently. Haven't seen any failure on
10 the ability of people that participate or bring to the
11 conference a wide variety of issues. So I'm not
12 necessarily an advocate of reduction, though, I
13 understand that that may become a political reality at
14 some point.

15 I don't think you need to reduce the size. And
16 the greater the size, the greater the opportunity for
17 the public to participate. You reduce the size,
18 somebody is going to reduce the ratio; you may have less
19 public involvement.

20 No. 6, the term? It should be the same for the
21 public and private -- public and lawyers.

22 Why? You're all a group. Groups function
23 better together if they have known each other for a
24 longer period of time. And I think that if you're going
25 to have those people work effectively together and on

1 the continuity of issues, they should be the same.

2 That's my take. We have an executive board ladder. I
3 served five years with the same people. So when the
4 crisis hits, we all have got a place to move from.
5 We're not starting from ground zero.

6 Seven, how to select the members? We sort of
7 talked about it earlier. The legal community, input
8 from the judiciary. The Chief Justice should have a
9 role, I believe, in some of the appointments. I
10 understand the constitutional issues. Meet with all the
11 stakeholders, outreach. But I think that the selection
12 progress needs to be mindful not to become a political
13 football.

14 Eight, changes in government's model? You
15 talked about the separation of powers, how the governing
16 should be done. I think that perhaps just what you're
17 doing now in discussing it may result in that there's no
18 need to change the governance. Again, I encourage you,
19 don't become a political football in the lobbying.
20 Trust me. We've got enough people out there who are
21 doing this full time. I was one of them. Worked very
22 closely with the courts, with the defense bar, with
23 everyone regarding court funding; and we're back in that
24 fray and we're doing it.

25 I testified with your predecessors in front of

1 the Judicial Council last year. There are enough
2 stakeholders that you don't want to eliminate them by
3 becoming the only one. That's my take on it, but that's
4 how we believe it should be.

5 So there are some things that I want to touch
6 on briefly which are the -- got that one. Got that one.
7 That's good.

8 So private reprimands, I just need to talk
9 about this for a minute. So the gentleman behind me
10 said that private reprimands should go away so that
11 there would be more discipline. I think the opposite
12 will happen. Because you see, what private reprimands
13 are, is guidance. So if you look at it in terms of how
14 you run your businesses, you have coaching and
15 counseling. Maybe you got a written warning. Then you
16 get a suspension, and then you're on probation. And
17 then you're in termination, right? That's how we run
18 our businesses. That's how I run my business.

19 In the legal profession, you may have
20 individuals practicing law as solos. They don't have a
21 mentor. They don't have a senior partner to run things
22 by. And maybe they have made a step in misjudgment that
23 just needs to be corrected to get them back on track,
24 but it's not harmed anyone, it's not diminished the
25 profession. But it is a chance for the Bar to step in

1 as a mechanism of guidance to educate a good lawyer to
2 continuing to practice law. I mean, that -- I don't
3 think we should overlook that.

4 And I think if you say everybody is going to be
5 public, then you're going to have that opportunity lost;
6 because then you've got to decide, do I tarnish this
7 career over this issue? And I think the answer will
8 probably weigh into the negative, and you will see less
9 discipline and less correction, which will be less
10 protection to the public.

11 It's interesting, I did the math that the
12 gentleman talked about from HALT as it related to 12,800
13 complaints statewide. I divided by 52. I came up with,
14 I think, 300 -- 236 on average per state, we're hitting
15 550. We're doing more discipline times two than anybody
16 in this country.

17 So if you look at -- they keep saying where's
18 that empirical? I just took the things given to me,
19 divided -- figured out where we are, and we're
20 disciplining more. Sure we're larger, but I think that
21 that shows that we are actually -- you are executing the
22 function that you're provided.

23 So we talk about the protection of the
24 integrity of the law and the public perception and
25 confidence. Let me tell you, if they don't have

1 confidence in my business or me, I have no business.
2 That's what I sell, confidence and ability. As a
3 representative of this Bar, when I walk into a
4 courtroom, I appear before a hearing, I talk to someone
5 at dinner, I talk about how this Bar serves, helps and
6 preserves the system of law; 'cause the oath that I took
7 was to preserve, protect and defend the Constitution of
8 the State of California and the United States. And I
9 take it seriously.

10 And that protection means discussion with
11 people about the importance of what we do and how we do
12 it. As if -- as if we were all on the race to the
13 bottom, I don't believe that's a correct
14 characterization of my profession. I'm constantly
15 striving to race to the top, to make good law that
16 protects people. So I think there's a misperception
17 that if somehow we protect ourselves, we have less
18 protection. I have the best interest in making sure
19 that people don't tarnish what I do.

20 I'm called -- my profession is called an
21 ambulance chaser. We pass laws -- help pass laws with
22 consumer attorneys of California against people doing
23 things that would harm the reputation of the Bar.

24 Furlough Fridays, people wanted to be suing
25 based on upon the fact that people on furlough from the

1 State Government got a discount. Somebody brought that
2 to our attention. We introduced a bill and said that's
3 ridiculous. That's going to tarnish the reputation of
4 lawyers. That bill is now law.

5 So to somehow think that we are going to sit
6 ideally by while our profession gets tarnished and goes
7 into the potty, as my daughter would say, is just
8 completely antithetical to everything to the people who
9 are preserving the system stand for.

10 And I think it is somewhat offensive to those
11 of us who are here today -- and I don't mean to get
12 anywhere particularly on anybody -- you're all here as
13 volunteers. I'm here as a volunteer. I give -- what?
14 I don't to even count the amount of hours to protect and
15 preserve the integrity of this profession. That's who
16 we are as lawyers. Not somebody on the race to the
17 bottom.

18 So the final thing I want to comment on -- and
19 I thought it was very apply stated by a member of this
20 committee who looked at a website -- God bless you --
21 that's where we find a lot of cross-examination
22 information. Today he was looking at U-Tube, Facebook.
23 You can decimate somebody with that stuff, so -- but the
24 non -- it was just completely, intellectually opposite
25 which is what we're practicing as lawyers as logic, that

1 you would advance the practice of -- I don't know what
2 you'd call it, law or quasi law or -- you would allow
3 people who don't have licenses and training to affect
4 people's lives materially by somehow directing them down
5 a course or allowing them to practice in a state in
6 which they have no idea.

7 Louisiana is a perfect model. It's based upon
8 the French legal system. I have no business practicing
9 law in Louisiana, much less Nevada. And so, really, to
10 say that I should be able to practice law in Louisiana
11 is like saying I should be able to drive a truck
12 blindfolded.

13 And then on the other hand, to say that lawyers
14 require malpractice so people can sue them, you're going
15 to move all these people who are untrained into this
16 category in which they'll have no insurance -- because
17 check your homeowners, folks. It doesn't cover the
18 practice of law, nothing does. So what you're going to
19 do is actually expose the public to greater risk by
20 following that derailment of the logic trail.

21 So even though that wasn't on your agenda, I
22 couldn't just sit there. In the backlog, we were under
23 -- we weren't funded as a Bar. I mean, they're a year
24 behind. That's like holding somebody back in school and
25 asking them why aren't they in the 12th grade when you

1 canceled a year of education.

2 I'm being -- I'm not trying to be in any way
3 difficult, but when you have a Legislature who can pull
4 the plug on your bathtub, you can't ask why it isn't
5 full of water in my -- in my belief.

6 So from what I understand, prosecutions are
7 zealous in this state, and the people are scared of
8 them. I am scared of being reported to the State Bar.
9 That's not the only reason why I act properly. And as
10 far as judges not reporting people, I think if you
11 looked at the instance of people who reported to the
12 State Bar in which disciplinary action is taken, a great
13 majority of them have come from reference from the Bar.
14 Anybody who commits any type of an offense in which
15 there's a fine of greater than \$1000 in a nondiscovery
16 matter, automatically you're in the State Bar. So there
17 is no laxity I would believe.

18 I think I've exceeded the -- well, actually I'm
19 about on time. I told you I'd take 15 minutes. I
20 appreciate your time. If I seem zealous, I told you at
21 the beginning, I'm a trial lawyer, so what we do is try
22 to get information across quickly and clearly. I would
23 be happy to answer any questions, but I don't want to
24 interfere between you and your lunch.

25 PRESIDENT HEBERT: No problem. Thank you so

1 much, Mr. Dolan, for coming here today and those
2 comments.

3 Does anybody have any questions for Mr. Dolan?

4 Mr. Kieve.

5 MR. KIEVE: I just have a comment. I've just
6 gotten a 30,000-foot introduction into the disciplinary
7 system.

8 THE COURT REPORTER: I didn't get the first
9 part. I'm sorry.

10 PRESIDENT HEBERT: I just got a 30,000-foot
11 introduction into the disciplinary system. It's part of
12 my training.

13 MR. KIEVE: You can also make me look better,
14 right?

15 I have a sense that the private reprimand does
16 serve a function, and if you did away with it, the law
17 of unintended consequences would give us an even bigger
18 backlog and make the system even more cumbersome.
19 That's just a perception.

20 MR. DOLAN: It's going to be one of two things.
21 You're going to have a greater backlog because you're
22 going to have more things directed at being disciplinary
23 with investigation that maybe shouldn't be there. We do
24 not have tried in our civil courts, traffic infractions.
25 If we did, we'd never move a case, period.

1 Why don't we have them there? Because they're
2 at the level that can be corrected by a fine or a judge
3 who brings somebody in. That's what I would say. But I
4 also think, as I said, is you -- if you do this, fewer
5 days things will become addressed by the Bar because
6 people will be reluctant to make that an act of public
7 discipline if it's of a quality that could have been
8 corrected.

9 I hope I've answered your question.

10 PRESIDENT HEBERT: Jon Streeter, and then Jim
11 Towery.

12 MR. STREETER: Mr. Dolan, thank you. Your
13 comments are appreciated. I was thinking about a
14 specific issue as you made your comments about private
15 reprovals. I wanted to follow up with you about that.
16 And I guess it falls under the rubric of public
17 protection. We've been talking about this issue for
18 some years, and I'm just interested in your views.

19 Are you familiar with the LAP program that we
20 have here at the Bar? It's a program for -- to assist
21 lawyers who have alcohol and drug dependency problems.

22 MR. DOLAN: Am I familiar with it?

23 MR. STREETER: Yes.

24 MR. DOLAN: I'm intimately familiar with it
25 including the role of other bar.

1 MR. STREETER: Okay. Could you give us your
2 views on whether that program has a place within the
3 State Bar's mission.

4 MR. DOLAN: I think that has a paramount place.
5 If you look at the studies relating to alcoholism and
6 drug dependancy amongst professions, we are one of the
7 highest. Firefighters, lawyers, the stress that we
8 operate under, the hours that we work through, the ways
9 that people seek to relieve that stress make them
10 vulnerable.

11 Do I think it's important? I referred one of
12 my associates to it who came to me and said I'm not -- I
13 said, Why aren't you doing this work? I'm drinking too
14 much. I did two things. I took him to an AA meeting.
15 I sent him to the program. That young man didn't get a
16 DUI, did not harm my clients, did not disgrace himself
17 in the profession and is two years sober.

18 What is he doing now? He's making a
19 contribution. We got him off of the highway towards
20 destruction and on to the path to assisting people. So
21 I have to tell you that has a phenomenal role in the
22 protection of both our people, our practices in the
23 justice that we serve up.

24 I hope I've answered your question.

25 MR. STREETER: You have. Thank you.

1 PRESIDENT HEBERT: Jim Towery, and then Lowell
2 Carruth.

3 MR. TOWERY: I just want to make a brief
4 informational comment to the members of the Task Force
5 about the subject of private reprovls. I listened with
6 interest to the testimony of Mr. Santomauro about it and
7 then the interviewed comments. Let me take it from the
8 theoretical to the practical for just a moment.

9 For the last the five years on an annual basis
10 we averaged about 90 reprovls according to statistics
11 for the State Bar Court. The discipline report
12 interestingly does not break it down between public and
13 private. I'm guessing that it's about half and half
14 from what I see crossing my desk.

15 What I'm going to do -- I think this is a very
16 good public-policy issue and irrespective of what the
17 Task Force does, we're going to look at it internally
18 and make a recommendation to RAD. On the one hand, it's
19 absolutely true as Mr. Dolan suggests, that a private
20 reprovl is a mechanism for a lawyer with minor
21 misconduct to conceive misconduct, and yet not have it
22 be part of the public disciplinary record. It's another
23 tool in our arsenal to deal with discipline and to
24 achieve resolution in cases.

25 On the other side, it has the detriment of not

1 being visible to the public, and I would also point out
2 that we have other tools in our arsenal, such as warning
3 letters that can achieve the same purpose.

4 So we will look at it, and we will report back
5 to RAD. Thank you.

6 MR. DOLAN: May I address that, Mr. Towery.
7 I've got the letter from them. I manage a law firm. I
8 get the letter if one of my people get written up. I
9 was given a letter -- I'm going to be very frank with
10 this group. Part of my job is getting as close to the
11 line sometimes as possible without going over it.
12 That's the role of an advocate on the plaintiff's side.

13 I had a judge who sanctioned me \$1500. I wound
14 up in your office. I had -- a bar investigation was
15 opened. I hired a lawyer. It cost me \$7000 to make
16 sure that I addressed it before it ever got into --
17 further into the disciplinary system.

18 I received a letter of case closure. The case
19 closure did not say that the Bar sanctioned my
20 activities such as they thought it was appropriate. It
21 indicated to me that they thought that I should consider
22 adjusting my behavior in the future. And that this
23 letter would remain attached to my bar number such that
24 if ever again I ran afoul, they would know, in essence,
25 what they had tried to tell me earlier. And this was a

1 relatively minor issue, but the valve a \$1500 sanction,
2 triggered it. That cost me \$10,000. If you think I
3 didn't pay attention, you're talking to the wrong guy.

4 And, Mr. Towery, your letter was signed by you.
5 So when you go back and look it up, you'll see that I
6 told the truth.

7 Now, most people wouldn't tell you that because
8 it's supposed to be a matter of shame that I got
9 disciplined or that I got the letter. When I got that
10 letter, I was not overly confident. I was quaking in my
11 boots and I called Richard Zitrin. First thing I did.
12 Okay. And those of you know him, know what he does.

13 So I would tell you that this myth about this
14 unreported versus reported and not changing behavior,
15 the people who actually move from the -- up the
16 disciplinary ladder, are the people who don't respond to
17 you. They ignore you. They show arrogance. They fight
18 against things that they should admit they did wrong.
19 And you come on down on them like a ton of bricks. So
20 the bad actors are often given the opportunity to mend
21 their ways and they ignore you, and you do not ignore
22 them.

23 PRESIDENT HEBERT: Good observations. Thank
24 you.

25 Lowell.

1 MR. CARRUTH: Yes. Mr. Dolan, your reputation
2 is excellent in the trial world. I'm in that business
3 usually on the other side of where you are. And I want
4 -- and this is just a comment. I, like you, don't agree
5 that the civil lawyers cause most of the problems in the
6 court. Where I'm from, we have very, very few problems
7 with the civil lawyers. I just wanted to make that
8 comment. And I'm glad you said so.

9 MR. DOLAN: And our judges, 52 judges in San
10 Francisco, 20 of them sit here, 30 of them in the civil
11 court division, I know them all by name. If I mess up
12 in courtroom A, there's what we call backstage. And
13 what do the judges tell us at the bench/bar conference?
14 We talk about you backstage. When you do well, we talk
15 about it. When you screw up, we talk about it.

16 So I do think that there's a lack of civility
17 in the civil law and I thank you for that because I know
18 you too. And I know how committed we are and ABOTA is
19 to training on civility to preserve the reputation of
20 our Bar.

21 If there are other questions, I'm happy to
22 answer them; but otherwise, thank you for allowing me
23 the opportunity to speak.

24 PRESIDENT HEBERT: Mr. Dolan, thank you for
25 being patient with us and sitting through the morning.

1 MR. DOLAN: I've got to go to court now.

2 PRESIDENT HEBERT: And so we're going to recess
3 for lunch. We're going to have to come back a little
4 late. Let's get back at 1:30.

5 For members of the public, you can go ahead and
6 leave the building and just be back here at 1:30 if
7 you're going to speak.

8 For the members of the Task Force and the Board
9 and staff who are here, we've got lunch next door.

10 (Lunch recess taken at 12:49 p.m., to be
11 reconvened at 1:30 p.m.)

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1 AFTERNOON SESSION

2 (At the time of 1:35 p.m., the public
3 hearing was reconvened.)
4

5 PRESIDENT HEBERT: I'm going to, first of all,
6 just welcome everybody. And then let me make a few
7 remarks about how we're going to run things this
8 afternoon. If I can find my remarks -- a few remarks.

9 Okay. So, ladies and gentlemen, welcome to the
10 public hearing of the Governance in the Public Interest
11 Task Force. And I just wanted to let you know how we're
12 going to run things this afternoon. We've got a number
13 of speakers, and we are going to allot everybody --
14 we've got a number of speakers, so we're going to allot
15 everybody ten minutes. And if it's -- if it makes
16 sense, then we're going to expand how much time you get.

17 I want just all of you to be clear that to the
18 extent you've submitted something in writing, you should
19 -- you should assume that the Task Force has read it, is
20 familiar with it; so you don't need to repeat what you
21 put in the written statements. I think it's better --
22 we found the Task Force, if we can engage in a dialogue
23 and ask you some questions and get your -- and make sure
24 that we are able to explore things and get -- get your
25 answers.

1 As you can see, we have a court reporter here.
2 And the court reporter is going to transcribe all of the
3 oral testimony that's being presented. And this
4 testimony, together with any written materials that have
5 been received, will be made available, or have been made
6 available, to the full governing Task Force, the members
7 of the Board of Governors, and will be made part of the
8 record available to the Supreme Court, the Governor and
9 the Legislature with the submission of the Task Force's
10 report in May of 2011.

11 If you have any supporting documentation that
12 you're going to refer to, then please make sure that you
13 get it to the court reporter, to Cathy Torney who is in
14 the back of the room, or to Amy Anderson who is sitting
15 here on my right.

16 Now, some of you may be here to discuss your
17 experience with a specific attorney. While it's not the
18 purpose of this hearing to register complaints, we
19 understand that you have taken time from your busy
20 schedules to be here. And we respectfully request that
21 if you do want to discuss an experience with a specific
22 attorney, and you filed a Complaint with the State Bar's
23 Office of the Chief Trial Counsel, if you could please
24 refrain from using the attorney's name.

25 Until the Complaint is filed with the State Bar

1 Court, your complaint is a confidential matter; and
2 because these transcripts will be made available to the
3 public, we appreciate your cooperation by not mentioning
4 the attorney by name, but please feel free to discuss
5 your experiences.

6 If you haven't previously registered to speak,
7 then you should see Amy Anderson who is here on my
8 right, Cathy Torney in the back of the room or one of
9 other staff members at a break; and we'll set aside time
10 for you to speak either before -- sometime before the
11 end of the day.

12 As I said, we're going to ask you to complete
13 your testimony within ten minutes. And we're going to
14 make sure that everybody has time for their views to
15 air, and for us to ask you questions, and for you to
16 answer the questions. And we will notify you when your
17 time is up.

18 I will call out names in the order in which
19 you're scheduled to speak to ensure that the court
20 reporter is able to take everything down. Come to the
21 front of the room when I call your name. We have a
22 microphone there.

23 Please try to make sure you speak into the
24 microphone. You need to speak slowly. You need to
25 speak clearly so that she can get down everything you

1 say. If you talk too fast, or if you interrupt, or we
2 talk over each other, she is not going to be able to get
3 a clear record. So it's very important for us to have a
4 clear record.

5 Everything that you say will be made part of
6 the public report. We're -- we have given the court
7 reporter a list of everybody who is speaking so we make
8 sure that we -- we get your name spelled right.

9 When you come up, please identify yourself so
10 that we have got that clear on the record.

11 And then, just a reminder, to please turn off
12 your cell phones. And that's for a couple of reasons.
13 One is because we don't want any interruptions from the
14 cell phones today. And second, we find that the cell
15 phones interfere with the microphones. We get a lot of
16 feedback over the loudspeakers. Okay.

17 All right. So let's get started. Our first
18 speaker of the afternoon is Daniel Passamaneck, who is
19 president of the Attorney Bargaining Unit of the
20 employees of the State Bar of California.

21 MR. PASSAMANECK: Good afternoon.

22 PRESIDENT HEBERT: Good afternoon. Welcome.

23 MR. PASSAMANECK: Let me start with a
24 correction. I -- I am an attorney, but I'm not exactly
25 the president of the Attorney Bargaining Unit. I am the

1 president of the Northern California Chapter of the
2 Bargaining Unit, consisting of both the attorneys and
3 general unit staff. There is another president for the
4 Southern Californians, so I want to make sure the record
5 is clear on that.

6 Also, I somehow formed the understanding that I
7 was going to have to fill a half an hour here, so I'm
8 going to try to cut two-thirds out of what I have here.
9 But I -- I beg your indulgence as I shuffle in that.

10 PRESIDENT HEBERT: And I -- and I apologize.
11 We just had some other speakers sign up today, and so
12 we're trying to compress everybody into the afternoon.

13 MR. PASSAMANECK: I'm -- I'm trying to play by
14 the rules.

15 I am a grants administrator for the State Bar
16 of California. My cube is about 15 feet below
17 Mr. Tenenbaum there -- or above you -- above you.
18 You're right. Thank you.

19 And I've been president of the Northern
20 California chapter for -- well, since last April.
21 However, since I started here in 2001, I've been a
22 member of the bargaining team that helps negotiate the
23 contract that governs the conditions of employment for
24 the employees here. And that is to say, not the
25 managers, not the confidentials, but the attorneys in

1 the general unit staff. That's about 370 people all
2 told north and south.

3 You've had a chance to look at our position
4 paper. I would state that it is a point of departure, a
5 place to begin a conversation. And I'll try not to
6 reiterate too much of what's been said there.

7 It is the product of a group effort by the
8 executive boards, north and south. And I have the
9 apologies of all of them that they can't all be here to
10 make this presentation.

11 I was fascinated to read the comments that have
12 been submitted so far. They certainly run the gamut
13 from scholarly legal opinions and research to heartfelt
14 personal expressions. However, I find that they -- we
15 found that they tended to focus primarily on only one or
16 two aspects of Bar operations, and often seem to neglect
17 the issue of governance per se.

18 However, the charge of the Task Force is to
19 address governance in the public interest. And I'd like
20 to try to focus attention directly on that issue.

21 The Bar has certainly had its share of
22 governance challenges over the years. And I am in the
23 debt of the Los Angeles County Bar Association for
24 providing me with 55 pages of history, that I'm sure is
25 a -- a pretty good scratch on the surface, but really

1 just the beginning of that conversation.

2 However, having read all of that, I was
3 surprised to see so many comments coming in saying,
4 Well, it's not broke, so we shouldn't fix it. With all
5 respect to those commentators, we think that there are
6 issues that deserve attention, if not remedy.

7 And, frankly, the fact that we're all here
8 today makes us think in the bargaining unit that the
9 Legislature thinks so too.

10 And if we come back and say, Well, we decided
11 everything was fine, we are concerned that there may be
12 a remedy imposed that may not be as -- as convenient as
13 any of us would like it to be. It may not work for the
14 purposes that we have in mind as well as it could. So
15 I'm really hopeful that this is the beginning of a
16 process that has really tangible results.

17 The foundational question, as I began, is:
18 What is governance? I work with governance all the time
19 as a grants administrator talking to the boards of
20 nonprofits that receive funding through the State Bar.
21 And I'm finding that governance is a very flexible
22 concept.

23 But with regard to the State Bar, there are two
24 levels. The Bar governs the legal profession. The
25 Board of Governors governs the Bar. It's our belief

1 that the task today is to focus on the latter so that we
2 can excel at the forum. We do a good job of governing
3 the State Bar, so the State Bar can do a good job of
4 governing the profession.

5 When I tried to understand or get a handle on
6 what governance was, our research revealed that one of
7 the best sources of information was your Bar book --
8 your Board book. Excuse me. The Board book has a
9 wonderful description of what governance means at the
10 State Bar.

11 In Staffing Article 3, Lines of Authority, the
12 governing functions are strategic direction, resource
13 development, financial accountability and leadership
14 development. If we can accomplish those and really be
15 good at them, then the management functions, which are
16 program planning and implementation, and administration
17 should follow right along.

18 These are criteria that are reiterated in other
19 places in the Board book. So it's clear that this
20 entity has a really good sense of what it should be
21 doing. The question is, how can it best accomplish
22 that?

23 The second half of the question is, what is the
24 public interest? It's an extremely broad concept. But
25 looking to the Task Force's legislative charge, there's

1 two clauses. And the first is to enhance the protection
2 of the public. Second is to ensure that the protection
3 of the public is the highest priority in the licensing,
4 regulation and discipline of attorneys.

5 Our understanding -- our reading of this
6 suggests that the second clause enumerates components of
7 the first clause. But the first clause is much broader,
8 open-ended and intentionally so because the public
9 interest is not something you want to try to nail down
10 into some very specific pigeonhole.

11 That charge was not created out of whole cloth.
12 It derives, as far as we can tell, from B&P 6031A, which
13 says that the Board may, in all matters pertaining to
14 the advan -- make aid in all matters pertaining to the
15 advancement of the science of jurisprudence towards the
16 improvement of the administration of justice.

17 You've got a lot of power, a lot of scope to
18 consider what the State of California needs from the
19 State Bar. And this, again, is reiterated in the
20 mission and in the goals. They're all in your Board
21 book, so we're not going to go back over that again.

22 Most of the comments that we've reviewed focus
23 in just on one or two things that the State Bar does,
24 and often on a very operational level. But we think
25 that given the legislative charge, the statutory

1 foundation and the Board book itself, you have got a lot
2 more to look at than what most of us have shared with
3 you.

4 There are four areas where Board governance can
5 directly impact the efficacy with which the Bar fulfills
6 its responsibility to the profession and to the public:
7 discipline, access and education, fiscal policy and
8 organizational management.

9 Now, as far as discipline, the Board oversees
10 discipline. The Board does not impose it. So it's a
11 question of setting the right policies and making sure
12 that we've got the staffing to execute those policies.

13 As far as access and education goes, I think
14 California is a national leader in helping to make
15 justice a reality for the largest possible number of
16 people. Of course, there's more work to be done, but
17 I'm hopeful that the history is prelude for further
18 growth.

19 Fiscal policy has been a focus of some concern
20 for the bargaining unit for some time. State Bar is
21 neither private industry, nor is it a nonprofit. This
22 is a public agency and, therefore, has its own set of
23 concerns and unique circumstances to manage.

24 And it has seemed to the bargaining unit, over
25 the past decade or so, that some of the Board

1 determinations and actions have derived from a private
2 enterprise perspective rather than a public agency
3 perspective, which has had a negative impact on our
4 ability to do our work, as well as our relationships
5 with the other entities with which we have to do
6 business, the Legislature primarily.

7 But it goes down to friction that has been
8 perceived, if not in reality, at least in perception,
9 between staff and the Board, between the Board and
10 Sacramento. Fiscal policy is something that we think
11 the Board should ensure. It is equipped to address with
12 regard to the specific concerns of the State Bar and not
13 drawn from major law firm experience or from managing a
14 nonprofit.

15 PRESIDENT HEBERT: Hey, Dan, I'm going to give
16 you another five minutes.

17 MR. PASSAMANECK: Have I already used up my
18 ten?

19 PRESIDENT HEBERT: Yeah.

20 MR. PASSAMANECK: Okay. Well, I'm on page 6 of
21 9, so I think that that's maybe even generous. Thank
22 you.

23 PRESIDENT HEBERT: Okay.

24 MR. PASSAMANECK: As far as managing the
25 organization, we are concerned that the Bar ensure

1 responsible stewardship of our resources. This would
2 include the control of expenditures and losses. And I
3 could give examples of places where we have thought that
4 subcontracts were very large. Some funds were lost that
5 should not have been lost.

6 We are concerned about idle assets: Floors in
7 this building that have never been leased, substantial
8 amounts of funding put into an IT enhancement fund that,
9 at least as of January of last -- a year ago, looked
10 like there was 1.2 to \$1.7 million that we didn't know
11 why it hadn't been spent.

12 But the most important resource in our view --
13 and this should surprise no one -- is that we have a
14 great deal of experience, both with organizational
15 structure and with the public concerns that come to this
16 organization. And staff are on the verge of being
17 prejudiced by the manner in which the Bar has been
18 governed: wage stagnation, protesting management
19 policies in which a -- a policy is imposed regardless of
20 the impact it will have on individual lives or on the
21 productivity of the departments. And there is a great
22 deal of reliance on long-term temporary staffing, which
23 can't help.

24 One of the most important things we think would
25 be to attain greater control over the fee bill. To have

1 a one-year fee bill is to hamstring this organization.
2 We can't plan for the future. And so in order to attain
3 that control or to attain greater control, the Bar needs
4 to have a voice that is trusted and listened to. And
5 from staff perspective, we're not sure that's happened.

6 Finally, transparency is a critical concern.
7 Even if it winds up making no difference in what the Bar
8 does, it will have a critical difference in what people
9 think about the Bar. And as far as public protection
10 goes, if you can't trust the police, you won't go to
11 them. If you can't trust the State Bar, then you're not
12 going to trust lawyers and the profile of justice in
13 California will be impaired.

14 Bagley-Keene might be a good option. There
15 might be other good options, but Bagley-Keene is well
16 tested. So we think that that might not be a bad
17 choice.

18 Finally, with regard Board makeup, we have a
19 proposal in our submitted documentation. But, again,
20 it's one way to attain our hoped for result, that a
21 wider range of public interest will be represented.

22 And I'll just note that the -- the Board book
23 has a number of requirements for diversity on committees
24 and commissions, but there is no requirement for
25 diversity for the Board itself.

1 And it is a risk that should not be taken that
2 the current system will result in a Board that focuses
3 on the -- the constituency that elected it or that
4 appointed it, rather than the breath of California's
5 concerns and interests, including those of victims of
6 crimes, people who rely on legal aid.

7 And we would also like to see a greater
8 component that has deep experience with the management
9 of public agencies, especially fiscal matters.

10 I think that everything else I've got in my
11 notes already exists in the position papers, so I will
12 conclude. Thank you.

13 PRESIDENT HEBERT: Thank you. I just want to
14 make a -- a couple quick observations. Dan and I have
15 worked together in the legal services group with -- in
16 efforts to increase giving by lawyers to the Justice Gap
17 Fund. And, Dan, I really want to thank you for all the
18 hard work that you've done there.

19 MR. PASSAMANECK: Likewise, sir. Absolutely.

20 PRESIDENT HEBERT: We really appreciate it.

21 And then I just want to of -- sort of a -- it's
22 not really a cautionary word, but this is the Governance
23 Task Force. This isn't the Board. We're not here to
24 engage in any kind of discussions about collective
25 bargaining or the union's relationship with the Board

1 and management. So if we could just make sure that we
2 focus our attention on the mission of this Task Force as
3 opposed to extraneous issues, that would be appreciated
4 in your -- you know, our discussions here with
5 Mr. Passamaneck. Okay?

6 PRESIDENT HEBERT: Jon Streeter.

7 MR. STREETER: Dan, thank you very much for
8 your presentation and for explaining the thinking that
9 went into how do you put together the proposal that you
10 have submitted. I found the proposal for changes to the
11 governance structure to be very thoughtful, and would
12 want to have you amplify a little bit about exactly what
13 that is because you didn't really have a chance to
14 explain this.

15 We've talked a lot about representation of the
16 Board, and how people come to this table. That's one of
17 the -- been one of the main focuses of discussion. And
18 you have submitted a -- a quite detailed plan that
19 suggests a -- a restructured composition for the Board,
20 under -- the underpinnings of it, you -- you've
21 explained.

22 But if you could perhaps flush that out, I
23 think it would be of great benefit because that is,
24 after all, one of the main things we're particularly
25 trying to get at here.

1 MR. PASSAMANECK: It's our view that the Board
2 is well poised to evolve, but that shouldn't mean that
3 some sort of cataclysmic change. The geographical
4 representation we think still is very important, and
5 it's important both for substantive because different
6 parts of the State do have unique concerns that need to
7 be brought to the table.

8 It's also important for organizational reasons
9 because if lawyers are deprived of all voice in the
10 entity that governs them, they're going to revolt; it is
11 our impression anyway.

12 So our proposal begins with retaining one
13 member of the Board of Governors from each district.
14 That's nine individuals. They would be attorneys.

15 There are 11 other members who would be either
16 elected or appointed by a range of different entities.
17 You would get the Governor. You would get the Chief
18 Justice, the chair of the Judiciary Committee, of the
19 Assembly and the Senate. Someone from the District
20 Attorney's, someone from the Public Defender's, someone
21 from the Department of Consumer Affairs.

22 And I think as a significant change, there
23 would be a nonvoting observer, or member without voting
24 status, from a state agency that is charged with
25 political -- excuse me, not political, is a nonpolitical

1 position that undertakes a fiscal activity, such as the
2 comptroller. Another option would be the state auditor.
3 Somebody who is going to be able to listen to what's
4 going on and recognize if a ball is being hit, if
5 something hasn't been shared with the Board about where
6 the Bar's money is, where it's going, where it isn't
7 going.

8 Finally, we would encourage the Board to
9 include, on an observer basis, a member of staff.
10 Somebody who could bring in the perspective of how Board
11 decisions and policies will likely impact the actual
12 activities that the Bar is undertaking. And while
13 managers and supervisors and executives can come in and
14 talk about how they expect their departments are going
15 to be responding, the voice from the trenches, I think,
16 can't be replicated.

17 Is that a -- responsive?

18 MR. STREETER: Well, let me -- let me ask a
19 specific question and try to put a sharp focus on this.
20 Does your -- your proposal accommodates a wide range of
21 -- of viewpoints in terms of representational democracy,
22 and the Board table is -- it -- it responds to some of
23 the concerns that have been raised without being tied to
24 -- the geographic represent -- or election-based system
25 that -- that we currently have.

1 But would -- would your model have the
2 possibility of accommodating a majority nonlawyer
3 membership, or a majority lawyer membership depending
4 upon how the 11 appointments are being made?

5 MR. PASSAMANECK: I can answer that because
6 I've counted it up. He's got a maximum of eight
7 nonlawyers.

8 MR. STREETER: I think that that's correct. I
9 think that lawyers should ultimately have the final say.
10 I say I. I say that, in a representational capacity, we
11 believe that lawyers should have the ultimate say in how
12 this organization governs itself.

13 However, once again, this is a conversation
14 starter. And if there's a better way to ensure this
15 breath of perspective, we'd like to hear what it is.

16 PRESIDENT HEBERT: Michael, do you have a
17 question?

18 MR. LEVY: Jon asked my questions.

19 PRESIDENT HEBERT: Anybody else have questions
20 for Dan?

21 Mr. Passamaneck, thank you very much for
22 coming. Appreciate your coming.

23 MR. PASSAMANECK: Thank you very much for
24 having me.

25 (Recess.)

1 PRESIDENT HEBERT: In the meantime, I want to
2 go ahead and continue this afternoon. Our next speaker
3 is Allan Kaplan.

4 Mr. Kaplan, welcome.

5 MR. KAPLAN: Thank you.

6 I'm Allan -- my name is Allan Kaplan. I'm a
7 member of the California Bar in good standing. I guest
8 lecture both on a regular basis program in their
9 clinical program and lead panels there on capital
10 formation.

11 I'm here because I'm extremely disappointed
12 that I even have to be here to discuss an extremely
13 disappointing experience that I've had with the State
14 Bar Disciplinary Committee. I appeared a few weeks ago
15 at a -- an open panel that the Bar had, so some of you
16 here are familiar with my situation or the situation
17 we're about to discuss.

18 Just to give you a little detail, coming up on
19 two years ago, I filed a Complaint with the State Bar
20 regarding some inappropriate acts by an attorney against
21 a corporation that I was the president of, both against
22 the corporation and me personally, having nothing to do
23 with my standing as a lawyer.

24 It was a well-written Complaint. It was 17
25 pages, 25 exhibits. I thought there was some serious

1 inappropriate actions by the attorney. This included
2 circulation of a -- of a -- of what has been -- the
3 State Bar demonstrated was a false -- false resume, an
4 item the State Bar has previously disciplined other
5 attorneys for as an act of moral turpitude.

6 After about six months, I checked in -- well,
7 four months, I checked in with the Bar and was told it
8 was pending. And without going into it, just before
9 Thanksgiving, I called and said that it was -- a
10 response hadn't been received from the opposing party.
11 And the day before Thanksgiving, clearly in violation of
12 the State Bar's own review procedures, I received a
13 letter from one of your Complaint analysts completely
14 dismissing my Complaint whole heart, whole -- lifting
15 whole paragraphs from the respondent of response, and
16 fully ignoring over half of the items that I complained
17 about.

18 I appeared before your open hearing that fall
19 after this happened. And as a result of my appearance,
20 was told that my case would be reopened, which was dis
21 -- I also filed an appeal. It was disappointing in that
22 I'm a relatively empowered person, and it took me
23 appearing before an open hearing to get the -- the case
24 reopened as opposed to it hadn't been properly managed
25 in the first place.

1 And I then went through the appeal process.
2 Your -- one of your investigative analysts down in L.A.
3 went through it. Discovered actually some additional
4 items that I wasn't -- I was in a position to suspect,
5 but couldn't actually prove. And -- and he told me that
6 he discovered there were additional false items on his
7 resume.

8 It was then referred to the enforcement
9 division, there -- that analyst, and I'm leaving out all
10 the names as you requested.

11 PRESIDENT HEBERT: Thank you.

12 MR. KAPLAN: Then reviewed it, and said it was
13 a strong Complaint, and referred it to a deputy trial
14 counsel that works for you; I think, Mr. Towery.

15 And after, I don't know, maybe two months, I
16 called him just to see like, well, how is it going? And
17 uh -- uh, he told me he hadn't look at it yet. And in
18 the meantime, there was a case that had been -- came
19 down through the State Bar, that Rudy case that was
20 almost directly on point of one of my other items of
21 complaint. And I had sent a note saying, Well, there is
22 -- here is a little bit more fodder to consider.

23 And he then called me back several days later,
24 very nicely, and said that he wasn't pursuing the
25 Complaint; that he was issuing a warning letter because

1 he was under a lot of pressure to clear his backlog.

2 And that it -- it wasn't something that they elected to
3 pursue. And that if I liked, I could pursue it with the
4 -- Supreme -- there was a process.

5 We talked about it. He was -- I appreciated
6 the courtesy of calling me. And I said, Well, how about
7 some kind of a negotiated plea kind of thing? And he
8 indicated to me that the lawyer on the other side was
9 sufficiently difficult, that that wasn't possible.

10 And so that they were merely issuing a warning
11 to this attorney for -- I mean, this attorney used
12 published words like "nigger" and "fag," which the
13 original complaint analyst basically said was okay
14 language and not appropriate for the Bar to consider.

15 He circulated a resume that was patently false
16 in at least, one instance that I proved beyond any
17 doubt, because he said he worked for me, which I could
18 prove was incorrect. And in another instance, the State
19 Bar investigated or proved that a second instance of a
20 false resume was circulated. There were -- there were
21 several other items that were argue -- of -- of arguable
22 substance, but -- but -- but the false resume was pretty
23 indisputable.

24 So I called the Supremes to see what the
25 process was for appealing, and they laughed at the

1 clerk's office. And I called several times for
2 information, so I wasn't too encouraged to pursue that.
3 And under the, I guess, Code of Civil Procedure code,
4 that the deputy trial counsel used to make his decision,
5 I -- probably does have the discretion, as arbitrary and
6 capricious as it may be as to do what he did. So going
7 before the Supreme seemed probably kind of pointless.
8 And it's a lot of work, and so I elected not to do that.

9 I've considered going to the Legislature. I've
10 considered going to the press, and I may yet do that.
11 I'm on some personal terms with a State Supreme Court
12 Justice, and I may speak to her. But I thought you were
13 having this open governance hearing, and I thought that
14 this was a rational place, I guess. Scares me a little
15 if there's ever a complaint filed against me, what may
16 happen.

17 But I thought, nonetheless, it was worth
18 bringing up -- partially because I'm aggrieved, but more
19 importantly, it just speaks of a horrible system that
20 you spend \$40-some-odd million on this system. And a
21 complaint analyst because she's rushing because it's the
22 Thanksgiving holiday to clear her desk fully, dismiss my
23 complaint and ignore such a blatant act of moral -- just
24 completely not even engaged with it in her letter is
25 disappointing.

1 That duty trial counsel can then ignore
2 something that the Bar has previously fully prosecuted.
3 And I spoke -- I actually called one of the -- these
4 guys, and he was terrified when I called that his name
5 would even come up. That his career was damaged. And
6 he -- in his case, he said it was -- it was a negligent
7 mistake. In my case, this was a blatant clearly
8 deliberate act.

9 And that when he tried to negotiate a plea with
10 the State Bar, his attorney had advised him he'd
11 probably just get maybe a private reproof, maybe a
12 public reproof; but that would be pretty much it.

13 There would be no -- they were brokering
14 nothing. I mean, he was just prosecuted to the fullest
15 extent, and he was terrified. I mean, even having a
16 conversation with me seemed to terrify him, that I would
17 bring his name up, or that it would somehow get dredged
18 up.

19 And in this case where we had a clear act of
20 moral turpitude, a deliberate act, a deliberate
21 circulating of a false resume, went to a recruiter, went
22 -- went out into the public domain by an attorney, and
23 -- and then it was proved that he actually lied on -- in
24 another setting in that same resume, it just seems
25 wrong.

1 And, you know, if I was a less empowered
2 person, if I was Joe Citizen who wasn't a victim of
3 mortgage fraud or of somebody stealing from the client
4 trust fund, it doesn't seem like there's a whole lot of
5 justice being delivered by the State Bar Disciplinary
6 Committee. So, again, partially on my own -- for my own
7 purposes -- 'cause I'd still like to see this case
8 reopened or revisited 'cause it just astounds me, and
9 everybody that I know in the legal profession that I
10 discussed it with.

11 And -- and because I also think it's just
12 emblematic of something a little worse, I elected to
13 come and speak today. And I can -- just give me one
14 second. I think that's basically, you know, what I want
15 -- I mean, again it's sort of nothing for the victim,
16 the perpetrator skates. I mean, this attorney, who I
17 know, laughed all the way home after this warning
18 letter.

19 So if you have any questions, I'm happy to
20 answer them. And if not, thank you for listening.

21 PRESIDENT HEBERT: All right. Mr. Kaplan,
22 thank you for coming in. We have met before. I
23 remember you spoke at the discipline public hearing a
24 year ago, and we -- we've talked to each other since. I
25 think you were at -- it was either a BOLT alumni event

1 or --

2 MR. KAPLAN: It was a BOLT.

3 PRESIDENT HEBERT: Yeah. And so I appreciate
4 your comments. In considering a little bit about this
5 Task Force, I -- I guess you probably saw the request
6 for information that we sent out, and the fact that we
7 are a Task Force looking at governance, have you given
8 -- given any thought, based upon your personal
9 experience, about those questions, how you would answer
10 those questions? Anything that really takes your
11 personal experience to this general idea of what the
12 Task Force has stated as its mission?

13 MR. KAPLAN: Sure, I did. And I appreciate I'm
14 a little off point there. But this was about
15 governance, and governance includes the disciplinary
16 committee which is, I think, the largest chunk of the
17 State Bar's budget, and, obviously -- or not obviously,
18 but from my observation a major source of its focus and
19 efforts.

20 PRESIDENT HEBERT: It's about 80 percent of the
21 general fund, probably about 34 percent of the overall
22 budget.

23 MR. KAPLAN: And it seems to me that the system
24 is somewhat broken and a little arbitrary because under
25 Mr. Towery's predecessor, I believe from what I have

1 heard from several attorneys who specialize in Bar
2 discipline, who I contacted in connection with this
3 situation just to get some kind of color and background
4 as to how to approach it, it's been -- you know, the
5 system has been kind of wobbling from one extreme to
6 another, which doesn't speak well for consistency or
7 appropriateness.

8 And I know that, in the past, I had a BOLT
9 colleague who was, at one point, on the -- I guess the
10 Board of Governors -- I think in your seat, Jon -- who
11 is a local guy, Rod McCloud. And I know that he was on
12 the disciplinary -- this is seven or eight years ago,
13 maybe ten.

14 And I know that he tried to get a little bit
15 more consistency in the disciplinary process and a
16 little bit more rigor in it, and stop allowing attorneys
17 to serially skate. And I felt he was batting his head
18 against the wall when it was all said and done.

19 I'm not really sure what the -- what the answer
20 is. I think that -- that, you know, we have a quasi
21 public institution here. We have lame leadership that
22 cycles in and out. We have -- not in any negative way,
23 but it's sort of been entrenched staff that, like any --
24 any group of staff, tends to get entrenched and develop
25 certain interests and certain biases, that it's hard for

1 any one- or two-year layperson necessarily to do much
2 about except, you know, this -- that's where Mr. Towery
3 sits. It's been a revolving door from what I know over
4 the last years, which also can't help with consistency.

5 I'm not sure what the answer is. I mean, I'm
6 here just to present to you a situation that just cries
7 out for attention. And if you weren't already focused
8 on it, to try and focus a little bit more on it. But I
9 do -- and I'd be happy to be absent -- you know,
10 stepping back from my own personal Complaint here, happy
11 to help.

12 I just think that it's -- it's a situation that
13 -- I mean, we're all out in the real world. And we know
14 that -- that -- that -- you know, most lawyers at big
15 firms work pretty hard to be at the goal and -- and do
16 the right thing. And I think this litigators sometimes
17 play games because they know there is not much that's
18 going to happen. And sort of less scrupulous or
19 lower-tier guys just work the system knowing that it's
20 highly unlikely anything is going to happen; or they go
21 to the -- this Bar of attorneys that work with a --
22 people who receive complaints.

23 And, again, I interviewed a bunch of them in
24 connection with this situation, and it's kind of a scam
25 because they know how to work the system. They know how

1 to get to work. They know how to write the letters.

2 And I don't really know what the answer is other than it
3 doesn't seem like -- you know, the poor snook that feels
4 he's taking advantage of is really getting much justice.

5 That goes beyond the Bar beating in the State
6 Bar journal that it got a bunch of lawyers who committed
7 hundreds of mortgage modification acts to resign, after
8 they made, you know, huge amounts of money.

9 So I don't have a particular proposal for you
10 today, but I wanted to highlight the situation that I
11 thought was emblematic of an unfortunate situation that
12 does need, I think, attention -- and goes down to the
13 complaint analysis level, that that woman who wrote my
14 response could really get away with that, that there was
15 no proper review of her response. And her English was
16 -- was broken enough that it wasn't even that coherent.
17 So --

18 PRESIDENT HEBERT: Well, I do -- I'm just
19 thinking that if you do have -- if you do -- do take a
20 look back at our request, and we do have specific
21 proposals that you want to make, the committee is going
22 to -- the Task Force is going to be deliberating --
23 starting deliberations February 8th.

24 MR. KAPLAN: Okay.

25 PRESIDENT HEBERT: There's a couple more days

1 to get in something in writing. And we certainly like
2 to hear from you on those topics if you -- if you have
3 specific written recommendations you wanted to make.

4 Does any -- I -- I apologize. I've sort of
5 been hogging things here. Does anybody have any
6 questions of Mr. Kaplan?

7 Michael.

8 MR. LEVY: I just want to say, that I -- I
9 interpret your story and your critique of the system as
10 suggesting that the appropriate rule for -- in review of
11 a body undertaking the review of the Board and the Bar,
12 figure out how we can better improve public protection
13 would be better focused on reviewing the discipline
14 system to make sure that it works more effectively due
15 to the percentage of our time and effort and expense
16 that goes into that.

17 And that that for most members of the public,
18 is the only interaction they'll have with a government
19 body of the --

20 MR. KAPLAN: And, frankly, I think it's the
21 thing that's the most important for -- you know, I mean,
22 I know you were on the -- the application process. And
23 -- and I think by the way this same applicant misstated
24 his -- his -- his resume on his application.

25 But, you know, short of vetting people before

1 they become lawyers, which is obviously an important
2 item, I do think it's the most important item that the
3 Bar does because -- I mean, let's face it, lives are
4 seriously impacted by the actions of lawyers generally,
5 but particularly by unscrupulous lawyers who tend to
6 prey on the weaker who are less empowered or less
7 capable to know what to do to protect themselves. And
8 if they encounter the experience that I encountered, I
9 mean, it -- it's -- it's maddening. And, you know, and
10 it's -- it's a -- it's a pretty intense bureaucracy.

11 So coming back to your question, yes, I do
12 think that focusing on Bar governance is probably the
13 most important thing you could do from a public
14 standpoint, would be to focus on the disciplinary
15 committee -- disciplinary process and ensure that it is
16 more robust -- then ensure that it is more robust. And
17 that situations, like the one that I described, don't
18 happen because they just shouldn't -- and it happened to
19 me twice, you know, but -- both in the initial process
20 and in the appeal process.

21 So I guess I agree with you.

22 PRESIDENT HEBERT: All right. Well, thank you
23 very much. I appreciate you coming.

24 MR. KAPLAN: Well, thank you, and good luck.
25 And if I can put anything in place by the 8th, I -- I

1 will.

2 PRESIDENT HEBERT: That would be great.

3 MR. KAPLAN: All right. Thank you.

4 PRESIDENT HEBERT: Okay. I want to go ahead
5 and continue on.

6 Erin Baldwin.

7 Let me call that again. Erin Baldwin.

8 Okay. I will -- I will call Erin Baldwin again
9 later, but I think we should go ahead and pass to the
10 next speaker.

11 Royal Glaude?

12 MR. GLAUDE: That's correct.

13 PRESIDENT HEBERT: Glaude.

14 MR. GLAUDE: Glaude or Glaude, either way is
15 fine.

16 I realize that time has to be short, and I had
17 -- I had the -- or gave to the lady to hand out to Judge
18 Jeannine English, Dennis Mangers, yourself Mr. Chair,
19 Judy Johnson, Judge JoAnn Remke, Michael Tenenbaum, Beth
20 Jay, Gwen Moore, James Towery and Wells D. Lyman. So I
21 understand that, you know, what I was -- what I was
22 going to do is go through what I have -- I was going to
23 go through what I have, but I know we're pressed for
24 time, and there is other U.S. citizens or those within
25 the jurisdiction of the U.S. that are here also that may

1 not be employed by the State Bar or members of the state
2 government.

3 And if it's okay with J. H. Stuller, I talked
4 with her earlier, I can give her a copy of what I have
5 given you guys. And what I can't cover you should put
6 that in the records. Would that be okay?

7 PRESIDENT HEBERT: Oh, yeah. Do you have
8 something for the -- for -- yeah. Why don't you leave
9 that with Amy, and we will make sure that anything
10 you've submitted becomes part of the record.

11 MR. GLAUDE: Okay.

12 MR. LYMAN: Mr. President?

13 PRESIDENT HEBERT: Yes.

14 MR. LYMAN: Could we wait to make that
15 decision? There may be names mentioned in here that you
16 may not like to become part of the record.

17 PRESIDENT HEBERT: No. There -- there may be
18 things that there -- if it's part of the public record,
19 we have to redact. But in general, your written
20 submission will become part of the public record.

21 MR. GLAUDE: Let me ask a question. What
22 you're really telling me in one way is that you want to
23 censorship this record at this public hearing; is that
24 correct?

25 PRESIDENT HEBERT: No.

1 MR. GLAUDE: Well, my question was -- was not
2 to the committee, but to the State's witness, to give
3 her a copy of what -- this actually is not the copy.
4 It's the original. I didn't have enough money. I made
5 enough copies as I could, and I gave them to you guys.
6 And now, I'm asking if I can give the original to this
7 stenographer so she can type it up.

8 Now, if there is any investigation going on,
9 it's fine. And I don't mind that. But when I -- you
10 tell me you want to take what I have and censor and
11 cross out what you want, I look at that as censorship.

12 THE COURT REPORTER: You know, you have to
13 speak up. I'm sorry.

14 MR. GLAUDE: I'll try to speak louder.

15 PRESIDENT HEBERT: I want to make clear, she's
16 just a court reporter. There is no State's witness
17 here. And so if you have something that you want to
18 make part of the public record, I think you've handed it
19 out, and we have that. And if it's the same as what you
20 copied and handed out, the Task Force has that. And as
21 I made clear at the beginning, any written submission
22 will be made part of the public record.

23 MR. GLAUDE: Okay. Now, for the record, we
24 won't argue because I got to get on with what I have to
25 do here.

1 PRESIDENT HEBERT: Yes, please.

2 MR. GLAUDE: What I understood from my
3 experiences in the -- with respect to for the law and
4 it's administration of justice, that the stenographers,
5 when they take down dictations that can be witnesses for
6 the State, so whatever -- okay.

7 But anyway, my question is: Will you give her
8 a copy of what you have after you decide what you want
9 censored or crossed out?

10 PRESIDENT HEBERT: We're going to -- yes, I
11 we're going to give her a copy.

12 MR. GLAUDE: All right. Well, that's okay. So
13 my point has been well made where the stenographer will
14 get a copy of this, and I'll go ahead and keep my
15 original because it's important.

16 Okay. Now, I look at this in two ways: This
17 gentleman has been here sitting up to me. I respect
18 where he's coming from. And I look at him as the public
19 -- State Bar public because he belongs to the member of
20 the State Bar public membership corporation.

21 Now, myself, I belong to the United States of
22 American citizenship, which I have. And that public is
23 separated from State Bar's public. I've been here all
24 day. I've listened to attorneys, and I've -- I've
25 learned a little bit, and I -- I see what's going on

1 now.

2 Now, I want to switch gears, so we can come out
3 of the cubby hole of the state, and let's move into the
4 federal; because if it wasn't for the federal, the
5 state's wouldn't be. We would probably tear each other
6 up. I mean, I guess that's what history has taught so
7 the Confederacy and the Union can come together so we
8 can survive.

9 And this is somewhat of what's happening here,
10 where we have a public hearing about citizens and
11 noncitizens, separate, and members of our -- or licensed
12 members or certi -- certificate individuals who are
13 members of the State Bar. I'm putting it this way
14 because studying a little bit about history.

15 When I was in the U.S. Army in 1970, I asked my
16 drill sergeant -- I said, How can you do what you do and
17 stay sane? He told me, Because of the Constitution.
18 And that's one reason why I'm separating the State Bar.
19 I look at that as a public situation because the State
20 Bar does have a private situation, things they do up in
21 the stairs where like, I guess, when they do mortgage
22 things. You know what I'm saying?

23 And also employees of the State Bar, who may
24 have gotten caught embezzling \$676,000 that you caught.
25 Okay? So this is a different world here. We don't want

1 to go back to old Europe where the steps will eventually
2 -- may or may not go, where we looked at from prisons to
3 death camps.

4 Now, in 1986, I have filed a State Bar
5 Complaint. I won't mention no names now. I'm not here
6 to bash names. We're here to protect our Federal Bill
7 of Rights covenant that brought each of you here. I
8 mean, grandparents, great, great grandparents that you
9 sit here today and forget about it. But the rule of law
10 outlives -- or the spirit of law outlives us all.

11 And so -- and in saying that, in regards to the
12 -- the U.S. citizens Federal Bill of Rights, now, as a
13 citizen, there's a -- you guys have it, so I don't want
14 to go deep into this. You guys know this is very
15 serious stuff because when you go back to 1986, and our
16 United States Armed Forces veteran benefits have been
17 seized due to the Court system through the State Bar,
18 just taken by force. Okay. And that was in '86.

19 So that September 11, 2001 fate of the World
20 Trade Center, why not? Well, I mean, you're taking
21 benefits. That's money that's hurting us. And the
22 9/11, it happened. That's not a joke.

23 And also, too, the reason why I said don't put
24 9/11 here because attacks are still going on against our
25 United States Armed Forces veteran benefits. And we're

1 in 2011. So all we're doing is connecting the dots.

2 And everyone here, I want to say because of my
3 experiences in having to understand certain things, I
4 think that there is always two sides to a coin. Okay.
5 That's why I respect this gentleman right here because
6 he was saying, Hey listen. We're all the same. And I'm
7 public, state public corporation. I have a problem.

8 And this will take it because this person --
9 for us over here, the United States citizens, who is
10 actually the foundation. The Federal Bill of Rights is
11 the foundation for each and everyone of us being here.

12 And so I throw -- I throw out those three lines
13 in regards to attacks upon veteran -- United States
14 Armed Forces -- you have to remember, it's the United
15 States Armed Forces. And it's --

16 PRESIDENT HEBERT: Slow down.

17 MR. GLAUDE: Okay. It's our United States
18 Armed Forces benefits, the World Trade Center within the
19 United States jurisdiction. Same thing. Both have
20 money. I don't know the background. I really don't
21 want any background. I don't dot my lines. And still
22 attacks against our United States Armed Forces
23 government. This is -- this is a great problem.

24 Now, State Bar will send people around the
25 world to do that sort of -- how do they say it, they sit

1 up here and learn international law, dispatch in
2 different countries, so they can go ahead and get busy
3 on things. But that's only for your attention. Okay?

4 Now, in regards to the Federal Bill of Rights,
5 okay, when it comes down to California Business and
6 Profession Code, I believe that's 64 -- I guess it's not
7 here 60 -- 6064.1. And it's a rule that forbids,
8 whether it's a State Bar private company, or the State
9 Bar public company, or attorneys or lawyers, it forbids
10 them for engaging in advocacy to overthrow the
11 government of the United States of America.

12 Now, when you are attacking the Federal Bill of
13 Rights covenant, you're attacking the United States
14 Federal Government. You're attacking United States
15 citizens, you know. And I'm not really -- I want your
16 attention. I want you to understand that even though
17 you're all kids here because you were once a kid, you
18 were just brought up doing other rolls, this is serious.

19 PRESIDENT HEBERT: Now, that was your ten
20 minutes.

21 MR. GLAUDE: What about -- well, give me a few
22 more minutes because I have something here that -- you
23 know, I can understand you want me out. I've been here
24 for a while, and we started, what, about an hour ago?

25 PRESIDENT HEBERT: So.

1 MR. GLAUDE: And -- and -- and what do we have,
2 15 minutes?

3 PRESIDENT HEBERT: I'm going to give you two
4 minutes.

5 MR. GLAUDE: Okay.

6 PRESIDENT HEBERT: And then if anybody has any
7 questions --

8 MR. GLAUDE: All right.

9 PRESIDENT HEBERT: And then --

10 MR. GLAUDE: What you have questions?

11 PRESIDENT HEBERT: -- we'll go on to the next
12 --

13 MR. GLAUDE: Oh, good.

14 PRESIDENT HEBERT: -- go on to the next people.

15 MR. GLAUDE: Good. That sounds good.

16 Okay. So the one part is -- is -- I have
17 questions on -- in there, so I hope to answer them.

18 The one part is: In regards to the Business
19 and Profession Code 6101 and 6102 dealing with moral
20 turpitude in a disciplinary context, which as I
21 understand is, of itself, a law which is supposed to
22 ultimately be cited by the Supreme Court. Okay.

23 Now, I mention this stuff because the RICO
24 activities dealing with -- with Robert Blakely, Jr., who
25 wrote the RICO statutes, I believe it was in 1986. It

1 was published in the National Law Journal in regards to
2 should State Bars be prosecuted under the RICO statutes?

3 And because of the influence that the states
4 have in -- in their -- in their operations here, they --
5 they said no. However, Robert Blakely, Jr., had made it
6 clear that if a statute only concentrates on organized
7 crime, then it would be discriminated. If the shoe
8 fits, wear it.

9 So another question to you, Mr. Chair, if --
10 since the State Bar in regards to the RICO activities,
11 which they do through the disciplinary system, meaning
12 that attorneys do things. They have a connection to the
13 merger, or I like to call it a marriage, with the
14 judicial branch of government because separation of
15 powers is not the State Bar. It's between the Congress
16 or Legislature, the executive and the judicial branch.

17 PRESIDENT HEBERT: Okay. I think --

18 MR. GLAUDE: Okay. Okay. I got -- in other
19 words, I'll just --

20 PRESIDENT HEBERT: Your time is -- your time is
21 up.

22 THE WITNESS: I understand. And -- and this is
23 exactly what I mean by public.

24 Thank you.

25 PRESIDENT HEBERT: Okay. Does anybody have any

1 questions?

2 Well, we've got your submission, and you've
3 made your statement for the record. So thank you very
4 much, sir.

5 MR. GLAUDE: Oh, just one -- one more thing I
6 forgot. This is more important, and this is a very
7 serious question, if I may, please.

8 Why shouldn't the Internal Revenue Service have
9 auditors to investigate the State Bar? I'd like to have
10 that in the record, and I'd like you to answer that.
11 Thank you.

12 PRESIDENT HEBERT: Great. Thank you, sir.

13 Okay. I want to go ahead -- I don't think
14 anyone wants to take a break, so I'm going to go ahead
15 on to the next speaker again. The new speaker is to --
16 ten minutes, and we have -- the next speaker is Patrick
17 Missud?

18 MR. MISSUD: Yes.

19 PRESIDENT HEBERT: Welcome.

20 MR. MISSUD: Thank you. Good afternoon, Task
21 Force. All right. I'm here, more or less, to pro -- to
22 provide a little bit of color, as Mr. Kaplan did just a
23 few minutes ago regarding his own personal grievance.

24 I've have several that I have filed with the
25 State Bar, and none of them seem to have been picked up

1 or investigated to any degree. I'm going to pretty much
2 harp on the first point of the first question that the
3 Task Force has requested our input on, as Mr. Tenenbaum
4 said, a review of the disciplinary system.

5 Now, in one particular grievance that I had
6 filed several years ago was against an attorney who had
7 filed an ex parte motion claiming to have contacted me
8 in good faith. I had supplied the State Bar with
9 evidence proving, in fact, that he had not used
10 good-faith attempts and had contacted me.

11 I had six or seven witnesses' declar --
12 witnesses' statements transcribed in official records
13 from a recording device that I had at my office. It had
14 stated that I was out of town. The attorney heard them,
15 the outgoing message, as had my witnesses. They
16 prepared declarations to that effect.

17 The attorney had also filed in his ex parte
18 motion the few exhibits that I had sent to his client.
19 Therein were my cell phone records. Over half of the
20 documents contained my cell phone number.

21 At issue was receipt of information or
22 nonreceipt of information, and had to deal with my
23 contact numbers. This attorney made a statement in his
24 pleadings that he had tried to contact me in good faith.
25 All of my other clients had heard the same messages he

1 had. Everybody knew I was out of town. Everybody knew
2 how to reach me by cell except for this attorney.

3 Even with being confronted with this evidence,
4 the State Bar claimed that there was nothing to
5 investigate, and that the attorney did not perjure
6 himself in those four documents.

7 There was another grievance that I had filed
8 against another attorney who had filed a frivolous case
9 against a -- a friend of mine. Happened to be a general
10 contractor, as am I. My friend called me up. He wanted
11 me to do a site inspection. We both went.

12 I reviewed the construction project and the
13 contract. When you file a construction claim, you are
14 supposed to append to that a copy of the contract. That
15 contract was drafted by the plaintiff. And within the
16 pleading, she had claimed that she had fulfilled all
17 prerequisites to that contract; and that the defendant,
18 my friend, had breached, and that she was thereof
19 damaged.

20 My inspection of the project -- and I can also
21 add that I'm a contractor, State Licensing Board
22 industry expert. I routinely go out to inspect such
23 projects for defects.

24 The result was that, when I did the site
25 inspection, that the precondition -- that the plaintiff

1 had actually breached the contract by not fulfilling her
2 parts of the contract. That there were no defects
3 whatsoever, and therefore she was not damaged.

4 Now, I'm not the judge, and I'm not a jury in
5 this. However, the papers that the plaintiff had filed
6 had proven our case for us. I took pictures to prove
7 that the conditions that the plaintiff herself had
8 claimed were fulfilled were, indeed, not.

9 Confronted with that evidence, the State Bar
10 never picked up the case and did not investigate this
11 attorney. I had demanded from that attorney a copy of
12 his inspection report from his licensed professional
13 claiming three times the amount of damages to this
14 property.

15 There was a contract to remodel the property
16 for 45,000. She was claiming 150,000 in damages to undo
17 what was done and then to redo it. And, apparently, to
18 redo it a second time.

19 I demanded a copy of this report, which I did
20 not -- which I knew did not exist because no licensed
21 contractor would have ever been able to come up with
22 that number of defects at this project, especially since
23 I couldn't find one.

24 And he refused. He wanted to drag us through a
25 very long lengthy discovery process. That would be

1 expensive and bankrupt my friend. He ended up going to
2 mediation. I think he spent about \$30,000 on a bogus
3 frivolous claim. And it's proven to be just that.

4 That could have been nipped in the bud very
5 quickly with a State Bar letter saying, Please furnish
6 Mr. Missud a copy of this inspector's report; but that
7 never happened.

8 There was another one when I was personally
9 sued in my capacity as a general contractor. Luckily, I
10 knew how to defend myself. I knew how this system
11 worked.

12 To preemptively prevent a long dragged out --
13 dragged out the discovery process, I filed seven
14 declarations, along with our answer to their frivolous
15 Complaint.

16 This attorney's client had run into a
17 construction project, assaulted a gentleman onsite who
18 happened to be the owner's father, a Senior. He did
19 injury to the Senior, and yet the plaintiff was claiming
20 that the Senior had assaulted him.

21 Of course, the assault took place at the job
22 site so that they could implicate insurance provisions
23 from me, the general contractor, and the homeowner --
24 home owners' insurance.

25 So he claimed in his pleading that he had been

1 assaulted. Our seven declarations proved otherwise.
2 Luckily, I also got the police to forward or give me a
3 little bit of information.

4 Apparently, the plaintiff had a criminal
5 record. So confronted with this information, the State
6 Bar did not act to investigate the attorney who was
7 bringing the frivolous case.

8 Now, this attorney, I had met with at a law and
9 motion hearing. Her -- her client had bolted after he
10 realized I had registered seven declarations. He knew
11 had been caught in lies and she couldn't find him for
12 three weeks. She yet pressed on to keep that case
13 active, so that she could make her money.

14 At that hearing, she told me: Why don't you
15 tender it to insurance?

16 The reason that I told her that I had no
17 intentions of tendering, nor did my client, was because
18 our rates would go up, and so would yours.

19 She said, So? She knew she had a frivolous
20 claim. There were seven declarations proving that her
21 client was a fraud. And yet, she wanted to press on.

22 There was another case. It was another
23 attorney against whom I filed a grievance. He has
24 denied receiving certified mail. Right now on your
25 computers, you can look up USPS.com, and nail down to

1 the second that certified mail is received. He did this
2 twice.

3 There is another one. I want to talk about
4 discovery abuses. I have not yet filed a grievance, and
5 I'm not going to because nothing will come of it. I'll
6 be wasting my time. This is in the official
7 transcripts.

8 I am crossing-examining a witness who happens
9 to be a general contractor, as am I. This guy has more
10 experience than I do, and yet I am considered a
11 Contractors Board industry expert. This guy works on
12 multi-million dollar civil works projects. I do not.

13 This guy is overqualified to answer the very
14 simple questions that I am posing, such as: What is a
15 two-by-four?

16 His defense attorney pipes up, says, This
17 witness is not testifying as an expert. He is merely a
18 witness. I explained to the defense attorney, this guy
19 is so qualified, he should be able to tell me what a
20 nail is, what a screw is, what a two-by-four is.

21 This dodging, obfuscation, waste of time,
22 harassment, lasted for two to three hours. The bills
23 were mounting from my client almost going bankrupt.
24 That's the defense position, though. The insurance
25 defense firms, that's what they'll do, they'll wear you

1 down until you run out of money. It's got nothing to do
2 with justice. I've come to the State Bar for a little
3 help. Again, nothing happens.

4 I have another one.

5 PRESIDENT HEBERT: Okay. You've got about
6 another minute before I ask open it up to questions.

7 But go ahead.

8 MR. MISSUD: The piece de resistance, it's a
9 very recent case that I've been working on. We were
10 compelled into mandatory arbitration. And as many of
11 you attorneys know, mistakes of law, in fact, are not
12 reviewable, and you cannot appeal said decisions
13 sometimes, unless they're based in fraud.

14 Now, as it just so happens, that case happened
15 to be a construction defect case, in which I've got 20
16 years experience in the construction field. I'm also an
17 engineer.

18 I was cross-examining the defense expert, who
19 was an architect and general contractor. I caught the
20 defense expert in no less than 63 lies, 6-3. You can't
21 overlook that. And these are lies such as, 32 equals 36
22 because he took apart -- taken a measurement twice. And
23 apparently, he said, For sure, it was 32 inches. A
24 couple days later when he forgot his testimony, he said
25 it was 36 inches.

1 He also said that the particular item cost
2 \$1476 to repair in his written estimate. But in oral
3 testimony, he said 4,000. He claimed in oral testimony
4 particular components existed, and then it disappeared.
5 He said, at one instance, that another component did not
6 exist, and then it magically appeared. You can't make
7 this stuff up. There is no gray area.

8 You can't say that there was a misunderstanding
9 of the question, that, well, shades of gray. No. 1476
10 is not 4,000. \$8,000 is not zero dollars in the final
11 cost estimate. The arbitrator based his decision on 63
12 lies.

13 We opposed. We asked him to correct his
14 decision because it was based in defense expert's lies.
15 He refused. It went to confirmation to the Superior
16 Court. It was rubber stamped. It is now being
17 appealed.

18 I also filed a grievance against this
19 particular arbitrator, who is a Bar licensed attorney.
20 That letter came back. We are not going to investigate.
21 There was another attorney also on that case. The same
22 thing: He is the one that got his defence expert to
23 lie. Big-money case, very politically sensitive.
24 Nobody wants to get their hands dirty. Nobody wants to
25 admit that there was fraud. It continues to be rubber

1 stamped now.

2 PRESIDENT HEBERT: I'll give you a couple --
3 about two-and-a-half minutes overtime. So if you can
4 just wrap up, and we'll see if there's any questions.

5 MR. MISSUD: Right. Fine. If attorneys are
6 not adequately regulated, and there aren't ramifications
7 for illegal conduct, they can become arbitrators and
8 mediators. They can do substantial injury to consumers.
9 Those attorneys can then also become judges, who can
10 then do even more injury to consumers.

11 We've got a culture here. Unless you check the
12 bad behavior, it will pervade the judicial system. And
13 I'm afraid that we may already be at that point.

14 This is the most important hearing that I've
15 ever had in my five years as a practicing attorney. And
16 I've been licensed for ten. The policy that you make
17 here can bring the legal profession back to where it
18 should be as a noble profession and not one that is
19 reviled by most of society.

20 And that's all I have to say.

21 PRESIDENT HEBERT: Thank you, sir.

22 Are there any questions?

23 I see none. Thank you very much for your time
24 today. We appreciate it.

25 Okay. We've got a couple people who signed up

1 before that. I want to call Erin Baldwin again. Erin
2 Baldwin?

3 Okay. I don't see any response.

4 Okay. Our next speaker is Connie Valentine.

5 Welcome.

6 MS. VALENTINE: Thank you. Thank you very much
7 for hearing the members of the public. I am a
8 non-attorney from a family of attorneys, some of whom
9 are very ethical. I'm also the cofounder and public
10 policy director of the California Protective Parents
11 Association, a statewide group that assists litigants in
12 family court who are attempting to protect their abused
13 children.

14 We concur with increasing the ratio of citizens
15 on this governing Board because that is sort of the
16 foundation of our country, is citizen review to prevent
17 abuse of power. In fact, we would like to see a
18 slightly over 15 percent. It's very difficult to
19 regulate oneself. And it's very difficult to regulate
20 people who look like you, act like you and behave like
21 you. Diversity is quite important.

22 We noticed that the County Bar attorneys were
23 the ones who wanted to maintain the status quo. And we,
24 as citizens who are not attorneys, would like to see an
25 increase in citizens.

1 We also agree that the discipline system is
2 probably the most important thing that we, as citizens,
3 believe that the State Bar should be looking at. The
4 private reprimands, they would work for small issues.
5 But for a large issue, a private reprimand would not
6 seem to me to be particularly effective.

7 There might be a money level on it, or it --
8 for example, there were problems that reached over 500
9 or \$1,000, some sort of money level, after which that
10 loss would become a more important issue than a private
11 reprimand.

12 We also believe, contrary to what the Sacra --
13 the Santa Clara Bar Association people were talking
14 about, that this is a constitutional issue that the
15 Legislature and the Governor should be involved in
16 because the three branches of government are created
17 that way to have checks and balances, not to act as
18 silos. So we believe also that he be 27 than 64, it was
19 -- came from problems, rather than everything going fine
20 with the disciplinary State Bar system.

21 So that those are the recommendations that we
22 would concur with. But Mr. Levy wondered about what the
23 problems were. He seemed to feel that the problems
24 hadn't been fleshed out enough first before the
25 recommendations had begun.

1 So we would like to say just a couple of words
2 about what we see as problems. Our focus is family
3 court, which is a growing civil court matter. But it
4 appears to be a bit of a backwater in -- in the ethical
5 area.

6 The complaints to the State Bar, we receive --
7 actually, we have become sort of the complaint
8 department for litigants in family court. They call us
9 because they don't have any other voice for complaints.
10 And the complaints to the State Bar don't even seem to
11 register enough to have a letter in return.

12 Here's some of the complaints that we hear from
13 litigants on a weekly basis. Family law attorneys take
14 enormous retainers from 3,000 to 20,000 up to \$100,000.
15 And they don't zealously represent their clients. In
16 fact, some do not represent them at all. They refuse to
17 return phone calls after a while.

18 Family law attorneys churn cases to continue
19 litigation. There is no financial incentive to settle.
20 Frequently, one litigant runs out of money, and the
21 other litigants still represent it. That creates a very
22 unfair situation that neither the attorneys, nor the
23 judges, seek to even the playing field as required by
24 Family Code 2030.

25 And the final one is that minors' attorneys

1 often do not adequately represent the best interests of
2 their small clients. They seem to be more impressed
3 with the financial resource of the person that's paying
4 them, which is generally the more resourced parent. And
5 they act almost as a second attorney for that parent.

6 Some of the litigants attempting to protect
7 their children call the appointment of a minor's
8 attorney the kiss of death for the abused child. In
9 fact, some children have been, indeed, killed because
10 they've been placed, with the attorney's permission and
11 advocacy, with the parent who injures them or kills
12 them.

13 The children cannot get rid of these appointed
14 attorneys. They can't fire them, and they can't
15 complain about them. Most of them exercise choice by
16 when they get old enough, they run away from their
17 abuser. The attorneys have not helped them. And, in
18 fact, advocate for them to be returned to their abuser.
19 We know of a number of cases like that.

20 So those are some of the problems that we see
21 that the State Bar needs to -- needs to look at, we
22 believe.

23 And finally, the Bench-Bar Collaboration works
24 very well if you have attorneys and judges. It does not
25 work at all for the litigant who is not represented, and

1 who is in a David-and-Goliath contest with a seasoned
2 attorney in a courtroom.

3 The Bench-Bar Collaboration means that that
4 attorney has an inside track to the judge, whereas the
5 litigant is an outsider.

6 So these are a few of the public perceptions
7 that hinder, I think, the State Bar from doing its work.
8 The public often sees lawyers and judges as a cozy club.
9 We could see that in effect today, that the lawyers who
10 spoke -- the attorneys who spoke here received much more
11 eye contact -- I watched that -- much more eye contact.

12 And afterwards, people come -- came up and
13 talked to them. But the litigants who were citizens or
14 the -- you know, the people who are just regular Joes,
15 did not get that same eye contact. That alone shows
16 something, I think, very important.

17 So we would urge you to change this perception.
18 And we would especially urge you to have us focus on
19 family court because it's a hugely growing area in which
20 some attorneys behave in very rapacious ways, and that
21 should stop.

22 Thank you very much.

23 PRESIDENT HEBERT: Ms. Valentine, thank you
24 very much.

25 Does anybody have any questions?

1 Just check the Task Force numbers.

2 Gretchen, yes. Gretchen Nelson.

3 MS. NELSON: Ms. Valentine, make I ask, the
4 organization that you are working with, is that located
5 at any particular area in California?

6 MS. VALENTINE: Yes. It's based in Sacramento,
7 but we work statewide.

8 MS. NELSON: And in the statewide context, have
9 you had any interaction with the Los Angeles Superior
10 Court?

11 MS. VALENTINE: Oh, yes.

12 MS. NELSON: Because I know that working on a
13 number of organizations -- with organizations that work
14 with the Court, there has been a concern by the Court
15 and by the lawyers, that pro se litigants, people who
16 are representing themselves, it is difficult to be able
17 to find a voice for them in meetings with the Court.
18 And so I would love to get your card because I would
19 love to pass that information on in case the Court would
20 have the availability then to -- so that the Court would
21 have the ability to your organization and to perhaps be
22 a voice for those that are pro se litigants.

23 MS. VALENTINE: We would very much like to do
24 that.

25 MS. NELSON: Very good. Thank you.

1 MS. VALENTINE: We want to assist that process.
2 And 85 percent of the litigants are pro se.

3 MS. NELSON: We're very well aware of that.

4 PRESIDENT HEBERT: Jeannine English.

5 MS. ENGLISH: Thank you very much for your
6 testimony. Unfortunately, we heard some similar
7 testimony in Los Angeles as well. So -- and -- and
8 coming back after that last hearing, I noticed that the
9 -- the state auditor had -- did a review -- a recent
10 review. I'm sure you're familiar with that review, and
11 probably were requesting that review.

12 MS. VALENTINE: Oh, yes.

13 MS. ENGLISH: But, you know, so from -- from
14 your perspective, is the Legislature focusing on this
15 issue as well? Have -- has the state auditor, has your
16 organization requested hearings of the Legislature
17 because I think -- this is an area that I would expect
18 to be of interest to legislators. So -- and so, I -- I
19 would expect that that would be another arena that --
20 that would be important to pursue.

21 MS. VALENTINE: Yes. We have pursued that for
22 many years. We had some remarkably good pieces of
23 legislation passed thanks to the advocacy of ourself as
24 a group and other groups and other individuals.

25 We have gone pretty far, but we have not gone

1 far enough because it hasn't been resolved. We do
2 believe we're getting closer to solutions. It's taken a
3 long time to figure out -- I'm a bureaucrat by
4 profession. That it's taken a long time to figure out
5 how that system works because it doesn't work as it's --
6 as the website says. It's not -- it doesn't work as you
7 read in history books. There's a lot of politicking
8 that goes on.

9 So we're -- we're becoming more sophisticated
10 in how -- we've become more sophisticated in how we work
11 with the Legislature and look at the number of excellent
12 legislators.

13 MS. ENGLISH: I -- on -- also, I would like to
14 mention that, at the last hearing, Dennis Mangers
15 requested that we have a presentation at our next
16 meeting about what we could do in this process. And so
17 we expect that that will be on the agenda at our next
18 meeting, which will in March.

19 MS. VALENTINE: That would be excellent. And
20 if you need any assistance from us, or any of our
21 colleagues, we would be happy to help also.

22 MS. ENGLISH: Thank you.

23 PRESIDENT HEBERT: Any other questions or
24 comments for Ms. Valentine?

25 Okay. Seeing none. Thank you very much for

1 your time today. Appreciate it.

2 Okay. Last call for Erin Baldwin.

3 Okay. Erin Baldwin did sign up to speak today,
4 and I don't see any response when we call a name.

5 Let me just check with the court reporter.

6 We have one more speaker. And I want to see
7 how you're doing.

8 THE COURT REPORTER: Only one more?

9 PRESIDENT HEBERT: Yes.

10 THE COURT REPORTER: I'm okay.

11 PRESIDENT HEBERT: Any objection to just going
12 on with the other speaker without a break?

13 Okay.

14 Helen Lynn.

15 Welcome, Ms. Lynn.

16 MS. LYNN: Thank you. I'm -- I'm somehow
17 feeling extremely intimidated and --

18 PRESIDENT HEBERT: Don't -- don't feel
19 intimidated.

20 THE WITNESS: I'm positive that you're not
21 going to want to hear what I have to say at all. And I
22 didn't really prepare a speech and --

23 PRESIDENT HEBERT: Don't -- don't --

24 MS. LYNN: But I somehow think --

25 PRESIDENT HEBERT: -- don't feel intimidated.

1 Don't worry. We're -- we're --

2 MS. LYNN: -- I need to say this.

3 PRESIDENT HEBERT: Please, we're -- we're here
4 to hear what you have to say, and we may have some
5 questions, but --

6 THE WITNESS: All right. I just kind of want
7 you to hear what I had to say. I don't really have
8 anything prepared. I spent \$1.5 million to protect my
9 grandchildren from sexual abuse by their father, with
10 the worst possible results.

11 And though sexual abuse was -- was a court
12 finding, there was a court transcript by the judge
13 stating specific sexual assaults on my grandson and
14 granddaughter, and the father was awarded sole custody
15 based on parental alienation in the best interest of the
16 child because the father was the better facilitator.

17 And there were Child Protective Service and
18 police investigations that stated that it was severe
19 ongoing sexual abuse of both children. And there's just
20 something wrong, and our case proves that. We had no --
21 you know, I spent 1.5 million; and I'm done, but that's
22 the results.

23 And so I don't know how to translate that into
24 Governance Board, but I'm hoping that somebody will know
25 what happened to my sexually abused grandchildren.

1 And that's all I have to say.

2 PRESIDENT HEBERT: Does anybody have any
3 questions for Ms. Lynn?

4 Wells.

5 MR. LYMAN: Thank you very much.

6 What court -- what county court was that?

7 MS. LYNN: We were in Los Angeles County.

8 MR. LYMAN: Okay. Thank you.

9 PRESIDENT HEBERT: Anybody else?

10 Michael.

11 MR. TENENBAUM: I just want -- I'm assuming
12 you've contacted the police and others?

13 MS. LYNN: The police -- there were police
14 investigations, and Child Protective Services
15 investigations establishing severe ongoing sexual abuse
16 of both children. The father was never charged.

17 But there are many, many cases exactly like
18 mine. I'm in a network across the United States. This
19 is going on from Maine to California. The California
20 State Bar Family Law Division oftentimes shows up in
21 Sacramento when we're trying to pass laws to protect
22 children from abuse. I can't remember her name. She's
23 blond, and she's from the Family Law Division at the
24 California State Bar.

25 She sits with the -- the Sacramento Chief Judge

1 James Mize, and they oppose -- they always oppose all
2 laws that we're trying to pass to protect children from
3 abuse; to my astonishment, especially the first time
4 that it went to Sacramento to be at a hearing.

5 PRESIDENT HEBERT: Anything else?

6 Jeannine English.

7 MS. ENGLISH: I think it would be helpful if we
8 could get a list of those -- those bills that you have
9 proposed, and those that have -- the State Bar has
10 weighed in opposing.

11 MS. LYNN: Yes.

12 MS. ENGLISH: I would -- I would like to see
13 that.

14 MS. LYNN: I appreciate that.

15 PRESIDENT HEBERT: Any other questions?

16 MR. TENENBAUM: Jeanne, I thought you were
17 going to ask for a list of the lawyer bills.

18 MS. ENGLISH: You can ask for that.

19 PRESIDENT HEBERT: Okay. See, that wasn't so
20 bad.

21 MS. LYNN: You're right.

22 PRESIDENT HEBERT: Thank you very much for
23 coming. Appreciate your time.

24 MS. LYNN: Thank you so much. Thank you.

25 PRESIDENT HEBERT: Is there anybody that -- in

1 the audience who wanted to have an opportunity to speak
2 who did not get an opportunity to speak?

3 Okay. Hearing none, that will -- that will
4 conclude the public hearing and public speaking portion
5 of this hearing. I want to talk a little bit about the
6 February 8th hearing.

7 If you're not here in the Task Force meeting,
8 which is coming up, and I've -- I've set aside quite a
9 bit of time for that -- for that meeting because what I
10 expect we will do is, by that time obviously, we will
11 all sit through these two public hearings.

12 We will have received the written comments that
13 have either been submitted in preparation for these
14 hearings through our survey -- electronic survey of a
15 sampling of the membership of the Bar, and any other
16 written submissions that were received before February
17 8th.

18 And then what I'd like to do because, again, we
19 are -- I know it seems like May is a long way off, but
20 we are somewhat pressed for time if we're going to
21 complete this Task Force report and recommendations in a
22 timely manner.

23 So on -- on February 8th, I think what we're
24 going to need to do, as a body, is start to make some --
25 some general conclusions after some deliberations

1 amongst the Task Force members about what directions
2 various members of the Task Force want to go.

3 And to that end, I'm going to start with my
4 recommendations, my proposals, my analysis of what we've
5 heard and what different options might look like. And
6 then we'll see where the different -- the various
7 members of the Task Force fall along those lines.

8 Because I think now it really is the time for
9 the Task Force to do its principal job of evaluating and
10 deliberating; the way I'm going to structure that
11 meeting is that I really need to limit, I think, the
12 deliberations and the discussion to the Task Force
13 members, both the voting and ex officio members. And
14 then we will set aside time at the end of the day for
15 any non-Task Force members or members of the public who
16 want to commit on our deliberations.

17 I don't know whether we will actually be taking
18 any votes on any of the recommendations on February 8th.
19 My best guess is we will probably start to get a sense
20 on February 8th as to the direction that a -- a majority
21 or a minority report might take, assuming we can't reach
22 consensus.

23 Obviously, what I'd like to do is see if we can
24 reach consensus, so that we have a unanimous report from
25 this body to the other branches of government. So

1 that's the goal. And, hopefully, we'll be able to talk
2 through these issues in a pretty lively debate on
3 February 8th.

4 In the meantime, if -- if do you have thoughts
5 or ideas, I would just like you to hold off on those
6 until we get to February 8th, so we can talk about them
7 then. And I think we'll be talking in, I guess I'm
8 going to say, fairly general terms. Although, I want to
9 get somewhat specific where I -- to figure out the
10 direction we want to go.

11 As you all know, the devil is always in the
12 details. So we can probably talk about some general
13 things; and then as we get ready for our next meeting in
14 March, try to hone in on some of the specific areas that
15 we're going to need to address as we go forward in
16 preparing a final report.

17 Now, we've had these hearings. There will be
18 transcripts prepared. I know that Angela Davis has
19 asked for a rough transcript of today's hearings in
20 which she can prepare because she wasn't here today.

21 If any of the members of the Task Force want or
22 need anything before February 8th that you don't yet
23 have, or you have questions, please contact Amy
24 Anderson, Cathy Torney, Starr Babcock, Tracey McCormick
25 or Rick Zanassi to make sure that you have everything

1 you need in order to prepare for the beginning of our
2 deliberations on February 8th.

3 Does anybody have any questions about what we
4 did here today, or what we're going to be doing on
5 February 8th?

6 MR. CARRUTH: I'm unclear as to when we're
7 getting the transcript.

8 PRESIDENT HEBERT: Let's see... Let --

9 MR. CARRUTH: There's no point in getting into
10 -- I tried to get the L.A. transcript, but I couldn't
11 get anything other than a list of witnesses.

12 PRESIDENT HEBERT: That -- that I don't know.
13 We -- we will talk to the court reporters and get back
14 to you to see how soon we can get those transcripts.
15 Because I know, Lowell, you weren't physically present
16 in L.A. So it might be helpful to -- to -- for some of
17 us to have that transcript ahead of time. I'm hoping
18 that we have both transcripts that day in case we want
19 to refer back to any particular testimony.

20 I think most of the written submissions cover
21 what the speakers then said to the extent that there --
22 there was additional clarification or elucidation right
23 brought out by the questions, then their answers to the
24 questions, that might be useful to have.

25 So we'll -- we'll check on when we're going to

1 have the transcripts and what form -- form. I sense
2 The court reporter's horror at the idea of having to
3 have a full-day transcript like this cleaned up and
4 ready to go by the 8th, but we'll -- we'll see how it --
5 how we do.

6 Loren, did you have a -- oh, go ahead.

7 MR. KIEVE: A rough transcript, how soon are we
8 going to have that?

9 PRESIDENT HEBERT: Right. Even that, I'm going
10 to need to check because I just -- I got to consult with
11 the L.A. court reporting. I don't want to put our court
12 reporter here on the spot, but I'm sure she'll do the
13 best she can. But that's spoken like a true trial
14 lawyer, take -- even take a rough.

15 Loren, did you have a question?

16 MR. KIEVE: No. Lowell just asked it.

17 PRESIDENT HEBERT: Does any -- Dennis, do you
18 have a question?

19 MR. MANGERS: Well, it's not entirely clear to
20 me the route between February 8th and the time you think
21 we have to file either a consensus document or a
22 majority/minority report?

23 What do you envision if -- on the 8th, and it
24 seems unlikely to be resolved, what's -- what's the next
25 step?

1 PRESIDENT HEBERT: Well, my -- my idea is that
2 on the 8th we're going to -- we'll talk. We will then
3 -- I think if we -- if we have a sense for where the
4 Task Force wants to go, we'll start drafting. And by
5 March 2nd, we will have something drafted for the Task
6 Force to review, and actually start to edit between
7 March 2nd. And then we'll -- we'll have to set up
8 another meeting in April, another one in probably early
9 May. And then to get it done by May 15th.

10 My -- so that's my idea, is that after we
11 discuss this, we will actually start writing. I -- I
12 think that I will have something outlined anyway to
13 present by then after I've sort of sat down and
14 considered everything.

15 Again, I'm not trying to usurp the job of the
16 Task Force. But I think that there needs to be some
17 proposal or proposals presented that we can then discuss
18 and deliberate on rather than just open it up for
19 discussion. I'd rather have some guidance for us or
20 some parameters so that, based upon what people -- the
21 speakers have suggested, I think we can sort of distill
22 some -- a couple of different paths.

23 Gwen.

24 MS. MOORE: It's your idea then that your
25 report will actually outline some -- some -- some items

1 that you think that there is some consensus on?

2 For example, the size of the Board. Would you
3 report that without further discussion of --

4 PRESIDENT HEBERT: I -- I intend to put up my
5 suggestions on a number of areas, and it would probably
6 include size, composition, method of getting on the
7 Board, et cetera.

8 MS. MOORE: And then we'll discuss them, and
9 then try to get some consensus from that?

10 PRESIDENT HEBERT: Okay. Either consensus
11 around the parameters of what I'm suggesting, or what I
12 may be suggesting is a minority position, or something
13 that we work off of then to -- to develop this -- this
14 final report. But I will try to be fairly specific so
15 that we don't have to try to draft this thing by
16 committee.

17 Jeannine.

18 MS. ENGLISH: Since there appears that we're
19 going to have a meeting in April, I'd like to get it
20 scheduled as quickly as possible. My evening is kind of
21 filling up at this point.

22 PRESIDENT HEBERT: Yeah. Mine is, too. So
23 I'll tell you what? Why don't we -- why don't we let
24 the court reporter go. Let's go off the record. And
25 why don't I just go ahead and adjourn the public hearing

1 and the Task Force meeting.

2 Thank you very much everybody.

3 (Time: 3:17 p.m.)

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REPORTER'S CERTIFICATE

I, JANE H. STULLER, CSR No. 7223, Certified
Shorthand Reporter, certify;

That the foregoing proceedings were taken
before me at the time and place therein set forth;

That the testimony of the witness and all
objections made at the time of the examination were
recorded stenographically by me and were thereafter
transcribed; that the foregoing is a true and correct
transcript of my shorthand notes so taken.

I further certify that I am not a relative or
employee of any of the parties, nor financially
interested in the action.

I declare under penalty of perjury under the
laws of California that the foregoing is true and
correct.

DATED: _____, 2011

JANE H. STULLER, CSR No. 7223