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4 TASK FORCE MEETING OF STATE BAR OF CALIFORNIA

5 180 Howard Street, 4th Floor

6 San Francisco, CA 94105

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11 REPORTER'S TRANSCRIPT OF PROCEEDINGS

12 APRIL 4, 2016

13 10:08 A.M.

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21 Reported by:

22 Linda Vaccarezza, RPR, CLR, CRP, CSR NO. 20101

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1 Panel members:

2 Jason Lee

3 Joanna Mendoza

4 Gwen Moore

5 Dennis Mangers

6 Vanessa Holton

7 David Pasternak

8 Elizabeth Parker

9 Miriam Krinsky

10 Danette Meyers

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1 MR. PASTERNAK: All right. We are going to start
2 the meeting. We have a full panel of experts, and I'm
3 going to do the introductory work. This is one of the
4 most important things the Bar is doing right now, and we
5 have a serious mission and a lot of issues to be
6 considering, and a large number of speakers in a short
7 period of time today.

8 As we did last time, we have a court reporter who
9 is going to be preparing transcripts of these proceedings,
10 which will be posted on the Bar's website. That will
11 necessitate some breaks during the day in order to give
12 her hands a respite. Also, instead of taking public
13 comment at the beginning of the session, if there is
14 anybody who has public comments, that's the purpose of

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15 this proceeding. If you see Francisco, usually sitting
16 here off to my right, we can try and fit you in on the
17 agenda later in the day.

18 So let's start with our first scheduled speaker.

19 Oh, I'm sorry. Elizabeth has a comment. Elizabeth
20 Parker.

21 MS. PARKER: I thought I would just say a word,
22 if I might, President Pasternak, as to how the speakers
23 have been arranged. As you know, we have posted the
24 numerous questions that we hope to look at. It's not
25 always possible to orchestrate the way in which speakers

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1 may address these topics because of scheduling concerns.
2 And so I thought I would just quickly indicate for each
3 speaker what they have indicated or we have invited them
4 to address.

5 And so for our first speaker, we have another
6 executive director from the local Bar Association who has
7 asked to comment about the inter-relationships between the
8 State Bars and the local Bar. I might refer you to the
9 first session we had, where the goal was really to share
10 some of the things we've learned about the different

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11 structural arrangement between both other Bar
12 organizations across the country as well as other
13 professional associations.

14 So today, we are going to have a little bit more,
15 I should say a diverse set of points of view, and that's
16 why I thought I would interrupt and just point out.

17 MR. PASTERNAK: Thank you, Elizabeth. We also, I
18 should mention as well, we have scheduled another session
19 three weeks from today on April 25th in Los Angeles, and
20 encourage anybody who might be here who is not on our
21 agenda today, if you want to offer some public comment, to
22 be placed on that agenda. And we also are receiving any
23 written submissions of comments that anybody wants to get
24 to us, as long as we get them by the end of April.

25 So with that, let's turn to our first speaker,

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1 Tiela Chalmers, who is the chief executive officer and the
2 general counsel of Alameda County Bar Association. She's
3 been a consultant, consulting on a number of projects,
4 including coordinating the Shriver Housing Project in Los
5 Angeles, which is the largest business private project in
6 California, among other things. Welcome.

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7 MS. CHALMERS: Thank you. And thank you to all
8 of you for giving me the opportunity to speak. I have
9 been a proud card carrying member of the State Bar of
10 California for 30 years, and have been in practice, as
11 well as in two local Bar Associations and a consultant
12 nationally and statewide as well.

13 I would like to offer my opinion that -- or my
14 plea that you consider continuing to have a unified Bar
15 for two separate reasons. The first relates to access to
16 justice issues. Part of why California is as far ahead as
17 it is in the nation in terms of access to justice issues
18 has to do with the power of our unified Bar. Access to
19 justice issues are supported by every attorney in the
20 state, and I know from sad experience that there are many
21 states in the country where that is not the case. We --
22 the State Bar here has been able to make some amazing
23 things happen on the access to justice front.

24 Whether access issues would be in a unified Bar
25 handled on the discipline side or on the voluntary side,

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1 in either way, I think we lose a lot of support and a lot
2 of coordination. I chair the State Bar's Standing

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3 Committee on the Delivery of Legal Services, fondly known
4 as SCDLS, and we coordinated activities with the Office of
5 Legal Services, Legal Services Trust Fund Commission, the
6 California Young Lawyers Association, and many of the
7 sections.

8 That level of coordination was really helped by
9 the fact there was a chaired staff. It's tough for
10 volunteers to put together coordination like that, and
11 typically, things fall through the cracks. So it was a
12 very powerful coordination.

13 The Office of Legal Services, in particular, has
14 an amazing ability to really support statewide activities,
15 and again, something I have not seen in a lot of other
16 states. For example, just recently, I've been working
17 with the State Bar as we put together a disaster plan for
18 legal -- delivering legal services in the aftermath of a
19 disaster.

20 The State Bar's Access to Justice Commission has
21 supported and prompted numerous legal incubator programs
22 that help those of modest means get help, as well as
23 providing employment opportunities for young attorneys.
24 And there's also been a lot of CLEs provided for -- free
25 CLEs for pro bono work. So there's been an enormous

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1 amount of great work. Your Board of Trustees in 2014
2 approved the so-called TFAR proposal, requiring 50 hours
3 of pro bono, more experiential learning and more CLE
4 experiential sessions for young attorneys. Another great
5 example of the collaboration between legal services, the
6 discipline system, the admissions system and the section.

7 So I think these kinds of powerful programs
8 really require a unified Bar. I'm old enough to remember
9 when the State Bar was dramatically downsized in the
10 aftermath of the Keller decision, and many of the access
11 to justice programs were kept alive only by volunteers.
12 We really do not want to go back to that place.

13 I do also want to wear my -- put on my solely
14 local bar hat and mention another concern I have about
15 deunification. In the conferences that I've been to where
16 I've met with representatives of deunified Bars, the
17 voluntary Bars, they are actively in competition with
18 local Bars. It makes sense, right.

19 There's only so many Bar Associations and
20 sections that one lawyer will be willing to join. Right
21 now, the State Bar serves as a unifying force, bringing us

22 together, offering us staff support, encouragement to work
23 collaboratively. It's actually a very powerful thing, and
24 again, something I don't see in the rest of the country.

25 But those states where there's a voluntary Bar,

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1 the voluntary State Bar is actively competing against
2 local Bars. I don't see any benefit to that. I
3 appreciate that in the world of capitalism, we may believe
4 that some competition is a good thing. But local Bars are
5 already struggling. Associations in general, as you
6 probably know, are struggling in today's world. And to
7 further slice us up really just serves to disempower all
8 of those associations.

9 And I'm concerned, not just about our ability to
10 provide referral sources for our members and MCLE programs
11 and networking opportunities. I'm also concerned about
12 our ability to continue providing pro bono legal services
13 in the community. And I'm just across the Bay here in
14 Oakland. We have a fair number of members. But imagine
15 the impact of this on the smaller Bars, the Bars with
16 several hundred members. They are already struggling, and
17 the last thing they need is another thing to compete

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18 against, particularly an entity that was supporting them

19 until recently.

20 So just to coin a phrase, I think, united we
21 stand, and deunified, we may not fall, but I think we
22 dissipate. And we lose a lot of our power and our
23 national standing, and I hope you'll consider sticking
24 with the unified Bar.

25 MR. PASTERNAK: Thank you very much. Before I

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1 ask if any of the task force members have any questions,
2 can we just clarify whether those are your comments or the
3 comment on behalf of your Bar Association.

4 MS. CHALMERS: Those are my personal comments.
5 As you probably know, it's very complicated to be allowed
6 to speak on behalf of an entire Bar Association.

7 MR. PASTERNAK: I recognize that.

8 Any questions or comments from task force
9 members? Miriam Krinsky.

10 MS. KRINSKY: Thank you for coming again, and for
11 the work you're doing, including many incredibly important
12 projects. I guess I was interested, just to pick up on
13 some of your observations in regards to the Office of

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14 Legal Services, to hear a little bit more about the nature
15 of CLE and training around legal services providers and so
16 on, that Office of Legal Services provides. And also, I
17 know if there is thinking around should we slice it up,
18 and how would it look sliced up, and why would we want to
19 do that, and what benefits might accrue from that.

20 I'm interested in, some of that may result in a
21 calculus around what things further the mission of the
22 regulatory association, regulatory board around protection
23 of the public, and I'm interested whether -- what your
24 thoughts are in regard to what side of that, the Office of
25 Legal Services would fall on, because I do think that the

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1 issue of access to justice and supporting legal services
2 for the poor and underserved, some may view it as a public
3 protection issue, and some may not.

4 So I just -- so I'm just kind of interested in
5 your thoughts around would it be part of what should be
6 deemed voluntary, or do you think it's mission consonant
7 with public protection, the broader purpose for
8 regulatory, if that makes sense.

9 MS. CHALMERS: So in response to your first

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10 question, one of the most amazing things that happened in
11 the last seven or ten years here with the Office of Legal
12 Services is that they have built a partnership with the
13 Practicing Law Institute, which is an online CLE provider
14 nationally, but has an office here in San Francisco, and
15 gotten them to agree -- and they have been very generous
16 in agreeing -- to host free CLE webinars on pro bono
17 topics. And so the benefit to that for us is that they
18 are recorded, so people can attend them in person, they
19 can watch the webinar, but they can also watch it anytime
20 in the next year for free.

21 And in doing that, the Office of Legal Services
22 has really encouraged us to do what, as a community, we
23 were not doing at all before, which is to collaborate on
24 trainings. Defending -- prosecuting a domestic violence
25 restraining order really is the same in every part of the

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1 state. There are details that are slightly different, but
2 essentially it's the same. So if we are going to train
3 volunteers, why is it that we have trainings in LA,
4 trainings in San Diego, trainings in San Francisco. And
5 it was the Office of Legal Services that really brought us

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6 together and continues to help us coordinate so that those
7 things happened once throughout the state, and then many
8 different organizations can use them. It's just one of
9 those really powerful things. And in doing that, they
10 often go to the sections or to the young lawyers
11 association division, whatever they are called. And pull
12 in speakers and support for those efforts.

13 With respect to where, if there was to be a
14 split, where would legal services go? I think it should
15 go with the protection of the public. I'm just concerned
16 -- I'm concerned that there will be a loss of
17 coordination, if nothing else, and perhaps a lot of some
18 resources. Because I know that there would be a lot of --
19 I mean, you already have a lot of sharp eyes on what you
20 do, I know, and I commiserate with you about that.

21 But I do think that protection of the public is
22 absolutely an access to justice issue. And part of what
23 we did, for example, in Los Angeles was to try to create a
24 lawyer -- to offer a lawyer for as many people being
25 evicted as we could, partly because there are these,

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1 frankly, forgive me, bottom feeders out there on the steps

2 of the LA courthouse, as many of you know, trying to sell
3 people, convincing them to spend their rent money on
4 non-attorneys who will help them with their eviction.

5 So I think it's part and parcel of protection of
6 the public. I just think that without the rest of the Bar
7 and all of its pieces supporting it, it risks being a
8 little bit of a stepchild in that discipline system.

9 MR. PASTERNAK: Joanna Mendoza. Joanna, do you
10 have a question or a comment?

11 MS. MENDOZA: Yeah. I had, I don't know if it's
12 one or the other. We had the former Supreme Court Justice
13 from New York State come and speak to the Board of
14 Trustees at our January planning meeting, and he pointed
15 out to us that the amount of dollars that go to access to
16 justice in the New York State is much greater than
17 California, rather embarrassingly. And New York has a
18 statewide voluntary Bar Association.

19 Now, they have a system that we are talking about
20 here, where the attorneys there pay a licensing fee. They
21 have to pay that. It's mandatory. But they don't have a
22 unified system like ours. And they have much more dollars
23 going to access to justice than we do, and they have a
24 statewide voluntary Bar Association.

25 So I have to say, I'm not compelled by the

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1 argument that by having a unified Bar, we are going to
2 have a lot more money going to access to justice in
3 California. When you look at New York, and they have a
4 statewide voluntary Bar Association, and they have
5 powerful Bar Associations that are not statewide that
6 still stay in place. So I just have to say, I'm not
7 particularly compelled by the access to justice argument
8 when we have New York.

9 MS. CHALMERS: Is it all right to respond?

10 MR. PASTERNAK: Yes.

11 MS. CHALMERS: Yes. Boy, I wish we had the New
12 York system, too, and frankly, I think that that's true,
13 but it's correlation but not causation. That what -- the
14 reason that New York has such money has to do in part with
15 their economy, and part with the make up of the
16 Legislature, and in large part to do with the chief judge,
17 as you call them, and his relationship to the legislation.
18 That's where he got that money from, which was amazing,
19 and it certainly has -- we have used that argument here in
20 California with less effect than we would like, because we

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21 have a different Legislature, and we have a different
22 financial situation.

23 And the courts are in a desperate situation here
24 in California the way they are not in New York. And so
25 New York judiciary is able to use their clout to push for

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1 legal services in a way that our judiciary, in my opinion,
2 have not been able to.

3 MS. MENDOZA: If we had a statewide Bar
4 Association, the attorneys in the state would have a much
5 louder voice. They would be able to go to our Legislature
6 and speak in a more unified voice, and say access to
7 justice is a more important issue than what we have now,
8 don't you think?

9 MS. CHALMERS: Well, I think we have that now. I
10 think this Bar does that now, and we coordinate with, for
11 example, the Bench Bar Coalition. We do do that now. I
12 think our issues have to do with the economy, the funding
13 of the courts, and also the paucity of attorneys in our
14 Legislature, who -- so we have a much harder row to hoe to
15 argue why legal services are important.

16 Many of them view legal services as -- lawyers,

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17 as sort of a surplus. If they are going to focus on the
18 needs of public, they are going to focus on shelter or
19 education, which is great. But the truth is, legal
20 services is a critical part of that.

21 MR. PASTERNAK: Thank you very much. Our next
22 person is Alon Rotem, who is general counsel at Rocket
23 Lawyer. Alon joined Rocket Lawyer in October 2013. He's
24 currently responsible for managing all of its legal
25 affairs, including corporate, litigation, commercial,

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1 regulatory, intellectual property, ethics, compliance and
2 global matters. Alon, welcome.

3 MR. ROTEM: Thank you. That's quite the
4 introduction, better than I usually get.

5 So hello, everybody. I've got some prepared
6 remarks that I'm going to read, and then of course, happy
7 to answer any questions that anybody has. So as David
8 mentioned, my name is Alon Rotem. I'm the general counsel
9 at Rocket Lawyer. And I'm here. I would like to tell you
10 a little bit about Rocket Lawyer and the people we serve,
11 and also how that relates to the structure and the purpose
12 of the State Bar of California.

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13 So a little background first. Rocket Lawyer was
14 founded in 2008 by Charlie Moore, corporate attorney and
15 entrepreneur. The founding team at Rocket Lawyer
16 recognized what the ABA calls the justice gap. The fact
17 that as much as 85 percent of the population is unable to
18 afford the traditional cost of legal services.

19 At Rocket Lawyer, our mission is to make the law
20 simple and affordable, and we aim to accomplish our
21 mission by leveraging technology to narrow this justice
22 gap in access to legal services across the country. Our
23 patented technology serves as an online legal services
24 platform where consumers and small businesses can
25 customize legal documents, connect with attorneys to get

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1 legal advice and incorporate their businesses.

2 Our software lets people edit and electronically
3 sign thousands of legal documents, and all along the way,
4 we encourage them to ask attorneys questions and schedule
5 attorney consultations. Our legal plans offer online
6 access to Q and A tools, free live consultation, and
7 transparent pre-negotiated rates from attorneys in our
8 network. Attorneys can log in to the Rocket Lawyer

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9 dashboards to answer questions, review legal documents,
10 and also publish blog posts.

11 This fusion of user-friendly software and
12 attorney-driven legal assistance is what empowers our
13 customers, most of whom have never engaged an attorney
14 before. And by making these legal services simple and
15 affordable, Rocket Lawyer actually helps to expand the
16 market for legal services to millions of individuals,
17 families and small businesses.

18 We also know that the world is changing, and the
19 way that consumers are finding legal services is shifting.
20 That old, thick yellow phone book is gone, and that 85
21 percent we talked about, they don't already have an
22 attorney on speed dial. For most folks, searching the web
23 is the place they start their journey to solve their legal
24 issues.

25 In fact, most people who come to Rocket Lawyer

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1 often find us from a web search. Whether they are
2 searching for a legal document or even simply typing in
3 the legal question into the address bar. Websites and
4 apps are the starting point.

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5 Today's consumers like to do their research
6 online. They like to learn about their issues in the
7 privacy of their own homes. And the Internet, as we all
8 know, is the is the ultimate shopping comparison tool.
9 Some people know exactly what they want, and others are
10 just trying to learn. Some folks want the tools to draft
11 their own legal documents, and others want to talk to an
12 attorney immediately and get advice from a professional.
13 The point is that people are looking for their legal
14 services online, and they are finding that the online
15 experience is a viable and affordable path to justice.

16 So I wanted to share a personal story to
17 illustrate the point. Last year, my mother-in-law dealt
18 with the unenviable task of managing her father's affairs
19 while he was hospitalized with severe dementia. He was no
20 longer able to take care of himself, and he was going to
21 have to leave his home to a managed care facility. There
22 were so many decisions to make, including the sale of his
23 home and other assets, as well as medical decisions, and a
24 host of other family issues I'm not going to get into.

25 As the lawyer in the family, I wanted to help,

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1 but that wasn't my area of expertise. So I encouraged her
2 to use Rocket Lawyer to learn about the legal issue she
3 was facing, and we even exchanged a few legal articles on
4 this area in family law. She was able to quickly prepare
5 a durable power of attorney and get her father to sign it
6 on an iPad at the hospital during a period of clear
7 thinking. And she also used our Q and A tool to get an
8 answer from an attorney about how to seek conservatorship.

9 Today, her father is thriving in assisted living
10 home in San Rafael, and the proceeds from the sale of his
11 estate are covering his living expenses. This story I
12 share is pretty typical, actually, and it shows how real
13 people can benefit from services like Rocket Lawyer. In
14 fact, many well known legal organizations are also
15 intrigued by the success of Rocket Lawyer.

16 So as many of you know, last year, the American
17 Bar Association reached out to partner with us. The pilot
18 project used Rocket Lawyer's platform to connect ABA
19 lawyers with small businesses looking for affordable legal
20 services. In Charlie Moore's words, the fact is, a
21 majority of American individuals and small businesses are
22 priced out of legal representation. At the same time,
23 many lawyers are under-utilized.

24 ABA Law Connect came about as a way for the
25 American Bar Association to experiment with modern

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1 technology as a way to resolve this paradox. The ABA
2 thought it was a win-win. Good for lawyers, good for
3 consumers. Ultimately, the pilot was successful and we
4 generated some very useful data. However, the reaction
5 from all corners of the legal profession was rather
6 illuminating.

7 The mandatory unified Bars -- now you can see we
8 are going to transition into the topic at hand. The
9 mandatory unified Bars like the State Bar of California
10 cheered on the project. As a steward of the public
11 interest, unified Bars have an easier time recognizing the
12 importance of solving the justice gap and appreciate
13 the -- that technology can offer. The opportunity, that
14 is, that technology can offer.

15 The loudest critics, however, were the local Bars
16 and the voluntary Bars. The trade associations that
17 depend on their own lawyer referral services for income.
18 Instead of recognizing the partnership and pilot program
19 as an opportunity for attorneys to attract new clients,

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20 they focused solely on price protection and fear of
21 competition.

22 As legal writer Mark Cohen suggests, it's
23 important to recognize that there can be an inherent
24 pressure on voluntary organizations to drive value to its
25 membership, or to kowtow to the loudest voices within

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1 their membership, even if that comes at the expense of the
2 public or to the profession.

3 So what does this mean for the organizational
4 structure of a State Bar? Well, without casting any
5 aspersions on the voluntary private association Bars, of
6 which I've been a member, we can appreciate that unified
7 mandatory Bars are much better able to balance the
8 interests of lawyers with the best interests of the
9 public, and we think Bars should be cognizant of the
10 potential conflict of interest that exists when issues
11 such as restraint of trade and monopoly power are present.
12 Anti-competitive behavior stifles innovation and runs
13 counter to the public's interest in accessing affordable
14 legal services.

15 In our experience, the unified Bars have

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16 demonstrated a more sophisticated ability to look at
17 companies like Rocket Lawyer through the public interest
18 lens, and are increasingly well positioned to lead the
19 profession through periods of change.

20 Now, shifting a little bit here. We recognize
21 that the changing legal landscape and the need to
22 modernize the legal system. Rocket Lawyer believes it's
23 important to have minimum standards for lawyer
24 participation in all nine platforms. Consumer software
25 companies are regulated by the FTC and state laws,

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1 focusing on consumer protections. Lawyers are governed by
2 the rules of professional responsibility in their state.
3 Both types of regulations serve the public best when
4 applied to the way lawyers and clients are actually
5 interacting, including online.

6 At Rocket Lawyer, we appreciate the ethical
7 responsibilities that lawyers must meet. Our platform was
8 designed to uphold the independence of the lawyer's
9 judgment, pricing transparency, and disclosure regarding
10 the nature of the lawyer's participation. In addition to
11 publishing lawyer fees, we believe that the guiding

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12 principle for professional responsibility here is
13 disclosure. Disclosure of financial relationships,
14 disclosure of conflict. These disclosures help consumers
15 make the most informed decisions, and offer lawyers the
16 most flexible way to practice law and take advantage of
17 new services.

18 Because the Internet enables consumers to unlock
19 so much information, they can easily comparison shop.
20 Consumers also end up voting with their pocketbooks. They
21 understand that if a service is transparent, if it
22 demonstrates how it's going to bring down their cost, and
23 if it ultimately provides a better experience, they will
24 pay for it.

25 So as I stated in the beginning of my comments,

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1 our goal at Rocket Lawyer is to make the law simple and
2 affordable for millions of people, right here in
3 California and elsewhere in the United States, where the
4 law has been simply out of reach. People like my mother-
5 in-law, working families, small businesses. These Rocket
6 Lawyers customers have benefited from the access to
7 justice that online legal services platforms offer. We

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8 are not only helping to close the justice gap, but we are
9 also creating a platform for lawyers to connect with
10 clients and modernize their practices.

11 We encourage the State Bar of California to take
12 the time to learn more about our platform, and work with
13 us to focus on the public interest, to enhance the
14 profession, and to expand the market so that everyone can
15 afford legal services. Thanks again for taking the time
16 to host me this morning. I appreciate your time, and I
17 look forward to working with you all to lead the effort to
18 expand access to justice in California. Thanks.

19 MR. PASTERNAK: Thank you Alon. Any questions or
20 comments from the task force?

21 MS. MENDOZA: Joanna Mendoza. Thank you. Are
22 you familiar with the North Carolina Board of Examiners
23 case?

24 MR. ROTEM: Generally, yes.

25 MS. MENDOZA: That's an antitrust case that talks

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1 about, essentially, when you have one profession trying to
2 regulate that profession, and how they can be
3 protectionist over that area of the law. And trying to

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4 keep somebody from coming into that area and --

5 MR. ROTEM: Yes.

6 MS. MENDOZA: Sounds like what's happening to
7 you, the way you described what Rocket Lawyer has had to
8 go through throughout the country, that you've run into
9 people, other lawyers trying to keep from you practicing
10 in their area, their turf. Would you say that's kind of
11 accurate?

12 MR. ROTEM: I wouldn't use the word "practicing"
13 for Rocket Lawyers, because we are not a law firm at all.
14 But in terms of competing in the area to provide access to
15 the delivery of legal services. Yes.

16 MS. MENDOZA: So it sound to me that you're
17 describing less an issue of a unified Bar versus a
18 deunified Bar, and more of a regulation issue that I would
19 say, would be more one of these antitrust issues that this
20 case was driving at, and that had to do more with whether
21 or not attorneys on a majority of these regulatory boards
22 should be regulating as opposed to more public member
23 majority boards, as non-attorney public members, because
24 they would not act in their protection of the profession,
25 they would be acting more in a public interest capacity.

1 Do you understand what I'm trying to say?

2 MR. ROTEM: Yes, I do. Although I think from our
3 perspective, and really what I was trying to say in my
4 remarks is that when you have a mandatory unified Bar
5 that's not necessarily dependent on the way that the
6 loudest critics are voicing their opinions, in terms of
7 getting membership dues, or making sure that there's
8 enough revenue coming in from lawyer referral services,
9 that they are able to more objectively look at what's best
10 for the public in terms of whether those delivery points
11 come from within the Bar structure or perhaps from private
12 companies.

13 MS. MENDOZA: My concern is that you have up in
14 Washington state, you've got the unified Bar up there.
15 However, you had the situation up there where you had the
16 limited license legal technicians and situation, and they
17 didn't -- that Bar did not vote for that particular issue,
18 and the Supreme Court had to step in and say, no, you're
19 going to have this. And that was a public protection
20 issue, and they didn't vote for that.

21 And so it wasn't -- they were listening to the
22 loudest voice, and that loudest voice was the lawyers.

23 And so that was a unified Bar, and it wasn't a public
24 protection issue that prevailed in that particular
25 situation.

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1 So I'm not convinced that a unified Bar would
2 necessarily result in a public protection issue prevailing
3 in that situation. I'm thinking more the way the board is
4 made up would be more critical in that particular
5 situation, as opposed to whether or not it's a unified Bar
6 or not. I'm just thinking more of what would be better
7 for Rocket Lawyer as far as public protection, and I'm
8 thinking having a majority of public members might
9 actually be more public protection driven for your
10 purposes.

11 MR. ROTEM: Well, I think the Washington State
12 example is a distinct issue. And while I'm interested in
13 that issue, I think it's separate from the private company
14 standpoint. But for us, I really, what I wanted to do was
15 come here today and share with you our experience. So we
16 had a specific experience with the ABA Law Connect pilot
17 project, and to us, it was very illuminating on what side
18 which Bars landed, and where we saw support, where we saw

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19 a comfortable space, if you will, for people interested in

20 watching an association of private company --

21 MR. PASTERNAK: Excuse me. We are getting some

22 noise from somebody on the phone. And those of you who

23 are listening in, if you can please make sure you mute

24 your lines, please.

25 MR. ROTEM: So I think it goes back to the

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1 earlier speaker's comments. There may be a question of

2 causation and correlation here, but for us, this was our

3 real world experience, and that's what we wanted to share.

4 MR. PASTERNAK: Thank you. Any other questions

5 or comment?

6 Jason Lee. And again, we are still getting noise

7 on the phone. Can I please ask you to mute your lines. I

8 don't want to have to disconnect those of you who are on

9 the phone.

10 MR. ROTEM: Maybe that's a way of protest on the

11 phone.

12 MR. PASTERNAK: Jason, go ahead. Maybe they are

13 protesting Jason before he said something.

14 MR. ROTEM: Please.

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15 MR. LEE: Thanks for your comments. I myself
16 followed the ABA Rocket Lawyer situation with a lot of
17 interest, because I think technology is going to play even
18 a greater role in delivery of legal services in the very
19 near future. And I thought that the breakdown of the, as
20 you describe, the sort of unified Bar structure and the
21 sort of process that Rocket Lawyer received from the
22 voluntary Bar Associations highlighted the priorities,
23 different priorities between the two.

24 You mentioned that the State Bar of California
25 was in support of the ABA arrangement. Could you provide

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1 a little more detail of how the Bar supported those
2 efforts?

3 MR. ROTEM: Sure. I mean, from our standpoint,
4 we definitely discussed it with members of the California
5 Bar. And if you recall the articles that came out a
6 couple months ago, we actually had some comments from our
7 very own Elizabeth Parker on the point. And I'll leave it
8 to her to comment for herself as to whether she would
9 support, is the right word. But I think there was at
10 least intrigue and interest in what we were doing, and not

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11 sort of a knee jerk reaction to really be fearful of this

12 sort of experimentation.

13 MR. PASTERNAK: Thank you. Any other questions?

14 Thank you, Alon. Thank you for sharing your comments with

15 us.

16 MR. ROTEM: Thank you.

17 MR. PASTERNAK: Our next speaker is somebody who

18 is well known to these offices. It's Contra Costa County

19 Superior Court Judge Judy Johnson. Judge Johnson, I

20 think, has more of a background in the State Bar than

21 virtually anybody. She is a former member of this board.

22 She is a former chief trial counsel. She was an executive

23 director of this Bar for about ten years. And so she has

24 quite a variety of backgrounds.

25 Ms. Johnson, welcome, and we look forward to your

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1 comments.

2 MS. JOHNSON: Thank you. I'm glad to be here. I

3 also, I suppose it's probably true that if there's a

4 position at the Bar, I've sat in that chair. I was also

5 one of the first JNE commission members, and I was a

6 member and chair of the committee of Bar Examiners before

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7 running for the board. I am a supporter of the unified
8 Bar. Do not have any prepared remarks, but I am prepared
9 to share my experience with the Bar with you.

10 This notion that the Board of Governors, because
11 it is made up of a majority lawyer board, that we are not
12 in support of the public interest is ridiculous. I have
13 been a prosecutor for most of my legal career, 17 years
14 with the District Attorney's office in San Francisco,
15 eight years as the -- six years, I guess, as the chief
16 trial counsel of the State Bar.

17 And to suggest that lawyers cannot support the
18 public interest is in my mind, as I said ridiculous. Most
19 of us serve, ran for the board, or became members of the
20 Board of Governors, in fact, to promote the public
21 interest. I personally cannot think of a situation in
22 which I believe that the board acted in a way that was
23 contrary to the public interest.

24 In 1994, there was a plebiscite in which lawyers
25 were asked, did they want to deunify the Bar. And the

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1 lawyers voted narrowly that they did not wish to deunify
2 the Bar. But I think what was telling in that experience

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3 was something that then senate pro tem, former attorney
4 Bill Lockyear, said. There is going to be a lawyer
5 discipline system, and the lawyers are going to pay for
6 it. And so if lawyers are going to pay for it, why
7 shouldn't they get the best, which is a unified Bar that
8 is able to bring together all the different perspectives
9 of the legal profession, and harmonize those interests
10 with the public interest.

11 If there was not a unified Bar, and we went
12 through this with the plebiscite, I think what you would
13 find is that there would not be a statewide volunteer
14 association. People would simply devolve back to their
15 local Bars. And when you don't have a statewide
16 organization, what tends to happen is that the largest Bar
17 Associations in the state dominate. So it would be the
18 Bar association Of San Francisco, and it would be the Los
19 Angeles County Bar that would be the primary drivers of
20 discussion within the legal communities. The State Bar
21 represents small counties whose voices would not be heard
22 in the absence of a unified Bar.

23 I've read that part of the drive to deunify comes
24 from concerns about the sections. And it is true that
25 because the sections are a part of the Bar, they are

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1 required to comply with a lot of regulations that they
2 would not if they were not part of the Bar. My view is
3 that the section should be carved out of some of these --
4 some of this bureaucratic overlay. There is really no
5 reason that section meetings conducted should not be able
6 to be conducted via telephone.

7 Most of what the sections do is to plan legal
8 education. There is absolutely no public interest in what
9 goes in the section newsletters. So the sections could be
10 carved out of things like Bagley Keene without any adverse
11 impact on the public interest. They should not be subject
12 to Bagley Keene any more than a meeting of faculty at the
13 University of California should have to have to be subject
14 to those kinds of rules.

15 So in essence, my experience has been that the
16 Board of Governors does support the public interest. And
17 that deunifying the Bar would simply create chaos where
18 none exists now. I understand that the Bar goes through
19 hard patches. I was executive director of the Bar longer
20 than anybody else. Perhaps Elizabeth will out distance me
21 on that, but I don't think so.

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22 MR. PASTERNAK: I'm not sure that's one of her
23 goals.

24 MS. PARKER: Now, now, Elizabeth.

25 MS. JOHNSON: But again, I think if the Bar were

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1 -- I second some of the remarks that Tiela made. I think
2 the other area where the Bar can speak with one voice is
3 on diversity issues. I don't think that anyone can
4 champion those diversity issue as well as the State Bar.
5 You may not know this, but one of the great things that
6 the Bar has been doing is support of high schools through
7 our law academy. I think there are now 14 throughout the
8 state. We could not have this movement without the
9 assistance of the organized State Bar. It is the staff of
10 the State Bar that helps us to carry out that work.

11 So many of the things, diversity, legal services,
12 it helps when the organization speaks with one unified
13 voice in support of those activities. And I fear that if
14 the Bar were to deunify, we would not only lose that
15 singular voice, but again, it would be the larger state
16 local Bars that would dominate. And as has been said, the
17 -- one of the problems with the local Bars is that they do

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18 tend to be lawyer-interest focused, and they often would
19 be -- speak against some of the heightened regulation that
20 the Bar itself has supported. So those are basically my
21 thoughts, and I'm happy to answer any questions.

22 MR. PASTERNAK: Thank you, Judge. I would like
23 to ask you one question --

24 MS. JOHNSON: Sure.

25 MR. PASTERNAK: -- on a topic that you did not

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1 address, because you're someone who has this extensive
2 background with the Bar. Do you have any thoughts about
3 the officers of the Bar, and specifically, the fact that
4 somebody is thrust into the presidency of the Bar about
5 two or three months before their term begins. Do you have
6 any thoughts about whether or not the officers' slots
7 should be changed at all?

8 MS. JOHNSON: You know, there are some issues
9 that are just -- they just go round and round and round.
10 And I've heard them for decades. This is -- many local
11 Bars have a leadership track system, where you have a
12 president elect who is elected and serves along with the
13 current president, and is sort of groomed into that

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14 leadership role. It's been looked at by the Bar, as I
15 mentioned, any number of times. I don't really have a
16 strong view on that. I think the board can do what it
17 wants with what issue.

18 In all candor, my experience has been that it is
19 difficult for an executive director to deal with one
20 president at a time, and to have two people with the title
21 can often lead to conflict. Bar presidents tend to have
22 big personalities, and it is often difficult just dealing
23 with one person in that position. And to have someone
24 waiting in the wings with almost equal stature may be more
25 problematic than helpful.

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1 MR. PASTERNAK: Thank you. Danette Meyers.

2 MS. MEYERS: Thank you, Judy, for coming. It's a
3 pleasure to see you. I haven't seen you in such a long
4 time. It's such a pleasure.

5 You know, my concern is --

6 MR. PASTERNAK: Danette, is your mic on?

7 MS. MEYERS: Thank you.

8 MR. PASTERNAK: Gwen is not there to turn it on
9 for you.

10 MS. MEYERS: I know. You notice that I sat away
11 from Gwen today. So my concerns are this, that if you
12 deunify the Bar, what happens to the sections. And you've
13 been the executive director of the Bar, chief trial
14 counsel. I remember you as chair of the criminal justice
15 section of the State Bar, and probably the first African-
16 American woman section chair. What happens to the
17 sections? Do they survive? Do they hire an executive
18 director? Do they hire staff?

19 And if, in fact, the sections are abolished, what
20 happens to public protection in terms of lawyering? The
21 sections provide a lot of education for all of us, and so
22 that public protection issue would pretty much be gone.
23 Can you address that?

24 MS. JOHNSON: The sections also provide a lot of
25 low cost education for the members. They become a vehicle

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1 for getting members interested in their particular area of
2 law or expertise. They provide a leadership ladder to
3 people who are interested in a particular practice
4 setting, and give those people an opportunity to mix with
5 their peers, and to learn how to be leaders within the

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6 profession. I guess you could ask the conference of
7 delegates how it's doing since it won its freedom from the
8 State Bar.

9 There are a lot of economies of scale that the
10 sections benefit from. Tiela mentioned the coordination.
11 The fact of the matter is that the sections provide a
12 statewide network of people in a particular practice
13 setting where as a state, those people can come together
14 and arrive at a consensus about issues facing a particular
15 practice setting.

16 Frankly, it is my view that the sections should
17 never have been forced to be self-funding, that they
18 provide such a valuable service to the membership in
19 providing that low cost legal education and continuing
20 legal education, which we all -- well, I don't anymore,
21 but the lawyers all have to pay for. I believe that there
22 is a mandate from the legislation that the State Bar
23 provide low cost and free education to its members. That,
24 again, I believe was put in when MCLE was made a
25 requirement.

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1 So who is going to provide that on behalf of the

2 State Bar? Would the State Bar contract with the sections
3 to and pay them to provide a service which they now
4 basically are doing for the State Bar for free? I don't
5 know if the sections as a statewide entity would survive.
6 What I fear would happen is what I said -- I don't believe
7 that lawyers would pay to join a voluntary Bar
8 association.

9 Again, I think that they would simply devolve
10 back to their local Bars. But what I would imagine would
11 happen is that more people -- the -- remember that each
12 local Bar also has sections. So what I fear is that
13 people would simply start, go back to their local sections
14 and be members of those sections, which might be of
15 assistance to the local bars in terms of a member benefit.

16 But again, you don't have that statewide network
17 where issues within a particular practice setting are
18 addressed on a statewide basis, and the criminal lawyer
19 from Fresno has as much opportunity to impact the criminal
20 law section as the criminal lawyer from LA. And so I fear
21 that that statewide network would be lost. I don't know
22 if the sections could be self-funded. They are now, I
23 realize.

24 But if spun away from the organization, you would

25 have to think about some of the nuances. How would they

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1 collect section fees? Would they still be on the state
2 Bar's dues statement, or would they have to bill their
3 membership? They would have to hire an accountant. They
4 would have to hire lawyers. They would have to basically
5 build a nonprofit infrastructure that where it is
6 currently, they simply rely on the State Bar to provide
7 that infrastructure.

8 MS. MEYER: Thank you.

9 MR. PASTERNAK: Any other questions, Joanna?

10 MS. MENDOZA: Thank you, Ms. Johnson, for coming
11 here today.

12 Since Keller and Brosterhaus went into effect,
13 it's required that the sections be completely self-
14 funded. The allocation has gone -- the overhead --

15 MS. JOHNSON: That was actually a criticism from
16 the state auditor back in 1994, and I believe that when
17 the State Bar -- I don't believe that Keller and
18 Brosterhaus impacted the sections. What Keller and
19 Brosterhaus prescribed was political activity by a
20 mandatory Bar, and I think that the activities of the

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21 sections would be well within the bounds of Keller and

22 Brosterhaus because they are essentially political.

23 MS. MENDOZA: Since then, the overhead allocation

24 has gone from 25 percent to almost 67 percent, in some

25 cases, and more, of their budget, and it's strangling the

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1 sections. That's quite a change since then. But I wanted

2 to comment on your statement that you -- the sections

3 engaged in nothing of public interest.

4 MS. JOHNSON: No, I didn't say that. What I said

5 was that most of their work involves putting on education

6 programs, putting out their newsletters, which don't

7 impact the public. It's simply an education forum. The

8 only activity that they engage in that might have some

9 tangential public impact is when they make recommendations

10 with regard to legislation.

11 But again, they are only making a recommendation

12 to a body, namely, the Board of Trustees, which itself is

13 only making a recommendation to the Legislature as to how

14 the Bar sees certain issues. That is the only instance in

15 which I think the sections engage in anything that

16 remotely impacts the public.

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17 MS. MENDOZA: But they do a significant amount of
18 that work for the State Bar. They review all the
19 legislation, they make commentary on it. And they make
20 decisions about what legislation they are going to decide
21 upon presenting to the Board of Trustees. So there is
22 actually a greater amount of work that these sections do
23 with respect to legislation, and with respect to what the
24 State Bar does, in that regard, of what goes to the board.
25 There is a lot of work that the sections do.

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1 The sections do a tremendous amount of work as
2 far as the content that the State Bar generates, and that
3 particular aspect of what the sections do would be
4 considered a matter of public interest, I would argue. So
5 even though it does have to go to the Board of Trustee --

6 MS. JOHNSON: Well, you could ask the sections,
7 when I'm sure they are going to get up here, approximately
8 what percentage of their time is spent on legislation, and
9 I would say that it is a fairly modest amount of their
10 time and energy is spend on legislation.

11 MS. MENDOZA: It depends on the sections. Some
12 sections spend way more time than other sections do. But

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13 I know that some sections do spend a lot of time on it.

14 Thank you.

15 MR. PASTERNAK: Any other questions? Judge

16 Johnson, thank you very much. Nice to see you again.

17 MS. JOHNSON: Nice to see you all as well.

18 MR. PASTERNAK: We are going to take literally

19 about a five-minute break for our court reporter. It's no

20 reflection on our next speaker. But I do want to give her

21 a brief respite. So five minutes, and then we'll get

22 started again.

23 (Recess taken from 11:02 a.m. To 11:12 a.m.)

24 MR. PASTERNAK: Our next speaker is, probably

25 needs no introduction. Jim Brosnahan, senior counsel of

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1 Morrison & Foerster, a former president of the Bar

2 Association of San Francisco. I think well known to

3 everybody in this room as one of the most highly regarded

4 trial attorneys in the state. Mr. Brosnahan.

5 MR. BROSNAHAN: Thank you, Mr. Pasternak. What a

6 pleasure it is to be with everybody behind me here, and

7 all of you. I'm just a practicing lawyer, that's it. And

8 I am sorry that the 220,000 members of this organization

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9 couldn't leave court in Torrance or Eureka or Sacramento,
10 wherever they are this morning, because their voice is
11 important. I'm not claiming that I speak for anybody but
12 myself. I've been a member of the State Bar for 52 years.
13 I've been a member of the conference of delegates for 48
14 years.

15 Your previous speaker asked you to ask how the
16 conference of delegates is doing since they were cast into
17 outer darkness. They are amazingly rejuvenated. It is
18 almost ideological that they can't be. But they are. And
19 how are they doing? They come from all over the states.
20 They bring the problems of small DAs and large probate
21 lawyers. They make resolutions. And here's the key
22 point, they get legislation passed. They get a lot of
23 legislation passed. They are independent. They are
24 viewed as an equal. And they have a lobbyist.

25 And I'll come back to that in a minute, because I

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1 think it's relevant to my position today, which is, the
2 time has come for a voluntary Bar. It's been coming for a
3 long time. And it's here. And if the leadership of the
4 State Bar does the right thing, they will accelerate that

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5 process. If the Legislature does the right thing, they
6 will allow it.

7 And what I'm speaking of specifically is the
8 division between discipline, licensing and admissions on
9 the one hand, and all of the rest of it on the other,
10 which should be an involuntary Bar. I don't want to
11 pretend that I know the history of lawyers, because the
12 truth is, I read about them sometimes Sunday afternoons.

13 The profession is 2400 years old. What lawyers
14 have done would amaze any of you in this room, when they
15 are allowed to do it. And I think I see that in the
16 conference, when they come and they say, there's a problem
17 in the probate code, or there's a problem in the
18 corporation code or -- and I've read this morning, the
19 corporation section now wants to be independent.

20 My problem, as I start, is that I feel guilty.
21 Why do I feel guilty? Because President Pasternak, you
22 are terrific. You've done everything that you could. If
23 I had my way, you would assume the position of president
24 of the voluntary Bar on Wednesday. And in an amazing
25 article in the journal, it would say that you had shown

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1 the most dramatic leadership in the history of the
2 organization.

3 MR. PASTERNAK: I can assure you, I have no
4 desire to ever be president of another Bar association.

5 MR. BROSNAHAN: Okay. Next Monday, then.

6 MR. PASTERNAK: I politely decline, but thank you
7 for the compliment.

8 MR. BROSNAHAN: And it is a compliment, and you
9 take my point. I've know many of the presidents over the
10 years, and I've defended a State Bar in Brosterhaus. We
11 lost. And it wasn't quite what the previous speaker said.
12 What it was was brought by the Pacific Legal Foundation,
13 not on political, but on ideological grounds, and it was
14 our job, and we spent months separating each item that the
15 State Bar had done in Superior Court in Sacramento. Each
16 item, wherever the State Bar had acted, the argument was
17 that was ideological, and we had to break down budgets,
18 the State Bar had spent this much money.

19 This is the control of 20 -- 220,000 lawyers by
20 forces outside -- and here, I don't want to be
21 misunderstood as decrying the Legislature, because it has
22 some very friendly members to the problems of clients and
23 the legal profession. David Chiu is an example. He's in

24 the assembly. He created, in San Francisco, the first

25 right to counsel sitting in the United States. So there

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1 are good people up there. I don't want to be

2 misunderstood.

3 So here we are, and here I am after all these

4 years. And I have three points, some thoughts on where I

5 think we are, and the opportunities that the leadership of

6 the State Bar have; second, the problems that our

7 integrated Bar has; and three, what I draw from those

8 problems. You listed some questions that -- for your task

9 force, and they are very good questions, and they may

10 subsume what I'm mentioning to you. But if I was drawing

11 up the questions, I would say, how much control should the

12 Legislature have over the organized Bar of the state of

13 California?

14 The issues that you seem to be focused on

15 primarily is the integrated Bar. The issue that I'm

16 focused on is there are only two states, I'm told -- I

17 hope this is right. One of you will correct me. There's

18 only two states in this country where the Legislature has

19 a large amount of control over the organized Bar. In the

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20 U.S. Supreme Court, when you make that argument, you know
21 there's only two states that have this, and you're trying
22 to throw something out, that is one of the strongest
23 argument you can make to those nine justices. And what is
24 the answer to that? What is the answer by the leadership
25 of the State Bar? That we are stuck there.

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1 Now, I am an accomplice. I had the car outside
2 the bank. We all saw it coming, a little bit. I'm
3 talking 25 years ago, I think that's about right. A
4 little temporizing. A little maybe this, a little maybe
5 that. And where are we this morning with the temporizing,
6 and where we be in the future, unless we have a strong,
7 independent, vocal, determined group of lawyers. Where
8 will we be?

9 And those who want to keep this have to assure us
10 it will be all right in 2018. It will be all right in
11 2020. We can't blame the Legislature, because the
12 Legislature has political power, and when they have things
13 that are under their aegis, they do what they think is
14 right. And then we all have to live with it.

15 What do the members want? What would be the best

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16 organization for legal reform? State Bar is good, not
17 that good. But legal reform. And what are our problems?
18 What are the problems that are facing the lawyers, and
19 especially, the clients. The most pressing needs of the
20 profession. We just went through four or five years where
21 the budget of the courts was cut, and who does that hurt?
22 Does it hurt the State Bar? No, not really. Does it hurt
23 the lawyers? A little bit, around the edges.
24 No, it hurts the truck driver, who has to go to
25 Alameda Superior Court, where my wife is a judge, at 7:00

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1 o'clock in the morning, and wait inline, outside, or not
2 go at 3:05, because the clerk's office is closed. I may
3 be wrong that the organized Bar will rise up as one
4 involuntary Bar. They are busy. They are practicing.
5 But they care.
6 The focus on discipline, which is essential, and
7 I speak as someone in the conference years ago, one of
8 four or five, who thought there should be public members
9 on the Board of Governors, as it was then called, of the
10 State Bar, because I kept reading somebody stole money
11 from a client, and then three years later, they were

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12 admitted back to practice. So that has that history to
13 it.

14 The unrepresented, you've already heard about.
15 If you make them into statistics, we can all tolerate it.
16 It's better emotionally for us not to think about the
17 mother who is denied custody of her child, the grandmother
18 who loses her home and has no lawyer. Where are we on
19 that? In California, six out of ten of the middle class
20 go to civil court without a lawyer. Eight out of ten at
21 the poverty level go without a lawyer. Despite the
22 efforts of pro bono through the State Bar, despite the
23 IOTA and all of those good efforts. I have a good friend
24 who was on the IOTA committee or board.

25 Despite all those good efforts, if we be honest

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1 with ourselves, we have to say it is time that an
2 organization be able to speak as an equal to the
3 Legislature. We must fix these problems. And imagine,
4 President Pasternak, I am not -- it sounds like I am
5 picking on you. I have no intention. I have to see you
6 at bar Meetings. You might come to the Morrison dinner.
7 I'm not picking on you.

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8 MR. PASTERNAK: I'm used to being picked on.

9 Mr. BROSNAHAN: All right, then. But here's two
10 Pasternaks. One is, hello, Legislature. We need this.
11 I'm with the integrated State Bar. And the other
12 Pasternak is, hello, I represent approximately 175,000
13 lawyers in the state of California, and here's what they
14 think you need to do. That is called democracy. That is
15 called strength. And it's possible.

16 And actually, you, if you were to do that,
17 President, I'm now serious. If you were to find a way,
18 despite the complexities of this, which are everywhere in
19 this room, so complex. But if you did, you could make a
20 contribution to the organized Bar in this state that would
21 be extraordinary. We know -- everybody in the room knows
22 about the budget issues, that the whole court budget is
23 1.4 of the total budget in California. And that 77
24 percent of that money goes to the trial courts, which are
25 real people.

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1 Yes, I've become intense. I go to court. I love
2 to go to court. And I see all -- not just my clients, but
3 I see all kind of people who have all kinds of problems.

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4 And this Legislature, as an institution, there were
5 individuals who were great friends of the court. But as
6 an institution, allowed four years of that, who do I go
7 talk to? I called my senator. You may have suspected, I
8 live in Berkeley and have radical thoughts.

9 I called my senator with the naive idea that I
10 would actually talk to her. I never did. On the court
11 budget. I never did. I talked to her staff, who told me
12 there was a problem that the senator was going to
13 straighten out with regard to computers. That's what I
14 got. Okay.

15 How would the voluntary Bar do? The best I can
16 do with regard to numbers comes out of the Wisconsin
17 report, which is now quite dated, but at the time, it was
18 interesting. It lists approximately 18 or 19 voluntary
19 State Bar Associations that existed at the time and what
20 their membership was. The membership was approximately 80
21 to 85 percent of all those members. And I guarantee you,
22 those would be the most idealistic, the most active
23 people.

24 The idea that the sections are going to wither
25 and die is -- does not -- I dare say it, maybe I have a

1 romanticized view of the Bar. I do, I do. Misunderstands
2 who the lawyers of California are. They are out there
3 doing all this good work. I see them on a regular basis.
4 And they were able to increase their membership. And why
5 were they able to do that? As an organization, you must
6 have incentives to keep the members happy. How are you
7 going to keep 220,000 people happy? Some of them are
8 clinically unhappy. Not kidding. And so how are you
9 going to do that?

10 But the problem with the present set-up is,
11 because it's impossible to communicate with 220,000
12 people, all this takes on a kind of "inside baseball"
13 atmosphere. And I know I'm pretending to be a man of the
14 people, and I'm out there, and all this kind of stuff,
15 which is not totally accurate. But how much does the
16 State Bar care about those 220,000 people, and how much
17 does it care, more importantly, about the clients they
18 represent. You do, President Pasternak. You care a lot.
19 So does everybody, probably everybody in this room. Other
20 organizations that I'm a member of, the executive director
21 is very caring, makes sure everything happened. They are
22 much smaller. I grant you that they are much smaller.

23 What are the problems? Number one, I'm
24 reportedly advised that the Board of Trustees holds up and
25 sometimes blocks sections' legislative proposals. How

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1 long has that been going on? In various ways, for 45
2 years. The conference is a comparison.

3 Number two. The financial entanglements are very
4 complex, and I'm not even addressing them. I wouldn't
5 pretend to know how you're going to disentangle some of
6 the financial things. I suppose in this age of mediation,
7 you'll have a room with some people in it. You'll figure
8 it out. Even down to the point, who owns the copyrights
9 on some of the products, and all that. I just want to
10 show you, I do understand.

11 Bagley Keene. Open meetings for a Bar
12 Association? I don't think so. I don't think so. And
13 temporizing with them, or trying to get them to say we are
14 different, or something, is not going to work, probably.
15 The California Public Records Act, now two lawyers wish to
16 discuss the Probate Code, and they must check the
17 California Public Records Act. Otherwise, there will be a
18 cover-up.

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19 No dues, says the Legislature, can be used for
20 the sections. Well, maybe that's a good idea. Maybe
21 that's a bad idea. But I think the lawyers in the
22 sections, and the membership of the organization should be
23 deciding that, not the Legislature, which is busy doing
24 other things. This all goes back to Keller versus the
25 State Bar, and before that, Abood, about what you can do,

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1 and what you can't do if you're a public entity.
2 Such inactivities have no impact on the Bar's
3 budget, as I say, for legislative reasons. There are
4 somewhere between 40 and 60,000 members, which speaks to
5 their desire to take a Saturday off and go to the
6 litigation section and learn more about it. That's who we
7 are talking about. What organization do they deserve?
8 And they get valuable practice assistance, which is never
9 going to go away.
10 So there has been for, back to about 1980, an
11 effort to move away from the integrated Bar. New Mexico
12 did that. The Missouri chief justice said, back in the
13 day, that he thought that the integrated Bar had run its
14 course. I said I would mention the conflicts. \$35 a year

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15 is voluntary. You don't have to go. They have a part-
16 time staff. They have one annual meeting. They have
17 relationships with local Bars, and they are passing a lot
18 of litigation -- legislation right now. It is a complete
19 reversal of democracy to have the Legislature tell lawyers
20 what they can present and what they cannot present. And
21 that's been going on for a long time.

22 I did not address the discipline part except that
23 it's got to be separate. The Legislature must have
24 nothing to do with discipline. And not so subterranean
25 echoes are coming out, even as far as my house, that the

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1 Legislature may want to have more to do with discipline.
2 The lawyers cannot be subjected to discipline by a state
3 agency. We are officers of the Court. That's very old.
4 We are not officers of the Legislature.

5 Questions can be raised, perhaps not in this
6 company, out of politeness, about whether the Legislature
7 is competent to be telling us the things that it tells us.
8 That's just one person's view. But I am told there are
9 four people in the legislation that have actually been to
10 court for lawyers, and there's a few more other lawyers

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11 there. And perhaps this isn't the venue to say what I
12 really think, but if the Legislature were overcome by some
13 insight, they would see that perhaps they have other
14 things to do.

15 Of all the organizations in California, whether
16 it's the Kiwanis or Mothers for Better Schools. The
17 Legislature is the least qualified to tell the organized
18 Bar what to do. But the organized Bar, going all the way
19 back, has been in the habit of telling the Legislature
20 what they would like to do. My answer to all this is that
21 the Supreme Court should be in charge of discipline, which
22 means an expansion of, very complicated, I imagine, a lot.

23 You have the North Carolina versus the Federal
24 Trade Commission, which I'm sure is taking a lot of your
25 time right now. That's the case where the dental people

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1 have the dentists deciding things, and I see those waters
2 are too deep in this company for me to suggest what you're
3 going to do about that, except that the discipline will
4 have to take care of it.

5 I debated whether to say this to you, but you
6 know it anyway. And I'm not blaming the State Bar for

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7 this. I'm just pointing out something you already now. I
8 work, in very small ways, on the integration of the Bar, a
9 long -- starting a long time ago. And now, it's still
10 just little bits of things. I mean well. I go to Bar
11 meetings, and we talk about it. I go to meetings. I was
12 at a meeting a week ago Friday. We all talked about the
13 problems and all that.

14 There are 4.1 Hispanic lawyers in the state of
15 California. Okay. That's not right. That is not right.
16 And if it's radical to suggest that it's not right, or if
17 I can be dismissed with kind of "you don't understand,"
18 I'll go back to my office at Morrison & Foerster and tell
19 Arturo Gonzalez, who used to work in the field in the
20 summertime, one of the best trial lawyers in this country,
21 that "I'm sorry, but I made a presentation I just didn't
22 understand."

23 What is it that it would take to increase the
24 number of Hispanic lawyers in this state? And I'm
25 speaking of someone who heard the rhetoric that it has to

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1 be 30 years ago, 35 years ago. It would take a voluntary
2 Bar. It would take enormous courage. A lot of work that

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3 I won't even be part of. As the T-shirt says, just do it.

4 Thank you.

5 MR. PASTERNAK: Thank you, Mr. Brosnahan.

6 Questions, comments?

7 MS. MEYER: I have one comment to make, and I
8 think this goes toward your comment, Mr. Brosnahan, about
9 the conference, and the Judy comment. And I think that --
10 I certainly don't want to speak on behalf of Judy Johnson,
11 but I think the comment that she was trying to make is
12 when I joined the conference, and I've been a member of
13 the conference from 1986 until about 2012.

14 When I joined, I would walk into a room with
15 about 700, 800 lawyers. I would walk into a room where on
16 a Saturday or Friday afternoon, the Attorney General would
17 come in and speak. I got a binder from the State Bar
18 which had three, 400 resolutions. Many of those were
19 accepted by the Board of Governors at that time, and the
20 Legislature adopted a number of those.

21 After Keller, Matt St. George, who took on the
22 chair of the conference, walked into a conference of
23 about, let's say 150 people. It was yet a shell of itself
24 because, it did not have the support of the unified Bar.
25 It was a shell of itself, because it did not have the

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1 gravitas that it had when it was part of the Bar. And so
2 although I appreciate your comments, I have to say that I
3 disagree that the conference is alive and well.
4 It is alive. It is passing legislation. It is
5 yet a shell of what it used to be. And I remember you
6 speaking before the conference on a number of occasions.
7 I remember as a young lawyer being so impressed at all of
8 you when you were speaking before a conference of well
9 over 700 lawyers. I think that the fact that Keller came
10 into play reduced the number of people who came. The Bar
11 was not part of that, and people stopped coming. We had
12 to compete to be on LA's delegation. Now we have to beg
13 to be on LA's delegation, beg people.
14 So I think that when I asked Judy the question
15 about the sections, that was my concern, that can they
16 survive by themselves? Maybe the larger ones can. Maybe
17 the business law section can. I wonder about the criminal
18 justice section. Can it survive? Can the criminal
19 justice section go out and hire an executive director?
20 Can they go out and hire a lobbyist? Those are the
21 problems that I see with respect to not having a unified

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22 Bar. But I am open to -- and I want to make this very
23 clear. I'm open to any suggestion to something different.
24 I just see those as being some issues. And I don't know
25 if you want to address that or not.

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1 MR. BROSNAHAN: I would be happy to. And I think
2 the question is, where are they in 2016. I was asked this
3 morning, how many members there were this year. I thought
4 there were about -- if they take a count, you know, if you
5 have a close count, they take a count. I think we had
6 about 250 members. I almost quit about the time that you
7 left in the sense of, there's not enough people.

8 The conference, by my view, maybe a minority
9 view, was demonized by some members of the Legislature.
10 They didn't like what we were doing. We were kind of a
11 free-standing group of lawyers. I mean, a lot is going to
12 happen if you put 700 lawyers in one room. That was what
13 was going on. And it was more fun with 700. But we have
14 come back, and I use "we" loosely. We now are very
15 energetic, very well organized. And whereas in the days
16 that you were referring to, you kind of go, and then a
17 year would pass and then you would go again.

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18 Now, the lawyers are actively working on proposed
19 legislation. I'm a member of the San Francisco
20 delegation. I don't know how many meetings they have
21 between the two conferences, but I'm going to say ten or
22 11 or 12. Why is that? Why is that?

23 That is because they sit in the meeting, and the
24 young lawyers have a vehicle. They sit in a meeting and
25 they get a report that last year, something was proposed.

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1 It's been signed into law. And that ability, and just a
2 little bit of a forecast, which you will indulge me, is a
3 little bit of a, where are we going. That ability is
4 going to bring young lawyers, who see the world as kind of
5 difficult to get anything passed in a way that would help
6 the organization, but more important, will help the
7 clients.

8 So I -- but the point is not that it was
9 flourishing and then it was thrown out. It was demonized,
10 very quite specifically. The politicians have a large
11 voice that they can use, and there's very often no good
12 answer for it. But they were demonized, but then they
13 hung in there, and now they have come back, in my opinion.

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14 And hopefully, they will have more people. But they are
15 not presently an ineffective organization. And my point
16 is, they are getting statutes passed with the Legislature
17 that sees them as an equal.

18 There is -- I did have one other point. Although
19 I'm not going over my time.

20 MR. PASTERNAK: Go ahead. We are running a
21 little bit late. Go ahead.

22 MR. BROSNAHAN: My last point. And everybody
23 knows this. When you're a lawyer and someone else
24 controls your money, not your client, you have a conflict.
25 I had a case years ago, I won't go into it, but the

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1 company wanted certain things to happen, but the client
2 didn't. But the company was paying my fee and I couldn't
3 do it. I couldn't continue. The Legislature controls the
4 money of the State Bar, and that gives this -- as an
5 organization, gives a conflict between what lawyers by
6 themselves want to do and what the Legislature will allow
7 them to do. And that's been there. It's been growing,
8 but it's been there a long time. Thank you,
9 Mr. President.

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10 MR. PASTERNAK: We do have a couple of other
11 questions or comments. Gwen Moore?

12 I thought you had your hand up, Gwen.

13 MS. MOORE: I did. I just have a quick question.
14 I liked your comments to President Pasternak when you
15 pointed out that with a voluntary Bar, that you could call
16 up the speaker or the president pro tem and say, "I have
17 175,000 lawyers, and that would make them do that."

18 Starting out and trying to put that together, how
19 long do you think it would be before you were able to make
20 that call?

21 MR. BROSNAHAN: It would take three years.
22 That's off the top of my head. I have no false idea about
23 how complex this is. But if the leadership of the State
24 Bar -- it's asking a lot, frankly. But if the leadership
25 of the State Bar were to lead an effort to take the

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1 non-regulatory portions of the Bar over to a voluntary
2 organization, which might include the conference of
3 delegates, by the way. Personally, I would love to see
4 that. That would take a year or two or three. And I
5 don't quite see how it would happen that fast.

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6 But once it was accomplished, I mean, there are
7 organizations in the state that have that many members.
8 They are powerful. They are very powerful. And it's
9 nobody's fault that I have the view that the State Bar is
10 not powerful, although I try to avoid telling you what
11 happened in the '60s and '70s. The State Bar was a lot
12 more powerful in those days, I thought. It's kind of
13 beside the point at this point.

14 But the answer to your question is, it would take
15 two or three years of a real lot of work by a lot of
16 people, but it would have exciting results almost
17 immediately. And it can be done. I appreciate the
18 concerns expressed here today, but I always had this idea
19 that somebody 30,000 years ago decided to walk upright,
20 and everybody was yelling, "You won't like it. It will be
21 bad. This is all going to fall apart."

22 We got something. We have got the pre-, and
23 you're going to ruin it. But I digress.

24 Mr. Jason Lee.

25 MR. PASTERNAK: Jason, you can follow that.

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1 MR. LEE: I'm not, unfortunately, the seasoned

2 trial lawyer that you are, Mr. Brosnahan. But thank you
3 for your comments. I wanted to focus on the last remark
4 that you had relating to the lack of diversity within the
5 legal profession. It's the same issue that Judge Johnson
6 addressed, too.

7 How would a voluntary Bar address that issue?
8 And you specifically identify the lack of Latino lawyers
9 in our profession. And how would they do it, and how
10 would they do it better than a unified Bar? It's an issue
11 that I'm very focused on.

12 MR. BROSNAHAN: I'm sure, and I'm sure everybody
13 here is focused on it. 209 was at the La Raza dinner on
14 Friday night. Wonderful young kids, I call them. But 209
15 cut off the sources of minority students in college, among
16 other places, and unless you've gone to college, you can't
17 go to law school. The fact that I would want it doesn't
18 mean a voluntary Bar would do what I want. That's not the
19 way the world works.

20 But it would be in a better position to lead
21 without concern about the Legislature. And maybe with the
22 cooperation of the Legislature, it should be a pretty
23 popular issue. A drive to do those things that are
24 necessary including the repeal of 209. That's a big --

25 that's a tall order.

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1 But the sources. I mean, we always have to ask,
2 okay. How do the kids get through the schooling, and how
3 do they get there? And this much is true. The State Bar
4 does some wonderful stuff with high schools and all that.
5 But it's almost false advertising if you're not going to
6 be able to go to college. And if you're not going to have
7 the money and all that. And I think an independent Bar is
8 in a better position to lead some of those issues than the
9 Bar.

10 I return to a point I made at the beginning, and
11 that is that there's only two states where the Legislature
12 is part of all this. And that's the other one is Alabama.
13 And I don't know what the answer to that is. But an
14 independent Bar, I think would be better situated.

15 MS. MEYER: Just to follow up on that. One of
16 the things when -- in 2008, when I was president of the LA
17 County Bar Association, one of the things the voluntary
18 Bar Associations do have is 501(c)(3) status. So a lot of
19 times, you're not able to bring about those kinds of
20 things. And when Prop 8 approached us, we wanted to

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21 actively take a role in opposing Prop 8.

22 And the first thing we had to do was see whether
23 or not that status would be jeopardized. So do you not
24 believe that a lot of voluntary Bar Associations wouldn't
25 be able to take that lead, and if they could, why haven't

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1 they done so now, in attacking 209, which has been around
2 for such a long period of time. And perhaps you can
3 address that.

4 MR. BROSNAHAN: I would be happy to, and it
5 requires me to say something that I know personally. In
6 1989, a long time ago, the San Francisco Bar adopted goals
7 and timetables on the issue of integration. And I was
8 chairman of the committee. I proposed it. There was a
9 lot of talk about the legalities of it, not so much the
10 nonprofit side of things, but more whether you can really
11 have goals and timetables. There were cases and we did
12 all that.

13 So that Bar Association has done it. And has
14 done it forever. If you went to the San Francisco Bar and
15 you said, you know, you're not going to be able to work on
16 this issue, nobody would really agree with that, if I may

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17 put it that way.

18 So there's plenty of energy out there to focus
19 through the right channels to the right organization. If
20 this voluntary Bar stood -- I think they would stand
21 absolutely for the budget. They would stand absolutely
22 for a kind of a right to counsel idea, complex thing. And
23 they would stand for the integration of the Bar. And
24 those three things, I think, would appeal to not every
25 lawyer in California, but a large majority of it.

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1 MR. PASTERNAK: I pointed to Miriam, and then I
2 think we are going to have to move on.

3 MS. KRINSKY: I really appreciate, Mr. Brosnahan,
4 all that you've done for decades on these issues.

5 MR. BROSNAHAN: I'm very old. I'm 82.

6 MS. KRINSKY: So I thank you for, really, a
7 career of not simply distinguished professional, career
8 but on behalf of these issues. I guess what I'm
9 struggling with a little bit, I think everyone shares,
10 everyone in this task force and in this room, shares the
11 same desires and objectives, which is how to we promote
12 the protection of the public.

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13 MR. BROSNAHAN: Sure.

14 MS. KRINSKY: How do we promote access to
15 justice? How do we promote diversity in our profession,
16 and better pipelines, and break through some of these
17 unfortunate glass ceilings. And I think the tough thing
18 is how do we get there, and I think we are all struggling
19 with that. I really believe everyone in the room wants
20 the same thing. You just need to have different lenses on
21 how do we find our way there.

22 So I guess I had one thought and one different
23 question that I want to kind of understand, make sure I
24 understand what you're saying. That the point you made
25 about how we are an outlier in regard to only one of two

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1 Bar Associations that has the degree of legislative
2 involvement and engagement with what we do is a point that
3 was well made at our last hearing by the executive
4 director of the Washington State Bar.

5 And her view was that the solution wasn't to
6 deunify, but that the solution was to take a long, hard
7 look at whether the separation of powers concerns have
8 really been accurately assessed. And I think that's

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9 something that our general counsel's office is looking at,
10 and I think it's the responsible thing for this task force
11 to look at those issues. It may be that we are not in the
12 right place on that, because we are an outlier on that
13 issue.

14 So I think we are all agree there's an issue.
15 It's how we solve it and what we do about it. That seems
16 to be the tough part. But the second question I have for
17 you is, as we are thinking through, if we were to separate
18 off some things, what would they be, and what should fall
19 under a voluntary Bar and what should fall under an
20 ongoing Bar whose focus is regulation and public
21 protection. There's a narrow lens one can look at in
22 terms of public protection, and then there's a broader
23 lens.

24 And I think what I'm hearing from you is you
25 would have us put into that voluntary side of the equation

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1 the diversity, access to justice issues, the work of the
2 Office of Legal Services.

3 MR. BROSNAHAN: The sections.

4 MS. KRINSKY: The sections. I think everyone

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5 agrees. But the pipeline work of places such as Council
6 on Access and Fairness, the work of the Commission on
7 Access to Justice. I'm also curious, would you put in
8 there lawyers assistance program?

9 MR. BROSNAHAN: I think so.

10 MS. KRINSKY: Ethics hot-line?

11 MR. BROSNAHAN: I think so. I haven't thought
12 about it much, but I think so. They are gallant and
13 wonderful and important and needed, and I think I would
14 increase that.

15 MS. KRINSKY: And fee arbitration also, the fee
16 arbitration function?

17 MR. BROSNAHAN: Yes.

18 MS. KRINSKY: So that's -- client security fund?

19 MR. BROSNAHAN: Yes.

20 MS. KRINSKY: So that's sort of the question that
21 I --

22 MR. BROSNAHAN: Although that's -- the client
23 security fund is very close perhaps to discipline. So I'm
24 not sure. That's a wobbler.

25 MS. KRINSKY: So that's -- I mean, I know I'll

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1 have a chance to talk more about it later. I know that
2 some of the members of our group will be presenting their
3 thoughts as well. But I -- where I come out with, the
4 devil seems to be in a lot of details here. And that kind
5 of more encompassing model of a voluntary association,
6 with one of the drivers being the extent of legislative
7 oversight and engagement as sort of the driving force why
8 we are separating so much out into that body, starts to
9 make me wonder whether we haven't really put a lot there
10 that really is about public protection.

11 And I guess I have a tough time reconciling our
12 mission, the mission of a regulatory association as being
13 about public protection, with things that we would peel
14 off that I continue to believe, including access to
15 justice, are integral to public protection. So that's
16 kind of the part of it I'm struggling with. And I don't
17 know where I come out on this, and certainly respect the
18 views of those who have been thinking about this for a
19 long time.

20 Well, I do believe they're driven by how do we
21 get it right. But, you know, I think those details start
22 to matter greatly with whether we are doing a disservice
23 to protection of the public, and weakening our ability to

24 further that objective.

25 MR. BROSNAHAN: I think those are great

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1 questions, actually. And I wouldn't want to sound
2 flippant, and I won't sound flippant, I hope. But the
3 discipline is so important that it stunts, in my view, the
4 rest of it. And the image of the State Bar is affected by
5 it. When I came in this morning, I almost wanted to say,
6 most of us have never been disciplined for anything. The
7 220,000. I don't know what the numbers are.

8 Most lawyers in the state of California have
9 never been disciplined and never had a complaint against
10 them. And yet the public discussion, understandably,
11 because it's a very important part of it, is about -- and
12 I even hear the State Bar's function primarily is
13 discipline.

14 Well, that organization would have a harder time
15 doing the kinds of things that I'm talking about. So if
16 you separated that, then that leads me to the voluntary
17 Bar idea, which I've always kind of liked anyway. In
18 terms of Alabama, I don't know what their Legislature has
19 been doing, so I can't compare that. But I know what this

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20 Legislature has been doing, and it's creating all kinds of
21 problems for the integrated State Bar. I don't want to
22 repeat myself.

23 MR. PASTERNAK: Just a follow-up.

24 MS. KRINSKY: If you then created simply an
25 only-discipline function regulatory body, in your mind,

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1 should the Legislature still be the one to control the
2 dues, sort of the licensing fees for that body, the
3 funding of that body?

4 MR. BROSNAHAN: No.

5 MS. KRINSKY: The composition of that work?

6 MR. BROSNAHAN: No.

7 MS. KRINSKY: Or as an arm of the court, is it
8 more appropriate for the court to be the one to control
9 those things?

10 MR. BROSNAHAN: I go back to our, maybe, simple
11 idea of having public members on the Board of Governors,
12 which was that they would come in, and they might be a
13 little tougher on discipline, but that's different than
14 having the Legislature have a word about discipline of
15 lawyers. I know and so do you, the Legislature pretty

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16 well. They like to have hearings and castigate everybody
17 and all that, and that's fine. But these -- I have
18 defended a few lawyers here and there and asked for mercy.
19 But they are very complex. They are not consistent with
20 headlines of the Legislature's cracking down on the evil
21 lawyers in the state. So I wouldn't -- my answer is no, I
22 wouldn't.

23 MR. PASTERNAK: And we have one more question
24 from Leah Wilkins.

25 MS. WILKINS: Quick question. Just wondering if

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1 you would comment on the anti-competitive issues that are
2 raised by this powerful voluntary Bar, in reference to the
3 Rocket Lawyer comments and some of those concerns.

4 MR. BROSNAHAN: Yeah, I think there are ethical
5 issues, actually, and that's not a new issue either.

6 There have been antitrust suggestions going back many
7 years. I think if you just have lawyers on this imaginary
8 panel that's going to decide the discipline issue, there's
9 probably a lot wrong with that. But legally, it's not a
10 crazy idea that lawyers sitting on a case that affects one
11 of their peers, not directly, not same firm or anything

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12 like that, it's not a legal conflict, but it's a mental
13 conflict, in the sense that, well, you know, I can
14 understand, very sympathetic.

15 The dynamic of the discipline is, you get very
16 sympathetic. I sat on one, and you're kind of
17 sympathetic. You kind of see how it goes and so forth,
18 except he stole money. And you don't see how that goes.
19 So I would have to think a lot more about it, actually.
20 But I think this panel that is floating in the air here
21 would be okay if there were some non-lawyers as
22 participants. And there are people that would qualify
23 quite well for that kind of thing. Who appoints them is
24 beyond my pay grade, this being free.

25 MR. PASTERNAK: Thank you for your time this

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1 morning.

2 MR. BROSNAHAN: Thank you.

3 MR. PASTERNAK: And your thoughts. I want to
4 take a moment for personal privilege first, before you
5 leave, Jim. You mentioned some of the wonderful attorneys
6 we have in the state and wonderful things they have done.
7 Miriam just mentioned among other things glass ceilings.

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8 Last week, as you well know, we lost one of the most
9 prominent, best attorneys and judges we have in the state.
10 One of your senior partners, Shirley Hostetler.

11 MR. BROSNAHAN: Yes.

12 MR. PASTERNAK: And I hope you'll take that to
13 our former president, Seth Hostetler, and send our sincere
14 condolences at her loss.

15 MR. BROSNAHAN: For those of you who don't know
16 her, she was first in everything, and of course, my wife
17 and I thought a lot about her this weekend. But she was
18 not afraid. She was never -- I never saw her afraid.

19 Thank you, Mr. President.

20 MR. PASTERNAK: Thank you.

21 MR. BROSNAHAN: Okay.

22 MR. PASTERNAK: We are going to move on to
23 Justice Ron Robie, who is a justice of the Third Circuit
24 Court of Appeal in Sacramento. Justice Robie has been a
25 judge for over 30 years now, as a former chair of our

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1 Access to Justice Commission. Justice Robie.

2 MR. ROBIE: Thank you very much. I'm -- you all
3 talked about the Brosterhaus case. I was the trial judge

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4 that got reversed on it. So we all have a connection with
5 that, and he still appears before me, to this day.

6 So as Chairman Pasternak said, I am a justice of
7 the Court of Appeal, and I've been a judge for 33 years.

8 MR. ROBIE: I think I'm not speaking close enough
9 to it. I've served on all different levels of the court,
10 and I have been on the Access to Justice Commission for
11 ten years, and I'm very grateful to the Board of Trustees
12 for have appointed me as chair for five years now, up
13 until two years ago.

14 I must say, I'm speaking only for myself today,
15 based on my experience as a judge and as a member of
16 various things. I wouldn't dare to presume to speak for
17 anyone else. But I do support the unified structure of
18 the Bar and urge you to retain it. Now, any organization
19 can be approved in some way. When I became director of
20 the water resources, everybody said it was a great
21 department, and I thought of all sorts of ways of turning
22 it upside down.

23 So I'm speaking today to the basic structure,
24 which I believe has served the lawyers of California, and
25 particularly the public and the judiciary, very well. You

1 know, lawyers have an ethical obligation to serve justice
2 and the underserved, and the fact that the unified Bar has
3 in California allowed a lot to be done in that respect is
4 very important.

5 And I consider the provisions of attorneys for
6 the poor and those of modest means to be part of the
7 public protection function of the Bar, because if people
8 can't get into the courthouse, they can't be understood
9 when they get there, and if they don't a lawyer
10 accompanying them in critical areas, they simply don't
11 have any access to justice. And lawyers have to take the
12 lead. They know this area best.

13 And it's been, really, a black mark on our
14 profession that the poor and people of modest means have
15 had inadequate access to lawyers and to the courts in
16 general. And I know we have been through a terrible
17 financial melt down and a rolling cut back in funding for
18 the courts. But the Bar has been in the forefront in
19 fighting to maintain the integrity of the judiciary and to
20 keep the courts strong, supporting self-help centers and
21 other functions like that.

22 So the lawyers are in the forefront, and I think

23 the Bar has given them the ability to be on the forefront.

24 It's a fundamental responsibility of lawyers to do these

25 things, to perform in the public interest. And I think if

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1 you just left them on their own, they wouldn't necessarily

2 be reminded of that as often as they need to be.

3 There was discussion of discipline today. There

4 have been a lot of attorneys who appeared before me before

5 the years, and while 98 percent of them are always -- were

6 really wonderful, they were some bad apples. And the Bar

7 has managed to take care of them. So that's a fundamental

8 responsibility. But so is public protection in the form

9 of providing public the abilities to navigate the court

10 system. A court system without the ability to make use of

11 it is not a court system at all.

12 And, you know, judges and the judiciary are

13 limited by the code of judicial ethics in so much of what

14 we do. And that's the organized unified Bar has a

15 significant role in doing what it can to do the things

16 that we can't do, to defend our courts, to defend the

17 ability of people who get into our courts. And you know,

18 the Bar has been a leader in civic education. Our chief

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19 justice has been very significantly involved in this.

20 We have a serious image problem with people who
21 don't know anything about the courts, and lawyers are --
22 they are in court every day, and they have a serious
23 obligation to support, for example, civics education as
24 well as legal ethics.

25 You know, it's funny. The court issued a

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1 discipline in a few -- I mean, the Superior Court
2 Committee on Judicial Ethics, which is another one of my
3 hats, issued an opinion on the kind of gifts that judges
4 could accept. And then it occurred to me, you know, who
5 has a significant role in this is the lawyers. And so we
6 wrote a letter to the president of the Bar and said, would
7 you help us tell lawyers what they should not be doing by
8 giving gifts to the judge. There's two sides of all of
9 this. Judges are very, very unable to protect themselves
10 against this. The State Bar and the organized Bar and the
11 unified Bar can do a lot in that regard. Thank you so
12 much.

13 MR. PASTERNAK: Thank you, Justice Robie. Any
14 questions or comments?

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15 I don't see any. Thank you very much.

16 We'll move on to our final speaker of the
17 morning. Carol D'Elia is the executive director of the
18 Little Hoover Commission, which is an independent state
19 oversight agency that was created in 1962. The
20 commission's mission is to investigate state government
21 operations, and through reports, recommendations, and
22 legislative proposals, to promote efficiency, economy and
23 improved service. Welcome.

24 MS. D'ELIA: Thank you. Again, I want to thank
25 Elizabeth for inviting me. I'm the executive director of

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1 the Little Hoover Commission, and I thought before I began
2 talking about our review of occupational licensing, I
3 would spend a minute or two talking about the commission
4 and our governing structure. I think you'll find it
5 interesting, and it also lends to not only the
6 conversation you're having, but our goal in the study.

7 So our commission has been around for 54 years.
8 We were modeled after a federal commission that President
9 Truman put in place after World War II. The government
10 that the federal government put in place to run the war

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11 became duplicative with existing federal government, and
12 he saw a need to get rid of the duplicity, to streamline.
13 So he put in place an independent commission, and he put
14 former President Hoover in charge of it. So it became
15 known as the Hoover Commission. We were modeled after
16 that, so that's why we are called the Little Hoover
17 Commission.

18 We have -- we were enacted through legislation.
19 We have 13 members. Four of them are members of the
20 Legislature. We have two from Assembly and two from the
21 Senate. We have nine public members. Our members are
22 appointed by the governor and the legislative leadership.
23 Of the nine public members, no more than five can be from
24 the same political party, and the same goes for our
25 legislative members. We have two Republicans and two

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1 Democrats. And this has been very important to our
2 resilience over the years.

3 We take on issues that sometimes are contentious.
4 Sometimes we're asked by the Legislature to look at
5 things. Sometimes stakeholder groups come to us. Often,
6 our commissioners themselves take on topics. They serve

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7 as volunteers. They all have different work backgrounds,
8 so they take on this task in addition to their regular
9 jobs. As I described, they have different ideologies, but
10 they all want government to work better, so they select
11 topics. Either they have been asked or they pick topics.

12 And then our process is very public. We are
13 subject to Bagley Keene, so everything we do has to be in
14 public. We have public hearings. We, as staff, are
15 non-partisan. We just try to find the best experts that
16 we can find, and we bring them in front of commission at
17 these public hearings. We have a lot of research, but it
18 all funnels up to our commissioners, and they then, in
19 public settings, decide what they potentially want or
20 recommend on any given topic.

21 Those recommendations, once they agree, are sent
22 to the Legislature and to the administration, and to any
23 appropriate members of the administration. For example,
24 we just published a report on the state Denti-Cal system.
25 So we'll be working with people at the Department of

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1 Healthcare Services which runs that program. That
2 happened to be a case where we were asked by two

3 legislative members, and they have placeholder bills
4 waiting for what we decided and recommended last week.

5 So that's kind of the Little Hoover Commission in
6 a nutshell. As I said, we are able, we're independent. I
7 report to our 13 commissioners, and other than the
8 legislative members who serve at the pleasure of their
9 appointing authorities, the other nine have staggered
10 four-year terms. That gives us a degree of ability for
11 us, when we come out with something such as the report we
12 issued last week, I don't have to run it through the
13 administration. We say, basically, whatever the
14 commissioners agree that they want to say.

15 So we look at the executive branch. That's our
16 focus. For this topic, occupational licensing. This was
17 a topic that was brought up by the commissioners
18 themselves. It started with a conversation last summer.
19 Shortly after the White House report that you might be
20 familiar with on occupational licensing. The report came
21 out and said that in the '50s and '60s, five percent of
22 occupations required licensing, and today, that's more
23 like 29 percent.

24 So this was brought to the attention of the full
25 commissioner, commissioned by one of our commissioners

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1 named David Beier. He is a Brown appointee and a former
2 chief policy advisor to vice president Al Gore. So there
3 was a lot of ties to the White House and to the federal
4 government. So he's always apprised on what's going on.
5 So he brought this issue to the commission, and with the
6 bipartisan nature, we found instant agreement that it was
7 something worth reviewing.

8 There were those who thought that by having
9 licensing, you're fencing out people and driving up costs.
10 There were others who were concerned that with licensing,
11 particularly for low or moderate income Californians who
12 may be trying to enter a job market, that the rigors of
13 licensing, particularly in professions that maybe don't
14 require a college degree, but then require a large amount
15 of course work and expensive licensing fees, that we were
16 shutting people out of the market.

17 So the commission agreed to go forward. As I
18 said, we meet monthly, and in our public setting. We held
19 our first public hearing on this topic in February, and
20 the first hearing featured -- it was more of a theoretical
21 Licensing 101. We had Dr. Morris Kleiner, who is the

22 author primarily of the White House report, and he kind of
23 spoke to the economics, and whether or not licensing hurts
24 the economy. And that essentially is his philosophy. And
25 he's pretty much dedicated his body of work to licensing

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1 and is being funded by Kaufman Foundation to document all
2 of the licenses in all of the states.

3 I guess I should say, as I'm beginning, our focus
4 to begin with, at least, was not to look at some of the
5 professions which would include attorneys. We have five
6 attorneys who are not practicing, but five who are part of
7 our 13-member commission, and they kind of shelled off
8 things such as doctors and lawyers, and had us, at least,
9 at the beginning, focus on the many licensed professions,
10 particularly those 250 some odd that are underneath the
11 Department of Consumer Affairs. So everything from
12 landscape architects to cosmetologists all the way up to
13 the registered nursing board.

14 So that was our area of focus. At our first
15 hearing, we also heard from the Institute of Justice.
16 They have been doing some studies on occupations that are
17 typically entered by lower income professionals. We have

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18 written testimony from the Kaufman Foundation, and I
19 should mention, all of this, from the written testimony
20 that we are provided by all of the witnesses as well as
21 links to our hearings, are available on our website, which
22 is lhc.ca.gov. So if anybody wants to see what some of
23 these folks said or listen to what they said, it's all
24 available.

25 Another witness at that first hearing is

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1 somebody you probably are familiar with, and that's Bob
2 Fellmeth from the Center for Public Interest Law. And he
3 has some outspoken ideas. He talked a lot about capture
4 of regulatory boards. And as was brought up already here,
5 the North Carolina case. We, entering this review of
6 occupational licensing, tried to avoid the North Carolina
7 case, because we know that the Legislature is currently
8 considering what might need to be done. They have had an
9 opinion by the Attorney General. And -- but knew we had
10 to at least make sure our commissioners were aware this
11 had happened and keep that in mind.

12 But Professor Fellmeth had some strong opinions
13 on that particular item and included that in his

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14 testimony. Then we also heard from the two chief
15 consultants of the two boards, the two committees,
16 legislative committees that do the sunset reviews for the
17 board and the sunrise reviews. And so we do, in
18 California, have something in place. Particularly with
19 the sunrise committee hearings, they -- any time somebody
20 wants to take a new profession that isn't licensed and
21 wants to become licensed, they go in front of the sunrise
22 committee. And they, I think, have done a fairly
23 effective job. You haven't seen in the past several years
24 a lot of new professions requiring licensing.

25 The sunset review is where every four years,

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1 various boards go in front of them, and they ask
2 questions, you know, ranging from how up-to-date are your
3 regulations, and how many people are being denied
4 licenses, and how fast are licenses being processed. And
5 they are also considering whether or not that board should
6 continue to exist. They haven't eliminated many boards in
7 the history that -- at least recent history. But anyway,
8 they came and talked to us about their process.

9 So last week, we had our second hearing, and we

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10 called our second hearing, we wanted to hear from the
11 people. We started the hearing at the request of several
12 of our commissioners. They wanted to hear from some of
13 the licensed so, we had a representative from registered
14 nursing and cosmetology. And then we also heard from an
15 interior designer, not to be confused with decorator, and
16 talking about why they would like to be licensed. They
17 are not currently.

18 And so we heard from those folks talking about
19 the public safety benefits, and I think some of our
20 commissioners were surprised to learn, particularly from
21 the cosmetology representative. You think of, you know,
22 well, if you don't like the haircut, you just don't go
23 back to that person. But when she described the chemical
24 peels and the many different types of things that are
25 under the umbrella, I think they came around a little bit

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1 to understanding why it is potentially a public safety
2 benefit.

3 What was interesting in her presentation was she
4 talked about how each state requires a different number of
5 hours to be a licensed cosmetologist, and how here in

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6 California, I think it's like 15 or 1600 hours, whereas in
7 some other states, it's less. And trying to come up with
8 some national standards. We also talked a lot about
9 reciprocity, particularly with the nurses. The nurses are
10 opposed --

11 MR. PASTERNAK: We are getting a lot of noise
12 again from somebody on the phone. If you can please make
13 sure your phones are muted. Thank you.

14 MS. D'ELIA: The nurses are opposed to
15 reciprocity, meaning you can have a nursing license in
16 other states and come to California, but there are certain
17 things you need to do. There's a consortium out there
18 that's trying to make that easier, so that if you're in
19 one of those compact states, that you really don't have to
20 do anything. And this kind of speaks to the next groups
21 of people that we heard from.

22 So we heard from some of the licensed. We
23 already heard from those which our commission thought are
24 the most adversely affected, and that would include
25 felons, former felons, who there is a lot of challenges to

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1 entering a variety of professions if you have a felony

2 record. We heard from a representative from a group who
3 advocates on behalf of foreign trained immigrants, and
4 particularly, the gentleman who spoke to us talked a lot
5 about healthcare professions.

6 So, for example, dentists who are practicing in
7 other countries and then come to California, come to live
8 here. Perhaps they are married to somebody who is working
9 in Silicon Valley. Without going back to two years of
10 dental school, they can't practice here. They can't even
11 be a dental hygienist here. So the barriers, particularly
12 in professions of nursing, dental, where we are actively
13 needing more people and the barriers that we have put up.

14 Last, we heard from a representative who talked
15 about the challenges of turning military experience into
16 something that could be counted toward a license. So what
17 she had to say, she was a Department of Defense
18 representative, is we effectively pay for training while
19 somebody is in the military. Then when we get out, we
20 insist that they be retrained, and we pay for them again
21 on the GI bill. So, for example, somebody who was
22 automotive repair, working on large trucks in Iraq or
23 driving tanks around Iraq. And they come back, and there
24 are these challenges to getting them into the trucking

25 industry or automotive industry.

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1 The other group that she talked about was
2 spouses, where a military member changes location
3 frequently. Usually, only deployed for year or two, or
4 moves around the country. Well, that spouse, if they were
5 an optician in Illinois, they come to California, they
6 can't be an optician here without jumping through numerous
7 hurdles, expenses and time, to the point where their
8 spouse then gets moved again. It doesn't really make
9 sense.

10 So we have heard all of this. My presentation
11 today is a bit unusual. We have not come to any
12 conclusions yet. We are right in the middle of the study.
13 We did get direction last week from our commissioners,
14 where they said they would like to have our next event be
15 a public -- or be a roundtable discussion where they are
16 hopeful that in addition to some of the committee
17 consultants, we'll have a couple of legislative members.

18 One of our current legislative members, Assembly
19 member Sebastian Ridley-Thomas from Southern California,
20 has a keen interest in this topic. And he's on the

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21 subcommittee studying it, and thinks that we'll be able to
22 pull a few more legislative members together to talk about
23 how do we resolve this.

24 The challenge that we foresee is in -- and we, as
25 far as I can tell, aren't going to be getting down into

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1 the weeds of any particular industry. Our recommendations
2 will be much broader based. We don't feel like we have
3 the capacity to say what should be part of the licensing
4 for nurses or any other profession. But at the same time,
5 any changes that we recommend, there's a lot of push back
6 by the associations. And there will be -- anything that
7 we recommend to the Legislature, they will instantly get
8 push back.

9 And we saw it even at our hearings, where they
10 quickly -- and we have a lot of people asking to make
11 public comments and sending us written comments, because
12 every single profession that has a license seems to be
13 interested in having the commission not do anything to
14 start to break down or erode the fences that have been put
15 up.

16 So we are in the middle of the study. Our

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17 recommendations, probably at the earliest, would come out
18 in August, possibly later. There was some talk at our
19 last business meeting about attempting, if there is
20 legislation that would affect the North Carolina case,
21 having whatever we might recommend be part of that, but
22 that's not necessarily going to be the case. It was just
23 a discussion that was had. So that's -- kind of takes me
24 -- I know I'm the person in between you and your lunch, so
25 with that, that kind of covers pretty much what we have

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1 done. I'm happy to answer any questions on that topic.

2 We also, last year, did a report on Open Meeting
3 Acts, and I would be willing to address what we
4 recommended there as well.

5 MR. PASTERNAK: Could you briefly address that
6 subject as well. You looked at Bagley Keene, it's my
7 understanding.

8 MS. D'ELIA: We also looked at the Brown Act and
9 as ex parte. So it was an interesting study. It started
10 with a hearing that we were holding in April of 2014 on
11 energy governance. And it was a follow-up to work that we
12 had done, and it was concerns about the California Energy

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13 Commission, the Public Utilities Commission, the
14 California Integrated System Operator all working
15 together, and how was that going, and were we going to
16 achieve our renewal energy goals.

17 So we had heard from all of the leaders from
18 those organizations, and we had this panel that included
19 Natural Resources Defense Council, U.C. Berkeley
20 professor, expert on renewable energy and a couple other
21 folks.

22 And the commission said, "Do you find it hard to
23 work with these different organizations? Is it
24 overlapping?" And the Natural Resources Defense Council
25 spokesman just kind of jumped up and said, "You know, what

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1 you really need to do is you really need to fix Bagley
2 Keene. Bagley Keene is preventing anything anybody from
3 talking to each other, from getting anything done. That's
4 what you should look at."

5 So sparked by that, somewhat off the track of
6 where we were, the commission later that year took up the
7 topic. We held two hearings. We did a survey of local
8 officials. We were really focused initially on Bagley

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9 Keene. It was also, as we were doing the study at the
10 time, where all of the e-mail issues with the former
11 president of the PUC and San Onofre and all of that was
12 coming out in the press. So just as we were talking about
13 ex parte and how important it could be, this abuse of it
14 was coming out in the press. So we were in somewhat of a
15 difficult position.

16 At the same time, so we -- so on our survey, went
17 to the League of California Cities, California State
18 Association of Counties. So all county board members,
19 board of supervisor members, city council members, and
20 then special district association members. And we got
21 feedback from like 300, and overwhelmingly, they agreed
22 that the Brown Act was limiting what they could do. When
23 it came to Bagley Keene, we primarily heard from the
24 Energy Commission, the PUC. We also reached out to the
25 Coastal Commission and to the State Water Resources

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1 Control Board.

2 And essentially, what the commission heard was as
3 the Bagley Keene was amended in 2008, what happened was
4 there was a court case, I want to say Fremont versus Wolf.

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5 And the ruling on that court case had made it seem as if
6 serial communication was okay. And so everybody agreed
7 there needed to be a fix, so they went in and they fixed
8 the Brown Act in 2007, and they fixed Bagley Keene in
9 2008. But what they added that didn't exist before was a
10 clause that prohibits discussion. And that piece of it,
11 that discussion had never existed before.

12 Shortly after that, pretty much everybody's
13 attorneys, whether you were us at the Little Hoover
14 Commission, and I get advice from the Attorney General, or
15 whether you were the PUC, they essentially said, don't
16 talk to each other. If there's more than two people, it's
17 a meeting. Two is a conversation, three is a meeting.
18 And so what we recommended, which was kind of going
19 against the grain at the time, and is still kind of
20 languishing out there, for lack of a legislative member
21 willing to take it on, or somebody willing to bury it into
22 a trailer bill in the dark of night, was that they really
23 did need to amend Bagley Keene and Brown Act to let people
24 talk to each other. Not to make decisions, not to
25 deliberate, but essentially to gather information.

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1 So an example we got from one of the members of
2 the PUC is that the lobbyist, the stakeholders can go to
3 each PUC member and get everybody's opinion, one-on-one,
4 and sort of like a bee pollinating a flower, they know
5 exactly what's going on. But the commissioner themselves,
6 who have to sit up there and make hundred million dollar
7 decision on various -- citing various transmission lines
8 or whatever comes in front of them on rates that effect
9 three-quarters of the people in the state of California,
10 they don't know. And they can't talk to each other.

11 So our commission came down that we should have
12 the ability to have conversations outside of a public
13 meeting as long as there isn't decision making or
14 deliberation towards decision making. If it's simple
15 information gathering, that it would be okay. So we are
16 still waiting to see the governor. Right about the time
17 we released our report, he held a conference, and there
18 were others who agreed with us on ex parte. We again kind
19 of went against the grain, despite what was going on with
20 the PUC, we felt like ex parte has a role, but we thought
21 there could be greater transparency. So that's, on that
22 topic what we said --

23 MR. PASTERNAK: I encourage you to talk to our

24 sections as well, if you endeavor to address that topic

25 further. Questions, comments?

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1 Vanessa.

2 MS. HOLTON: Did the Hoover also consider Bagley

3 Keene modernization to allow individuals who participate

4 to -- and do so from home or office by video or audio

5 without having to publicly notice and allow others to

6 attend? Did they get into anything around technological

7 improvement?

8 MS. D'ELIA: No, although it's something that

9 comes up. It's -- I'll give you an example. A former pro

10 tem, Don Perata, is a member of the Little Hoover

11 Commission, as a public member now, and he's going to call

12 in from his house. He notices his house. He's like,

13 fine, tell them to bring coffee on their way up. But

14 that's not necessarily what everyone wants to do. So our

15 members realized it's an issue, but they make every

16 attempt to find themselves in a public place.

17 MR. PASTERNAK: The types of problems that I've

18 heard about for example, referring to our criminal

19 jurisdiction section, we have prosecutors on there. And

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20 prosecutors, for obvious reasons, are reluctant to give
21 out home addresses and home telephone numbers. And same
22 thing is true for many family lawyers. And so from what
23 I'm hearing, our sections are experiencing problems that
24 Mr. Perata apparently is not.

25 MS. D'ELIA: Well, I think that -- we didn't go

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1 into that, but I think -- you guys are all lawyers and I'm
2 not. But the way, the best way to handle that is to try,
3 if you've got people all over the state, what our
4 commissioners will do is they'll select somebody's office
5 and make it open to the public, and two or three of them
6 would gather in that one person's conference room. And we
7 do get people who attend, but they are typically
8 association members and lobbyists. It's not typically
9 just somebody wandering in off the street. But I think
10 the best is when you can do it in a conference room that
11 can be made open to the public.

12 MS. MEYER: I think the other issue, too, along
13 with David's comment, is for prosecutors, especially for
14 me, the public cannot come in our offices. We have
15 confidential, highly confidential material in our offices

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16 that the public cannot see. And moreover, folks coming in
17 the office, they could be my criminal defendants the next
18 day, and they come into that office. So that's also a
19 problem, that governmental lawyers with Bagley Keene are
20 having an amazing problem dealing with giving out both of
21 our business and our home address.

22 MS. D'ELIA: Right.

23 MS. MEYER: So maybe they can make your
24 commission kind of look into that at some point.

25 MR. PASTERNAK: Miriam.

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1 MS. KRINSKY: I've just been looking at your
2 report, on the recommendations that you made, and it's
3 terrific. I mean, it's quite interesting. I'm wondering
4 whether you looked at the issue in that, kind of
5 consistent with the informal conversation, internal
6 discussion, given that Bagley Keene really is intended for
7 the public to have access to decision making, whether
8 there's an ability in the sort of scenarios that have been
9 played out, of the individuals to participate by phone,
10 but simply not be counted as part of the quorum and not
11 vote, and still be able to participate, listen in, and not

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12 be subject to the same posting of the address
13 requirements. I know that's into the weeds a bit -- and
14 you know better about, if that's anything that you all
15 looked at.

16 And I also made a connection, going back at you,
17 wondering whether we have yet given clear guidance on that
18 issue, because that question has come up. But maybe when
19 you all happen to look at that piece of it.

20 MS. D'ELIA: We didn't specifically look at that.
21 That would be something, because my commission deals with
22 that on occasion. I'll give you an example. We had --
23 and this was a couple years ago. We convened a meeting
24 just to specifically adopt a report, and unfortunately, at
25 that point in time, we hadn't yet adopted in our bylaws

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1 the ability for people to vote while they were at their
2 home office or wherever they might be. And we had one
3 commissioner, who was kind of the person who was the most
4 concerned about this particular issue, flying in. Got
5 stuck in the Denver airport.

6 And so he -- we have convened all of these
7 people, and we have flown commissioners up to Sacramento.

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8 And here, the one key person is stuck in an airport in
9 Denver. Can he call in? Can be part of it? Can he vote.
10 It's been several years, so if we broke the law, it's
11 probably okay. But we didn't -- he wasn't able to vote,
12 but he was able to participate and talk about, because the
13 whole reason for everyone else.

14 So we were weighing taxpayers dollars, and our
15 other volunteer commissioners who had flown from LA and
16 San Diego and wherever with this rule, and we decided that
17 we would let him have his say, and we would listen to him
18 and they would weigh it.

19 The meeting was open to the public. Everybody
20 could hear what he was saying. But what would the
21 Attorney General say? My experience with them is they are
22 always very cautious. And they might say that, you know,
23 maybe you're following the technical letter of the law,
24 but it probably doesn't look good, and you shouldn't have
25 done it.

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1 I have another example from last year. We were
2 looking at the Salton Sea, and we wanted to go to down to
3 the Salton Sea and do this bus tour. We were going to

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4 drive all the way around the Salton Sea. We're going to
5 have all these experts, economic development experts,
6 engineers, scientists. And as we drive around, they are
7 going to talk.

8 And so I wanted to know, do I have to notice
9 this, and if so, how do I make -- what if there's more
10 people that want to come on the bus and there's room. And
11 they actually told me, well, they can -- so here's what
12 you need to do. They can follow you in their cars and you
13 can only talk when you stop. And you know, so you're
14 always going to get -- and that was something we got
15 through the whole report. But we would hear from people.

16 So we had the California Newspaper Publishers
17 Association, which are backers of the most recent
18 amendments to Bagley Keene, and they were sitting there
19 telling our commissioners, no, that's not what we meant.
20 And then a roomful of the lawyers of all of the boards and
21 commissions affected, all shaking their heads, saying no.
22 We won't allow anybody talk to anybody, because we don't
23 want some multi billion, million dollar decision to be
24 thrown out because somebody violated or is accused of
25 violating.

1 So everybody interprets it really strictly. And
2 so I tend to feel, as the executive director, I sometimes
3 don't know. I get the advice of the Attorney General, and
4 I try and follow it as best as I can. But I think that
5 that's a gray area.

6 MR. PASTERNAK: I can take one more question.

7 I have Gwen, who had a question.

8 MS. MOORE: Again, my question is just a quick
9 one. That is the commission already, do you have a formal
10 report on this issue?

11 MS. D'ELIA: Yes, and it's online at lhc.ca.gov.

12 MR. PASTERNAK: I think.

13 MS. D'ELIA: I'm happy to stick around a little
14 bit. If anybody has additional questions that they just
15 want to ask me one-on-one, I'm happy to answer.

16 MR. PASTERNAK: I appreciate it. Thank you very
17 much for your comments and for your time. And we'll take
18 a lunch break now until ten after 1:00.

19 (Luncheon recess was taken from 12:35 p.m. to
20 1:16 p.m.)

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1 AFTERNOON SESSSION: 1:16 p.m.

2 MR. PASTERNAK: Our next speaker is Linda Katz
3 from the State Bar, who's a principal analyst in the newly
4 created Office of Research and Institutional
5 Accountability. Linda?

6 MS. PARKER: So if I can lead off here, and for
7 Linda's sake, this will be quick. But I wanted to
8 highlight that we are collecting and posting a lot of data
9 that Linda is gathering. And so the slide up here, you're
10 not intended to read. It's just to get your interest. So
11 Linda, do you want to quickly walk through some of the
12 slide?

13 MS. KATZ: Yes.

14 MS. PARKER: Some of the research that we have
15 done and what we are looking at.

16 MS. KATZ: Yes. So there were three documents
17 that were posted to the website from last, the last
18 meeting. Two of them were summary information, one page

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19 about -- so there was a summary of basic information about
20 unified Bars. The number of attorneys, the Board's size,
21 the number of public members. How the members, the
22 attorney members, how the Board was selected. How the
23 public members were selected. Whether non-attorneys are
24 directly involved in discipline, things like that.

25 And then the voluntary Bar, there were summary

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1 information about the number of licensed attorneys,
2 resident active attorneys, number of members of the Bar,
3 the governing Board size. And then there was one page
4 where, for the large Bars, there was a selection of the
5 largest Bars, both unified and voluntary, with a little
6 bit more detailed information about some of the program
7 areas.

8 How the client security fund is managed. How
9 MCLE is enforced. What the mandatory maximum annual fee
10 is. Whether there was an opt-out provision for fees, and
11 whether malpractice insurance is required and things like
12 that. So that is all on the website from the last
13 meeting.

14 MS. PARKER: That would also tell us for the

15 large Bars which ones -- who set the fee; is that right?

16 MS. KATZ: For the large Bars, right. So that
17 that was included, how the mandatory fees are established.

18 MS. PARKER: And what did you find?

19 MS. KATZ: What I found was that for the most
20 part, they are set by the regulating agency, but for the
21 mandatory Bars, they were set by the Bar, and often, they
22 have to be approved by the court.

23 MS. PARKER: And they are the only ones, then,
24 where the Legislature is involved?

25 MS. KATZ: Right. We are the only ones where the

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1 Legislature is involved. I think there was reference to
2 RB 102. So I know you only looked at large Bars. So we
3 are the only large Bar. But as I understood it from the
4 testimony at the last hearing nationally, there are only
5 two bars.

6 MS. KATZ: We will have to research at that, but
7 I think there was three, but we will look at that.

8 SPEAKER: The number's very, very small.

9 MS. PARKER: The other thing I thought, Linda,
10 before you go on. In the voluntary Bars, there's been

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11 discussion as to what participation there is in, that is
12 to say, the voluntary Bar as compared with mandatory
13 licensing practice, and that information is available,
14 too, is it not?

15 MS. KATZ: Yes, it is. And there was a -- that
16 just came up, I think that Joanna raised a -- no. There
17 was someone, maybe Donna, raised a question about how that
18 was -- the analysis that was done on that last time. And
19 what I looked at was the percentage of resident active
20 attorneys as a percentage of Bar membership as opposed to
21 -- I mean, I used the percentage of licensed attorneys as
22 opposed to the resident active members in terms of, to
23 look at what percentage are members of the Bar. So it's
24 from the universe of all the licensed attorneys in that
25 state. So that is available on that summary page.

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1 And then what's up on the screen now, which is
2 too small to be legible, is some additional information
3 for all of the mandatory Bars, the governance structure.
4 So I provided the list of all of the different officers on
5 the board, and whether there were rules of succession, if
6 there's a president, a president elect, immediate past

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7 president. And most -- what I found was most Bar -- most
8 mandatory Bars have a succession in place. And varying --
9 and it allows for some continuity in leadership. And so
10 that information is included on this chart.

11 MS. PARKER: I think you found that 18 have a
12 three-year continuity, and 12 have two-years.

13 MS. KATZ: That's correct. And California is one
14 of only three mandatory Bars that don't have any rules of
15 succession.

16 MS. PARKER: And then, I guess, finally, we're
17 taking ourselves to the last chart, which is the most
18 colorful and everyone has in front of them.

19 MS. KATZ: This last chart has not been posted to
20 the website because it's in draft form, and we are still
21 sort of finalizing some of the details. But it's been
22 distributed. And it's this colorful chart. And this is
23 an attempt to capture all of the different aspect of the
24 Bar. Programs that range from regulatory and discipline,
25 from other statutorily mandated programs, and then the

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1 programs that are purely voluntary. And to lay those out,
2 and to allocate the staffing. And the line that says

3 staff size, that's the staff that's dedicated to those
4 particular programs. And the costs that are associated
5 with that, and then the indirect costs that account for
6 the infrastructure support that's provided to all of the
7 programs.

8 MS. PARKER: And this will be posted, but we are
9 still tinkering along the margins.

10 MS. KATZ: Right.

11 MR. PASTERNAK: Any questions? Miriam.

12 MS. KRINSKY: Thank you first of all, not just
13 for the follow-up for this meeting, but the work you did
14 for the last meeting. And it's sort of one of those, no
15 good deed goes unpunished, because the more that you give
16 us this information, which I think is incredibly valuable,
17 is, I'm finding, the more these comparisons would be
18 useful to probe on, because I do think that there are -- I
19 mean, we shouldn't be myopic and just limit what we know
20 and what we can learn from what's happening in California.

21 So I guess I had two follow-up things that I was
22 wondering about, and then one thought on the multicolored
23 chart. On the follow-up, the very last one, additional
24 terms permitted. So I think I had actually asked for some
25 of this follow-up, so I'm perhaps to blame for the

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1 additional work, but I think it is really helpful. What I
2 was, I think, trying to gain an understanding was whether
3 board members are term limited. And what I think this
4 refers to more is additional terms for the officers.

5 MS. KATZ: That's correct.

6 MS. KRINSKY: So I was interested -- I know that
7 when I asked the Washington State Bar executive Chris, was
8 that her name? Paula, I'm sorry. Afterward she said yes,
9 they are term limited, they are board members, and that
10 her sense was that many boards are term limited. So I was
11 trying to find out about Bar board, board members, not
12 officers. So I think that would be useful information, if
13 it's easy enough to get.

14 I also thought that from some of the comments
15 today, that it might be useful for us to have a little bit
16 more understanding of not simply the participation rate,
17 but looking at a more laser way. Those Bars who were
18 unified who deunified, what was the experience with it?
19 So you know, I think to the extent we are sort of
20 grappling with what would be the implication of
21 deunifying.

22 If others have been down that path, and there are
23 clearly others who have, what were their experiences?
24 What did they peel off, and what did they find? What does
25 did the voluntary part of Bar, the voluntary association

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1 charge, and what kind of participation rate and revenue
2 success did that voluntary association have? I think
3 that, you know, if we can learn something from those who
4 have walked down the path, it will be really helpful.

5 MS. PARKER: Well, you're going to be
6 disappointed to know, there isn't a lot of information
7 today. We will be speaking with Nebraska. Actually,
8 Linda already has, and it might be useful if I shared the
9 notes that she typed up on that.

10 Earlier, you'll recall we called in the executive
11 director from Wisconsin, where we had a back and forth.
12 Perhaps ironically, the most relevant place to look,
13 however, would be the UK, where that has happened recently
14 as a result of legislation. It's quite an interesting
15 story. They are about the same size as we are, and I'll
16 share the notes of that conversation, in anticipation that
17 we -- that it might be of interest to have a presentation

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18 by phone with the consultant Allison Cook, whom I spoke
19 with, who has extensive knowledge not just about the UK,
20 but Bars worldwide, if you will. But particularly, can
21 talk about what happened with their deunification.

22 MS. KRINSKY: That would be great. And then the
23 only thought I had on the multicolored chart. I guess the
24 one concern I have with this is when you look at the
25 definitions of mandatory and voluntary, mandatory is

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1 defined as activities that contribute to the public
2 protection mission of the Bar. And voluntary is
3 activities that are part of the broader mission of
4 educating the public, supporting professional development
5 of members, et cetera.

6 And I understand that this is really trying to
7 define what the statute creates as the starting point.
8 But when you look at those definitions, it sounds like the
9 voluntary things are not contributing to public
10 protection. And I don't -- I'm certainly, when it comes
11 to legal services, and probably also, these would be the
12 efforts around diversity. I don't think that those fail
13 to contribute to the core mission of public protection.

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14 So I just -- I am not sure what you want to do with the
15 chart, but I realize, again, this is largely based on what
16 the statute, how the statute categorizes it, but I --

17 MR. PASTERNAK: Well, let me add something,
18 because I think the Access to Justice Commission is a
19 statutory creature.

20 MS. KATZ: Yes.

21 MR. PASTERNAK: If so, you're going to have a
22 statutory creature in the volunteer category.

23 MS. KRINSKY: So I guess my concern with this
24 part is that by putting things like legal services and
25 elimination of bias and so on, Council of Access and

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1 Fairness in the voluntary category --

2 (Pause in proceedings.)

3 MS. KRINSKY: So I guess all I'm saying is, I
4 just want to be careful about how we are presenting this
5 information. Because I think, to the extent we start to
6 think about what might be peeled off into a voluntary
7 association, I think I'm presuming that the dividing line
8 will be what does not deal with the core of public
9 protection functions. And I wouldn't want one to look at

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10 this and assume that these categories here, diversity,

11 legal services, are not part of the core public --

12 MS. PARKER: That's easy to adjust. In fact, an
13 earlier version had simply arrows. And it indicated that
14 somewhere along the line, you would have these natural
15 break points. But it doesn't make those choices.

16 MR. PASTERNAK: Let me raise one additional
17 issue, and that is under the direct cost line near the
18 bottom, I suspect the \$31 million figure for legal
19 services includes, in large part, the funds that are
20 distributed, the IOTA adjusted debt fund, the equal access
21 funds.

22 MS. KATZ: If you'll go up to the top, in the
23 second row, you'll see GV, which means grant fund here.
24 That's the source of the funding.

25 MR. PASTERNAK: Right. So that includes the

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1 number, which I think is misleading, because that's just
2 past three dollars. That is not the actual cost of
3 operating the legal services department. And so I frankly
4 think the number that should be there is the cost of
5 operating that department as opposed to the dollars that

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6 are allocating out. And I would say the same thing for
7 the others, too. If there are dollars that some of the
8 others are allocating out, I think the meat of this is
9 what does it cost to operate and pass it on to somebody
10 else as opposed to how many dollars are they actually
11 distributing.

12 Any other questions or comments? Linda, thank
13 you. Everything you've presented to us is very helpful.
14 Thank you.

15 We are going to move on. We have a presentation
16 from two trustees, members of this task force. Joanna
17 Mendoza and Dennis Mangers. Please take your seats.

18 MR. MANGERS: Mr. Chair and members, thank you
19 for this opportunity for us to have a part in this
20 discussion today. For my part, this is my last six months
21 on my tour of duty here. So I will be bold and speak
22 candidly about my impressions and my, at least,
23 preliminary conclusion with regard to the issues before us
24 today. Most of you are aware of my history with the State
25 Bar. I arrived here a little over five years ago, having

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1 been appointed by Senate rules as a non-attorney public

2 member.

3 My first meeting was the one at which Senator
4 Dunn was officially hired as the new CEO of the Bar. And
5 there appeared to be a sense that a new day was dawning,
6 that the seemingly endless cycle of disruption and
7 dissension, crisis and scandal at the Bar might finally be
8 coming to an end. Regrettably, that most certainly did
9 not turn out to be the case.

10 At first, I had trouble understanding the
11 rancorous relationship between some of the public and
12 professional members of the Board of Trustees. The Board
13 of Governors, as it was called then. But it soon became
14 clear to me, as they spoke up, that the public members had
15 become frustrated with an organization that appeared to be
16 more focused on trade association type activity and issues
17 than its regulatory responsibilities. And they were,
18 frankly, tired of being gaveled down and out voted every
19 time they tried to make recommendations for change.

20 I was reluctant, at first, to join these
21 increasingly strident voices of the marginalized public
22 members, because I thought it might be a lot more
23 productive to do as I've tried always to do in new
24 settings, and that's listen, learn, and try to develop

25 relationships within. So I spent the first year watching

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1 the process, asking questions of members and staff, and
2 trying to get my arms around a system in which public
3 protection had somehow been placed in the hands of a body
4 primarily composed of attorneys elected by attorneys.

5 It seemed strangely inappropriate to me at the
6 time. As I checked around, I found, as we have heard
7 today, that no other profession in California was
8 permitted to regulate itself and in a manner inextricably
9 intertwined with this professional trade association.

10 When the first task force on governance in the public
11 interest was convened, I was asked to join as a public
12 member. And when I raised questions that would have, I
13 thought, been expected of a public member, I was told that
14 this unique approach to regulation in the case of the
15 State Bar was justified because the State Bar is a
16 quasi-judicial agency, and therefore different than all
17 other professions.

18 Meeting after meeting, I watched as the attorney
19 majority dismissed my observations and suggestions, until
20 it finally became clear that the task force was really

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21 only interested in stonewalling the Legislature and
22 protecting the status quo. As is now widely known, I
23 finally determined that the only way to be heard was to
24 file a minority report to the Legislature. And my
25 intention then was to recommend that the regulatory

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1 functions be formally separated from the trade association
2 activities that so preoccupied the board.
3 But it did not seem to me at the time that the
4 Legislature was ready at the time to make such a big step,
5 already taken by a number of other states, and quite
6 frankly, it hadn't been studied here sufficiently, in my
7 judgment. So I confined my report to a list of
8 recommended changes in governance designed to reduce the
9 number of members, especially elected members, and certain
10 other changes that fell far short of what I really thought
11 was needed. To my delight and amazement, the president of
12 the board at the time, who is with us today, Bill Avery,
13 also became convinced that the process was on the wrong
14 track, and signed on the minority report.

15 The rest is history. While many legislators
16 agreed that the best approach would be to ultimately

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17 separate the functions of the Bar, the will of the body at
18 the time ultimately was to take about two-thirds of my
19 recommendations and place them into SB 163, and the plan
20 was to then watch to see if those changes had an
21 appreciable effect on the behavior of the board of this
22 important institution.

23 But, Mr. Chairman and members, those reforms,
24 while necessary and overdue, turned out to be woefully
25 insufficient. And the Bar continued to sink more deeply

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1 into a quagmire of discord, internecine politics and suits
2 and counter-suits wasting, in my judgment, millions of
3 members' dues dollars on attempts at personal vindication
4 and face-saving maneuvers, while becoming increasingly
5 distracted from their primary obligation to protect the
6 public from the unbelievably bad behavior of some of its
7 members.

8 Practically every day, members of this Bar and
9 other stakeholders pick up their various journals to read
10 not only the lurid tales of attorneys gone astray, but the
11 latest drama in the life of their Bar to which they're
12 required to pay some of the highest dues in the nation.

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13 The board meets less frequently than any regulatory body
14 in the state, and when it does, its agendas are almost
15 exclusively devoted to trade association activity.
16 Regulation and discipline are lucky to get an hour and a
17 half of meeting time, often at the end of a long day when
18 it's the only issue between the board and cocktails and
19 dinner.

20 The time most members of this board actually
21 attend to regulation and discipline is minuscule in
22 comparison to the time spent in closed sessions dealing
23 with lawsuits and personnel intrigue. And quite frankly,
24 way less time than is spent by any other regulatory body
25 in this state or any other state, I suspect, with regard

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1 to their professions.

2 Over the years I've been here, I have seen a
3 attorney members plotting and planning their moves to
4 become president of the Bar, as if it were some career
5 capper. And the time devoted to this colorful practice, I
6 think, is disgraceful, and has no place in a regulatory
7 body.

8 Every time a new president is elected, he or she

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9 seems bound to announce some new initiative as to be their
10 signature leadership objective, and over the years I've
11 been here, those have ranged everywhere from autism to
12 civic education, to who knows what. Access to justice.
13 But never to a regulation or discipline related objective.
14 Never once have those unilateral issues related to a
15 regulatory or disciplinary objective. They just don't
16 seem to get that they have been elected to head a
17 regulatory body, so they distract their colleagues and
18 staff from the only reason they really exist.

19 So Mr. Chairman, members, I'm no longer willing
20 to simply write another minority report. And the reason I
21 ask to be on this agenda is I'm no longer satisfied to
22 tinker around the edges of this grossly dysfunctional
23 organization as I did last time and suggest minor
24 adjustments. And I'm certainly not going to stand by
25 while yet another attorney-dominated task force publishes

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1 a white-washed report designed to assure a Legislature and
2 a Chief Justice that all is well, when everyone out there
3 can tell that's not the case.

4 I've come to the conclusion after five years of

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5 service on behalf the people and the people's Senate that
6 there is simply no justification for this profession to
7 continue regulating itself. There is no justification for
8 attorneys electing their own friends to a regulatory body.
9 There is no justification for being distracted from
10 regulatory responsibilities by the fascination with
11 running a trade association. There is no reason why this
12 profession's trade association should be burdened by
13 provisions of Bagley Keene, and no reasons for your
14 sections to have to carry the increased burden of costly
15 overhead of the regulatory side of the organization.

16 I've asked myself, and I'll ask again today, why
17 is it that California's judges have a regulatory body
18 separate from its trade association? But somehow, the
19 attorneys here have decided that can't work, in spite of
20 that they are all desperately trying to become judges.
21 Why is it that doctors have asked to have their trade
22 association liberated from their regulatory body so they
23 could advocate for or against policies affecting their
24 profession, while because you're intertwined, you remain
25 constrained by court cases that would not apply if you

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1 were not unified.

2 Other large states like New York, Michigan,
3 Pennsylvania, Illinois, Ohio, others have separated their
4 functions quite successfully. And they have thriving
5 trade associations with voluntary dues that are often less
6 than they were paying before. If it can work there, it
7 can and should work here. One of our witnesses this
8 morning suggested that he thought that the take-rate among
9 the voluntary boards, that is, the number of attorneys,
10 who after separation elected to pay voluntary dues to a
11 Bar Association, was around 80 to 85 percent. The ones I
12 looked at, the take-rate is somewhere between 45 and 60
13 percent.

14 But nonetheless, if you took the numbers of
15 attorneys in California, and looked at the average from
16 every other state that does this, you would still come up
17 with about 50 to 55 percent on the natural, becoming
18 involved, paying dues in a way that would produce
19 somewhere between 18 and \$20 million to propel the trade
20 association forward.

21 This task force can continue to summon outside
22 expertise, and I think it's been helpful in that regard,
23 and it can continue to be a resource to inform changes.

24 But I no longer have confidence that it is capable of

25 recommending what is really needed.

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1 And so in the coming weeks, several current and
2 former board members will submit to the chief of the
3 Supreme Court and the chairs of the Senate and Assembly
4 judiciary committees, a proposal calling for legislation
5 to require the State Bar to prepare a plan for separating
6 its regulatory and trade association functions on a
7 timeline we propose to be completed by January of 2019.
8 Our plan will be prescriptive only in terms of what
9 functions must be placed under a regulatory body, and
10 which are most likely to remain under a trade association.
11 And it will be directive in terms of the composition of
12 the new agency to ensure sufficient public participation.

13 But unlike other professional regulatory bodies
14 in California that are governed by the state Department of
15 Consumer Affairs, we will propose to keep all of the
16 regulatory functions of the legal profession firmly under
17 continuing supervision of the Supreme Court. In fact, in
18 our draft, we will expand, to some degree, the oversight
19 capability of the chief justice to see to it that she and

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20 her court are better informed, with regard to the
21 reportings that often has gone exclusively to the
22 legislation.

23 The Bar's duty, and this is deliberate here, the
24 Bar's duty under this proposed legislation will be to
25 provide its own plan for the division of resources,

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1 assets, staff and programs, to the end that a regulatory
2 body entitled, for lack of a better name, the California
3 Legal Services Regulatory Board, will emerge concurrently
4 with a newly-configured nonprofit corporation, which we
5 envision retaining the name and the historic seal of the
6 State Bar of California.

7 We emphasize in our proposal that no jobs are to
8 be lost in this process. As you will see when we get to Q
9 and A, if there be one, we don't seek to answer all of the
10 questions that you have been raising in previous meetings
11 and have raised today about our skeletal proposal, and we
12 certainly don't want to be glib about the potential
13 complexities that may arise in a transition. Obviously,
14 there are union contracts and annual meeting contracts and
15 intertwined finances, all of which have been raised today

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16 as issues.

17 But we think the people best prepared to answer
18 those questions are people like Elizabeth and Leah and
19 Vanessa, and the fine staff that we have assembled here,
20 when called upon to present a plan to the Legislature,
21 that they are the best qualified for working through these
22 issues. And we propose to give them enough time to do so.
23 So that according to our plan, they present back to the
24 Legislature, pursuant to this legislation, a plan that
25 ultimately, having been reviewed through public hearings,

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1 consultations with the court, emerges as legislation
2 leading to separation.

3 I believe that in an ideal world, what would
4 happen, and this rarely does, but I'm hopeful in this
5 case, that the Bar's leadership, sitting down in the next
6 several months with the chief and her team, and the chairs
7 of the two respective judiciary committees of the
8 Legislature, develop a collaborative effort to
9 appropriately, responsibly, separate the regulatory
10 functions from the trade association functions of this
11 body, leaving it no longer the only outlier that's allowed

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12 to regulate itself, and at the same time liberating its
13 trade association so they can do all of the things that
14 Miriam and I and others have talked about with regard to
15 educating and ennobling the profession without being
16 intertwined with its regulatory functions.

17 In our judgment, we have come to believe that
18 separation of the functions is inevitable, and as other
19 states cascade in this direction, we believe it is only a
20 matter of time until the California Bar's cyclical drama
21 and dysfunction result in a similar path. It seems to us
22 you have a choice to continue to fight such an outcome, as
23 the last task force was quite prepared to do, and risk a
24 more traumatic top-down solution, or take this opportunity
25 to be a partner in developing an elegant win-win for the

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1 public and the profession.

2 We have distributed an outline of our proposal.
3 We'll be happy to answer questions. Elizabeth has also
4 developed an encapsulation of our proposal, just as a
5 background resource, which is also available. And from
6 our standpoint, this is a beginning of a conversation that
7 simply has to take place, not the end. Thank you.

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8 MR. PASTERNAK: Joanna, do you have anything to
9 add?

10 MS. MENDOZA: Yes. Thank you. President
11 Pasternak, fellow members of the task force, Executive
12 Director Parker, State Bar staff and honored guest. My
13 complete written statement has been made available, but I
14 want to share with you part of that statement as it
15 relates specifically to the sections, since I can address
16 that in more depth than Trustee Mangers.

17 As many of you know, I came to my position on
18 this board by way of the sections, and over a ten-year
19 period, I served on a section executive committee as an
20 officer and chair of a section, as a section advisor, and
21 as an officer and co-chair on the Council of State Bar
22 sections. I know the sections well, and I am more
23 familiar than most with all the wonderful content they
24 generate, and the many volunteer activities in which they
25 engage for the benefit of our profession and the public.

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1 The sections generate the majority of the MCLE
2 publications, webinars, legislation and legislative
3 commentary that comes from the State Bar. I have a great

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4 interest in seeing the sections not just survive but to
5 thrive. I have demonstrated my support of the sections,
6 and urged others to appreciate what they do since I joined
7 the Board of Trustees in 2013. I have worked hard to
8 familiarize the board with the work of the sections, and
9 to open up regular communications between the board and
10 the sections, including the report by the council of
11 sections. I have urged my fellow board members to be
12 active liaisons to their assigned sections, and have led
13 by example for every liaison appointment that I've been
14 given. I hope, therefore, that when I take on a position
15 with respect to the sections, the sections are confident
16 that I do so, because I firmly believe that it is in the
17 best interest of the sections.

18 Never before has the ongoing survival of the
19 sections been so threatened. Since the Keller and
20 Brosterhaus cases, the overhead allocation charged to the
21 section has grown from 25 percent of their budget to
22 nearly 67 percent, and sometimes more, as I mentioned
23 earlier today.

24 Because we are a government agency, essentially,
25 and since the sections are a part of that agency, we are

1 required to charge their share of the overhead of that
2 agency. This charge includes such costs as the audit by
3 the state auditors, which the State Bar must pay for, and
4 which is roughly a half a million dollars each time there
5 is an audit. By statute, that audit happens every other
6 year, although this year, we are fortunate enough to be
7 audited in between the biannual audits. Lucky us.

8 If the sections were not affiliated with the
9 regulatory agency, they could be paying fair-market rent,
10 instead of the much higher cost associated with a building
11 they will actually never own. Such is the price the
12 sections pay for being affiliated with the regulatory
13 agency. These charges are not overhead costs the sections
14 would ever have to pay if they were liberated, and instead
15 were part of a separate voluntary trade association.

16 There have been other issues faced by the
17 sections over the years, all of which have been associated
18 with being part of a government agency. They have lost
19 all access to staff, services, for months at a time. They
20 suffered significant website issues and loss of access to
21 content. There have been severe social-media limitations.
22 Sections do not have the ability to publish on Westlaw or

23 Lexis due to contract issues. They are subject to
24 government procurement rules and restrictions regarding
25 their use of vendors and contracting, as well as strict

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1 government travel and expense reimbursement rules.
2 The Bar has prohibited the sections from
3 e-mailing and mailing anyone who is not a member of that
4 section, making it inordinately difficult to grow
5 membership in the section. These are just some examples
6 that I know have plagued the sections and prevented them
7 from growing their membership and thriving as they should.

8 And I do not want this to be viewed as anything
9 but the most positive commentary upon the amazing staff
10 that work for sections and education with whom I have had
11 a very long and wonderful relationship over the years. I
12 have seen them work incredibly long hours, and deal with
13 not-so-pleasant and demanding personalities, as we all
14 know lawyers can be sometimes. They are themselves
15 limited by the State Bar organization and structure within
16 which we all must operate, and rules which we all must
17 follow.

18 They often bear the brunt of frustrations

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19 expressed by those in the sections who do not understand
20 that the sections, all of which are operated with
21 voluntary dues, are essentially a square peg being
22 hammered into a round hole. It takes a long time and a
23 great deal of patience for our section volunteers to
24 understand they are working within a government agency,
25 but it makes little sense.

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1 The imposition of Bagley Keene, effective as of
2 April 1st, has a new and significant impact on the
3 sections, as you all are very well aware at this point. I
4 welcome the combined application of Bagley Keene and the
5 Public Records Act, and the new transparency that I hope
6 it brings to the State Bar. The State Bar, however, is
7 essentially a regulatory agency, and unless specifically
8 accepted, all parts associated with the State Bar are
9 required to comply with the laws applicable to it. We
10 cannot make an exception for one part of our agency
11 because of inconvenience, when the entire agency needs to
12 adopt and embrace transparency.

13 More importantly, the message has to make rather
14 clear that we should expect no relief from the Legislature

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15 in the form of Bagley Keene exceptions. The
16 incompatibility lies with how sections do their business.
17 No one would dispute that sections generate significant
18 educational material and content. They are able to
19 perform what can only be described as Herculean effort by
20 way of multiple subcommittees, interest groups, editorial
21 boards, and similar groups that accomplish their business
22 by way of numerous telephone calls and e-mails during the
23 course of each year. The larger the section, the larger
24 the number of these affected bodies, and the more
25 difficult, and in many cases impossible, it will be to

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1 continue to generate content in affiliation with the
2 regulatory agency.

3 I am fully aware that some affected bodies have
4 decided to stop all work as a result of the imposition of
5 Bagley Keene. Some have created two-person advisory
6 committees that do not fall under Bagley Keene in an
7 effort to replace subcommittees and editorial boards. By
8 doing this, the sections will be relying upon a whole new
9 paradigm of volunteerism that prohibits individuals from
10 listing any type of title or position beyond being a mere

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11 member of that section.

12 Frankly, the only thing of any value that the
13 sections could previously provide to their volunteers was
14 a title to put on a resume to recognize their effort, and
15 an occasional free meal and limited travel reimbursement.
16 I'm also aware of no publication of significance published
17 regularly by the sections that can be done by only two
18 editors who have no authority to delegate.

19 It is difficult to imagine a multi-day conference
20 put together by two people, but it is just as difficult to
21 imagine it put together by way of only ten days' advanced
22 notice meetings when those attending by phone may only
23 call in from an ADA compliant location which they had to
24 identify and include on the notice ten days earlier.

25 I am also aware that a 501(c)(6) association has

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1 already been created for the purpose of allowing some
2 section work to continue outside of the organization,
3 since Bagley Keene is totally incompatible with how
4 certain tasks are performed. Unless there's full
5 cooperation between the State Bar and the individuals
6 working within that association, however, there is no

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7 guarantee that this will serve as an adequate substitute

8 until reform can be adopted.

9 The application of Bagley Keene has made the
10 ability to do business for our largest and most productive
11 sections unworkable. If some sections have not realized
12 it fully yet, I expect it will not take long. Being on
13 the Board of Trustees, I have operated under open-meeting
14 rules for three years now, and I am fully aware of the
15 restrictions imposed. Knowing how a large section
16 operates, and listening over the last few months to the
17 many concerns, I cannot see a meaningful way forward for
18 the sections unless they separate themselves from the
19 regulatory agency, assuming that they receive their
20 reserves, their intellectual property and content, and
21 preferably, the right to continue to have dues collected
22 on the State Bar annual invoice, at least until the
23 voluntary trade association is firmly established.

24 It is time to make meaningful changes that give
25 the regulatory organization a fighting chance, and an

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1 opportunity to liberate the sections and all other trade
2 associations functions so that they do not just survive,

3 but to thrive and to build an effective statewide
4 professional association for the future of the California
5 legal profession. Thank you.

6 MR. PASTERNAK: Thank you. Questions, comments.

7 MS. MEYERS: I have a comment. I'll make a
8 comment to you. I did read your -- as you were speaking,
9 I read your comments. And I just wanted to, since the
10 press is here, I just wanted to comment on a couple things
11 that you said which really troubled me, they really did.
12 First of all, maybe it has been your experience that you
13 have had a troubled relationship with many of the
14 trustees. I feel that I have disagreed with you on many
15 things. But I have always felt that we been professional
16 with each other.

17 I have a tremendous respect for you. I have a
18 tremendous respect for Ms. Moore as well as Ms. LeBron,
19 who were public members. I've listened to what you have
20 to say, and I've listened to what they have to say. As a
21 matter of fact, Ms. Moore and I traveled down together
22 from Los Angeles for most of these meetings, and many
23 times, her views are different from my views.

24 But I just don't want the public, because I know
25 that the news media will be printing something in the

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1 paper, to believe that on this board, that there is a
2 tense relationship between public and lawyer members. I
3 don't feel that at all. I feel that as a lawyer, and
4 having been a lawyer for over 30 years, if I have a
5 problem with someone, I approach them. Maybe to my
6 detriment, but I do approach them and try to address that
7 problem. And I don't think that -- so I want to make that
8 clear.

9 I also believe that the comment that you made
10 with respect to not dealing with disciplinary functions in
11 terms of when we meet as a board are somewhat inaccurate.
12 I believe we had a long and lengthy meeting on increasing
13 MCLE with respect to lawyers, which goes directly to
14 regulation and discipline of lawyers. How are lawyers
15 expected, particularly those in private practice, to
16 understand lawyer trust accounts? What do we do? Do we
17 put on programming for them?

18 And so I think we have discussed a lot of things
19 that have to do with discipline. I listened intently as
20 Jane Kim gives her RAD report. I take that report home
21 when it is sent by Doug Hall. I read it. I try to

22 understand most of what's in it. I try to come to these
23 meetings prepared to discuss them. And so I take
24 exception to that as well.

25 Just want to make an announcement to every one, I

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1 don't intend to apply to the bench. I never have. I'm
2 just waiting for my next three years so I can retire. So
3 the comment you made about, with respect to people trying
4 to become judges, I take exception to that as well. I
5 understand some of your frustrations. I wasn't on the
6 board at the time that many of these things that you
7 outlined in your report occurred. But I will take note of
8 one thing, that the discord, the lawsuits, and all of that
9 foolishness that's going on is because we had an executive
10 director who was from the Legislature, who was a member of
11 the Legislature, and should have known better.

12 And I think we have a tremendous leader in
13 Elizabeth Parker, who is not a legislator, who is a
14 lawyer, and I would like for her to be able to transform
15 this Bar, and I believe she already has, with her amazing
16 staff, into something that we all can be proud of, that
17 the lawyers in the state can be proud of.

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18 And so those are the comments I have to make with
19 respect to what you put here. And I hope I have never
20 done anything to make you believe that you could not
21 approach me in a professional manner, but we will always
22 agree to disagree. And let me just end by this. I think
23 there is one thing that maybe non-lawyers don't
24 understand, and that is the Sixth Amendment to the United
25 States Constitution, the right to counsel. That's what

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1 makes us different. You will note that the Supreme Court
2 has, in all of the constitutional amendments, they have
3 crafted exceptions here and there, to the Fourth, to the
4 Fifth, but never to the Sixth. The right to counsel. And
5 that's what makes us different from every other
6 profession.

7 There is no constitutional amendment that says
8 you have a right to a doctor, a construction worker or
9 anything else. But you do have a right to a lawyer, and
10 I'm proud to be one. And those are the comments I have.

11 MR. PASTERNAK: Thank you. Other questions or
12 comments?

13 MR. MANGERS: May I just say in response, you're

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14 accurate in characterizing our relationship as a very
15 professional one, and I have never for a moment felt
16 otherwise. So let me just affirm that in this particular
17 case, I've enjoyed that relationship as well. It's been
18 candid. We haven't always agreed, but it's never been
19 personal. I appreciate that. I'm not going to be
20 defensive about any of your observations, nor argue,
21 because we have no witnesses today. What I was hoping to
22 do was stimulate a dialogue that I think needs to occur, a
23 conversation that really needs to occur, not just because
24 the extraneous forces around vis-a-vis Bagley Keene and
25 overhead and all of that, but because my honest, my honest

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1 analysis of having been here over five years within this
2 body and observing your profession, is that what we are
3 proposing will ultimately inure to the benefit of public
4 protection, and it will also inure to your benefit as a
5 profession, as you are liberated to do the various things
6 you have long suggested should be done, without the kinds
7 of strictures and constraints that are imposed upon you
8 simply because you're interrelated with your regulatory
9 body.

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10 And in conclusion, I'll make this observation.
11 Regulatory bodies spend their entire time on regulation.
12 My observation about the time devoted to regulation and
13 discipline here was not to suggest that you don't keep
14 your eye on the ball, because if anybody does, you do.
15 But it's obvious to me that many of the members of this
16 board have repeatedly, over the years, been more involved
17 in what would traditionally be trade association behavior
18 and activity, and spend way too little time thinking about
19 ways in which the regulatory and disciplining system could
20 be improved.

21 That's my observation, my analysis. We don't
22 have to agree. But I think the fix is for the chief, the
23 Legislature and our staff to get together and transition
24 to a body that in my judgment is inevitable; to a process
25 that I believe is inevitable, and I think you ought to be

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1 involved in its construction rather than being bystanders.
2 That's my view.

3 MR. PASTERNAK: I have a question. I keep
4 hearing this phrase, trade association issues or
5 activities, and frankly, I'm not clear on what you mean by

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6 your impression or perception that the board is spending
7 most of its time on trade association issues. So if you
8 can enlighten me, I would appreciate that.

9 MR. MANGERS: Well, I don't think we have time to
10 go into a great of deal of detail, but I will say that
11 when you look at the agendas for our typical meetings
12 here, and you look at the Parker's chart, you'll come to
13 the realization that many of the hours we spend, and the
14 little time that board has actually ever convened on
15 things that do not immediately relate to regulation, when,
16 in fact, every other regulatory body meets with only that
17 function before it.

18 So to whatever, to whatever extent this
19 regulatory body is distracted by other aspects of
20 administering and being involved with its professional
21 trade association activities, I don't think that's
22 appropriate. And I think, finally, the profession is
23 being called on the over-generalization I've heard ever
24 since I got here, that we are somehow different because we
25 are officers of the court.

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1 While I agree you're different because you're

2 officers of the court here and a quasi-judicial agency,
3 that's why it's being proposed that your entire discipline
4 system remain right there, with a court making the final
5 decisions about admissions and discipline and regulation,
6 but with the exception that the oversight body that's
7 created for that agency now has a stronger mix of public
8 and professional members, and all trade association
9 activity is relegated over to the voluntary side where it
10 belonged in the first place, and is now increasingly
11 happening in the other major states across the country.

12 MR. PASTERNAK: I'm still trying to understand,
13 and forgive me for my struggle. But we all know that our
14 mission is public protection. Are you suggesting that the
15 mission of that mandatory State Bar change to simply
16 regulatory functions, simply admission and discipline, or
17 are you suggesting that the mission remain public
18 protection?

19 MR. MANGERS: You'll note in our prescriptive
20 element of the skeletal outline, we retain many of the
21 features on the regulatory side that we have long thought
22 are kind of integrally related to regulation. For
23 instance, there's two places on this --on Dean Parker's
24 chart that relate to education. So as you go forward to

25 create what we are suggesting should be your proposal for

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1 the separation, we are leaving it in the Bar's hands to
2 determine which of those functions are separated, which
3 are regulatory.

4 But what we want is those that you determine are
5 trade association behaviors, irrespective of whether
6 there's a bright line between them and their impact on
7 regulation, they are liberated to go pursue those things
8 on behalf of their profession, and hope, as the doctors do
9 -- when I was interviewing the head of the medical
10 association, he said, "Everything we do over on our trade
11 association side is designed to prevent the disasters and
12 horror stories we see over on the regulatory side. We no
13 longer pretend that that's our job because that body has
14 been set up. But everything we do over here is designed
15 to see to it that doctors receive better training, more
16 ethical and moral help, trouble with their various
17 addictions and depression and so forth." Just like we do,
18 only those are separate, but aimed at the same direction.

19 There is no reason why anybody has to think that
20 under the scheme we are proposing, that trade association

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21 has to stop doing what it tries to do, and that is to have
22 an appropriate and positive impact on the regulatory side.
23 They need to be separated.

24 MR. PASTERNAK: Let me try a different way,
25 because I don't think you answered my question. And maybe

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1 if I try a more specific question. My belief has been,
2 and I've articulated this, that access to justice is part
3 of public protection. Your proposal has access to justice
4 as this voluntary association. Are you saying that when
5 this board spends its time on access to justice issues,
6 it's dealing with trade association issues rather than
7 public protection?

8 MR. MANGERS: You know, I don't want to get into
9 some kind of semantic wrangle at the expense of other
10 witnesses, sir. But I will say that I think I've made the
11 answer really, really clear.

12 MR. PASTERNAK: You have not to me, and that's
13 why I'm asking the question.

14 MR. MANGERS: Well, I'm not surprised that you're
15 struggling. We can have a further conversation off-line.
16 I will simply say that it does no one a service to try to

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17 develop a bright line and pretend that the things in trade
18 association have no impact on the regulatory side. It's
19 easy for me to say, I think, that it would be better to
20 have a regulatory body with more public members, and
21 certainly nobody elected by their own profession, which is
22 more than just a bad optic, making decisions about
23 regulations and discipline, while this group is doing what
24 trade associations traditionally do, and in the legal
25 profession, are doing increasingly all across the country.

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1 And if you want more specificity, don't ask your
2 non-attorney public member, ask your colleagues in the
3 large states that seem to be quite happy with the way
4 those things are being pursued in their respective states.

5 MR. PASTERNAK: Any other questions comments?
6 Gwen.

7 MS. MOORE: I listened to your comments with much
8 interest. And I think that one of the things that is
9 troublesome for me is the implication that as a public
10 member, you're the only one that really cares about public
11 protection. And having served on this board probably one
12 year longer than you, I have found that most of the

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13 attorneys on here care just as much as you do about bad
14 lawyering, about bad lawyers, and are willing to do
15 something about it. And I think in your description of
16 what went on in this board, it's kind of been revised a
17 bit, and is not totally accurate in terms of what was
18 really going on when you came on this board.

19 And I think that the basic difference that you
20 and I have is this belief that you have that lawyers can't
21 be concerned about the public that they purport to serve
22 or about public protection. And I think that that's
23 troublesome for me in trying to look at what you're
24 suggesting needs to be done with that notion that there is
25 no role really for lawyers in helping to discipline the

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1 people that -- their colleagues, or the people that are in
2 the law profession.

3 MR. MANGERS: I learned 35 or 40 years ago, when
4 we were seat mates not to argue with you, and I'm not
5 going to today as well. But I certainly hope you didn't
6 take personally anything that I suggested.

7 MS. MOORE: Well, I did, and I do want to talk to
8 you at another time. But I just think that it's kind of

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9 unfortunate to lay out that nothing has been done or no
10 interest has been shown towards public protection except
11 in the proposals that you have submitted.

12 MR. MANGERS: Thanks, Mr. Chairman.

13 MR. PASTERNAK: Any other questions or comments?

14 MS. MEYER: Yes. I guess I want to offer a few
15 thoughts, and Denny, we had the opportunity to serve
16 together as RAD chair and vice chair, and I now consider
17 it my privilege to be a chair of RAD. I've never for a
18 minute felt, now I'm at seven years leadership of RAD,
19 that issues around regulation and discipline are given
20 short shrift by this board. I've always felt that this is
21 a board that has been intensely engaged and interested in
22 those issues.

23 And I guess -- well, I don't come to this process
24 of the governing task force body with any preconceived
25 notion around what we should do or what we shouldn't do,

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1 what's on the table or off the table. I think it's a
2 great opportunity for us to pause and look at where we are
3 and what we can do better. But what troubles me a little
4 bit in the presentation is a presumption that, number one,

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5 all the public members are of one mind, which I don't
6 believe they are. I mean, we certainly have another
7 public member, a couple others who aren't here. And I
8 don't know that, just as Ms. Moore might have seen things
9 differently, I think other public members might see things
10 differently. I don't believe this board has ever had a
11 public versus lawyer member divergence.

12 We have had differences of opinions on issues.
13 But I don't think it's sort of divided as between public
14 and non-public members. I think those differences have
15 varied from issue to issue, depending on what we are
16 talking about at the moment. And I don't think there's
17 been a particular lens or way the public members have seen
18 issues that differs from the way lawyer members on this
19 board has seen issues. I've really seen a board that has
20 struggled throughout just to try to get it right and to do
21 the best we can to carry out our mission of public
22 protection.

23 And I think the other part of what troubles me is
24 a presumption that I don't believe, Denny, you have, as a
25 starting point, which is that as we sit today, our

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1 discipline system is broken. I've heard you say quite the
2 opposite over a number of past meetings. I believe we
3 have a discipline system that had some real problems a few
4 years back. And we brought on board an individual to lead
5 our office of chief trial counsel, who had to grapple with
6 some real challenges, and who has made some tremendous
7 efforts to try to move beyond past problems.

8 So I guess I find a little bit troubling the
9 presumption that there is some divide on the board that I
10 don't believe others have ascribed to, as between public
11 and private member perspective, and that we have something
12 that's broken that we are trying to fix. I think we
13 shouldn't be trying to embrace change just for the sake of
14 change, but that doesn't, in my mind, mean that aren't
15 things we can improve. And I am open to the notion of
16 thinking about splitting some things off.

17 But I think the devil is in the details, and I
18 find it a little bit concerning to presume that the work
19 of the Office of Legal Services, or the work of our lawyer
20 assistance program, or the work of our efforts around
21 access to justice, or creating pipelines of diversity to
22 enhance the diversity of our profession, are trade
23 association functions that don't promote public

24 protection. And my sense is that we have been of the same

25 mind in regard to prevention efforts being very much about

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1 public protection, that this body, as we further public

2 protection, shouldn't just be about punishing and

3 disciplining those across the line. It should be about

4 preventing the harm in the first instance.

5 So I think that there are some ideas here that

6 warrant further study and consideration, but I'm not sure

7 that I start with the same premises that you or Joanna

8 started with. I guess what I would like to know, as the

9 staff digests this all, and I think that there are some

10 fiscal issues that need to be studied as well. What will

11 it take to finance things through a voluntary Bar. What

12 would a fee structure look like? And by virtue of that,

13 how realistic do we think it is. I don't know -- you've

14 done that calculation, and based on that, concluded that

15 it's realistic.

16 I don't think any of us want it to be any

17 function that divides the court be given short shrift, and

18 I worry greatly that peeling some things off will leave

19 aspects of this important work without the finances to do

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20 it. I know this says that there would be no cut back on
21 the number of employees. Is that a realistic assumption,
22 that that in fact would not involve the staff downsizing?
23 What about functions that would be duplicative between two
24 organizations? There are now economies of scale by
25 ratcheting down in one organization.

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1 I think there are elements of this that need some
2 real analysis. And those other large Bar Associations
3 that are referenced as being successful models, I think
4 that's part of what I would be interested to see in that
5 analysis that's comparable, an analysis that's being done.
6 Are those truly thriving models of how one could see a
7 division of responsibility, and if so, we should be
8 looking at them. If not, then I think it would be folly
9 for us to move down the path and simply change for the
10 sake of change.

11 MR. MANGERS: I really appreciate those
12 thoughtful observations, especially the way you suggested
13 them. I won't get into them, except to say that I started
14 to fear that this task force would go the way of the last
15 one, which was an endless parade of witnesses from one

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16 view or the other, usually skewed as this morning's was.
17 But nonetheless, that there would be never be time for
18 this kind of conversation among us. A conversation I
19 think is really overdue, needed to be done, and we've
20 started today. Whether or not you agree with our premises
21 is less material than the fact that the conversation is
22 now begun. And that I look forward to working with you in
23 the future as we continue to pursue those things.

24 MR. PASTERNAK: Any other question or comments?

25 Let me just clarify, too, Denny, just so there's no

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1 mistake. My intention was that we're having these three
2 days of hearings. Today's the second. We're having
3 another one April 25th. And then we will be meeting in
4 April and thereafter to discuss all the speeches we have
5 heard, all the issues we are considering and prepare a
6 report.

7 So my intention is, yes, we will have time for as
8 much deliberation as necessary. Let's take a five or
9 ten-minute break, just to give a court reporter a break,
10 and then we'll try to conclude in about an hour or so.

11 (Recess taken from 2:20 p.m. to 2:36 p.m.)

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12 MR. PASTERNAK: We have some task force members
13 that I've been told need to leave early, so we are going
14 to try to get started, and hopefully try to conclude
15 relatively quickly.

16 Our next speaker is Donna Parkinson, who is the
17 former chair of the business law section and co-chair of
18 the Voluntary Bar task force. Donna.

19 MS. PARKINSON: Thank you, David. Survival of
20 the sections. That's what this is about for those of us
21 in the sections. We have heard here that maybe the
22 sections cannot survive out there on their own. But we
23 already are a voluntary Bar, with dues and with an
24 overhead that's two-thirds of our dues. So we now how to
25 be a voluntary Bar. We know how to get members and

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1 provide product and services content to them. It's not
2 something that we would learn how to do.

3 I respect the speakers that were here today Who
4 shared their views with us. But the idea that a group of
5 very clever lawyers couldn't hire an executive director,
6 accountant, lease premises and collect dues is just a
7 disservice to the other voluntary Bars that are surviving

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8 and thriving in the state. I'm told there are 280 of
9 them. I'm also pretty sure that we could have overhead
10 that wouldn't be that high if we had people out on our
11 own, or we if do go out on our own.

12 On the other hand, the real question is whether
13 the sections can actually survive in the current
14 situation. And the answer that the voluntary task force
15 and the business law section came to was no, we cannot
16 survive. We provided a recommendation letter to the
17 business law section chair and to the executive committee
18 and the business law section. They are meeting next
19 weekend to talk about it. But basically, and you've got
20 the letter, it says the Bagley Keene and the current
21 economic structure are not compatible with what the
22 sections do.

23 Let me just give a real specific example of one
24 of the executive committee members, who is pregnant, and
25 has been ordered bed rest by her doctor. She cannot

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1 participate in the executive committee while she's
2 pregnant because she is not going to invite people into
3 her bedroom, period. And there's no exception for that

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4 sort of thing.

5 But I'm not requesting a carve out or some sort
6 of fix. There really just need to be a separate
7 organization that doesn't have to deal with Bagley Keene
8 and the economic structure of the State Bar. The business
9 law section has 14 standing committees that each have 15
10 to 25 members that are actively producing content at any
11 given time. They work to improve the law in their
12 substantive areas. They collaborate. They do it, as
13 Joanna mentioned, for getting their recognition for doing
14 it. But they also do it because they care. They care
15 about the Bar. They care about the law. They care about
16 how the practice rolls out.

17 I talk to a lot of those section leaders. They
18 don't want to be -- they don't want to become public
19 interest lawyers. They don't want to learn how to
20 discuss, decide when they can send an e-mail or when they
21 can talk to someone on the phone or who they can send an
22 e-mail to. They don't want to do that. They want to do
23 their voluntary activity. They don't want to have to
24 figure all these things out. It's a huge distraction for
25 them.

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1 So in the business law section, at least three of
2 our standing committees are either shutting down work or
3 threatening to shut down. Two others -- we have 14, as I
4 said. Two others standing committees have been speaking
5 monthly with continuing education of the Bar, saying well,
6 let us do our educational work through the continuing
7 education of the Bar. Another organization was looking
8 for a -- one of our outstanding committees was looking for
9 a voluntary Bar. I will just go work with the San
10 Francisco Bar Association so we can do our work.

11 One of the other ones was just saying, we can't
12 do our legislative proposals because the way they are
13 done, they are done through e-mails, they're done through
14 collaborative e-mails and so forth. We are losing people,
15 and we are going to lose more people, because it's too
16 distracting. And there's other voluntary places out there
17 where this activity could happen. Not a statewide
18 organization, but there are other places where they can
19 go.

20 The reality is that the sections are going to be
21 decimated over time. It's just not going to work. Their
22 volunteers, their law firms are saying, why take the risk?

23 Let's go somewhere else. This doesn't work. Even I have
24 disbanded our business law section voluntary Bar task
25 force because we have accomplished our task, which was to

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1 give a recommendation, and I don't want to have to deal
2 with who I can e-mail and when.

3 So some former chairs of business law section,
4 some California lawyers, some very prominent and very
5 highly placed lawyers, have gotten together and formed a
6 separate voluntary statewide organization called the
7 California Lawyers Guild. And I am one of the directors,
8 and I intend to work through that organization, hopefully
9 not coming afoul of any problems with Bagley Keene. But
10 there's just no other way to operate and get the content
11 out. It just isn't going to happen.

12 So I have Peter Szurley is here. He's our -- one
13 of our leaders on that -- on the Guild, called the
14 California Lawyers Guild. We have a website. We have
15 articles. We have bylaws. The only thing I would say is
16 that for that kind of an organization to survive and be a
17 place in the interim as a shelter so that the content of
18 the sections can continue, we are going to have to work

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19 together. We are going to have to have collaboration with
20 the Bar.

21 MR. PASTERNAK: Peter is actually next on the
22 agenda. Peter Szurley of the California Lawyers Guild.
23 Peter, why don't you come forward and tell us what you
24 would like to add. Peter is a partner of Chapman & Cutler
25 in the banking and financial services department. And a

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1 member of the firm's commercial lending group and private
2 equity and hedge fund group. So probably very appropriate
3 that we started an organization.

4 MR. SZURLEY: I appreciate you allowing me to
5 speak here today, and I will do my best to keep you on
6 track. I think one of the things that spurred me on, as
7 well as a variety of other people to get involved in this
8 particular project, namely, the California Lawyers Guild,
9 is the fact that I'm a veteran of having worked on the
10 sections of for over 15 years. I am a former co-chair of
11 the Council of State Bar sections. I've been a vice chair
12 of the business law section. I've been co-chair of two of
13 its standing committees, including one right now.

14 And part of it is, I think we have gotten to a

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15 point or it's dawned upon us that business as usual
16 doesn't work. Whether from a dollars and cents
17 perspective, or probably more importantly, from the
18 standpoint of Bagley Keene, it's just no longer easy to do
19 volunteer work for the sections. And the volunteer work
20 that we have done, I think, is critical to the practice of
21 law in the state of California. There are so many people
22 who were involved in so many different projects, trying to
23 advance the law. They are not doing it for compensation.
24 They are a lot of times, given where we are with the State
25 Bar website, they are not even doing it for recognition.

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1 It's just a matter of trying to volunteer and give back to
2 the community.
3 When I heard earlier in the month of March the
4 fact that various of the standing committees of the
5 business law section were going to shutter their
6 operations until this could be sorted out, the notion was
7 to get a group of people together and form a voluntary
8 statewide Bar Association in California; hence, the
9 California Lawyers Guild. It's designed to be about as
10 modular as an organization like this could possibly be, to

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11 try and fold in as many different organizations who want
12 to become a part of it, whether they be sections or other
13 parts of the State Bar, which quite frankly, we who have
14 been participating primarily with the sections aren't as
15 familiar with. But we view it as a starting point. An
16 organization that will grow.

17 We have already formed our website. We have
18 already had outreach with a lot of people, and we are
19 committed to furthering the interest of a voluntary Bar in
20 the state of California. I don't pretend to be interested
21 at all in the politic of the situation. I'm just more
22 interested in make sure that the volunteers, who have been
23 working for the State Bar sections for I don't know how
24 many years, don't just suddenly disappear.

25 You know, I appreciated what Trustee Mangers had

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1 to say in terms of coming up with a proposal whereby there
2 would be new organizations set up by 2019, and the only
3 real comment that I have about that is, I think that's far
4 too far in the future. I think we have to have something
5 now. And that's the reason we're formed. We are moving
6 forward, irrespective of whether we are a potential

7 solution for your deliberations here today. We would like
8 to offer ourselves as part of that solution. We would
9 love to engage in dialogue, because after all, we have
10 worked with the State Bar for years. We have people who
11 are members of the board of the guild who have worked with
12 the sections from their inception. There is a wealth of
13 knowledge, a wealth of commitment, and a desire to be an
14 organization that can help the State Bar through what its
15 going through right now.

16 Again, our focus has primarily been on the
17 sections and the volunteers, but we are open to anything
18 that the State Bar would like to engage with us on,
19 because we think it's -- we are serving a critical
20 function. And we would like to help people continue to
21 volunteer the way they have in the past for the sections.

22 MR. PASTERNAK: Thank you. Questions, comments?

23 MS. PARKINSON: I would just say one additional
24 thing, that the sections really need a seat at this table.
25 They really do. If we are going to have a --

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1 MR. PASTERNAK: Unfortunately, this group is a
2 statutory group.

3 MS. PARKINSON: No, I'm not talking about that.
4 I'm talking about Denny talked about, let's get together.
5 Let's figure out all the details. There needs to be
6 representatives of the people who are going to be affected
7 by that at that table. That's all.

8 MR. PASTERNAK: Okay. Any questions? Comments?
9 Thank you both.

10 Our final speaker today is Patrick Coleman, who
11 is a member of the Council task force on the
12 organizational structure of the Bar. And an attorney at
13 the law firm of Zimmerman, Zully & Coleman LLP.

14 MR. COLEMAN: Thank you. So I'm a member of the
15 Council State Bar section task force on this issue. And
16 I'm also the chair of the State Bar California trust
17 estate section executive committee, which we call TEXCOM.
18 We had our full committee TEXCOM meeting in March. I'm
19 going to give my comments primarily on TEXCOM's position
20 at one of the sections. I also had a chance to talk to
21 Perry Siegel, who chairs the Council State Bar section
22 task force, and in general, he's in agreement with my
23 position, our committee's position.

24 So we had our full committee meeting in March,
25 and we had a lot of deliberations and debates on this

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1 issue, and this followed this issue of deunification or
2 unification being studied by our TEXCOM long range
3 planning committee over several months, as well as
4 participation with the business law sections ad hoc task
5 force, which was something that many of the section chairs
6 participated in.

7 We voted nearly unanimously at our March meeting
8 in favor of ongoing unification. Our biggest concern was
9 we know what we are, we know what we do as a section, as
10 the trust and estates section. And we are very concerned
11 if the State Bar was deunified and the section were spun
12 off, what we might look like in 10 or 15 years as a
13 committee. And let me talk about some of the reasons why
14 we are concerned.

15 First of all, education and our service to the
16 public, protection to the public. One of our standing
17 committee on TEXCOM is called educating seniors, and we
18 focus heavily on that particular topic. We have an
19 educating seniors project, where we actually go out and we
20 have speakers at senior centers talk about how seniors can
21 protect themselves. What they can do to watch out for

22 scams, elder abuse, that sort of thing. That's one of our

23 standing committees.

24 We also publish the only guide in California

25 that's an ethics guide that's specific to trust and

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1 estates law. We're on our third edition. We also do a

2 lot of continuing education. We publish the trust and

3 estates Quarterly, which is a scholarly publication, and

4 it really provides members of our section -- we have 6,400

5 attorneys that are members of the trust and estates

6 section, and the Trust and Estates Quarterly is what many

7 lawyers look to to stay abreast of the law. They consider

8 that to be kind of like their Bible when it comes in, and

9 it keeps them on the edge.

10 These are unique give back programs, and they are

11 things that we've worked very hard on. We're all

12 volunteers, and that's just what the speakers before me

13 said. Our section is all volunteers. We work very hard

14 in those programs. And we wonder what we would be like

15 five, ten, 15 years if we were a trade association. Would

16 we still have those types of commitments?

17 We think that the public might lose if they

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18 didn't have those benefits. We like to think that what we
19 do accomplishes two of our things. One is we really like
20 to safeguard and watch over trust and estates law for the
21 legal profession, but also make sure that we, as the trust
22 and estates section executive committee, are protecting
23 the public, and we are concerned that we might lose that
24 purpose if TEXCOM was something else.

25 The other thing we were very concerned about was

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1 geographic diversity. And what I mean by that is we have
2 a nominating committee that selects the five people that
3 will constitute the incoming TEXCOM class. And what we
4 strive to do is we break the state down by geographic
5 region, and we look at the number of members of our
6 section in each of those geographic regions.

7 We try to make sure that when we were populating
8 our executive committee, that we have it proportionate as
9 to membership in our various sections. So that allows us
10 to make sure that the more rural communities have a voice,
11 that we can have members that participate from
12 Bakersfield, or from Merced or far northern California.
13 If we have qualified applicants, we like to be able to get

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14 them on executive committee so that we have geographic
15 diversity.

16 We also look for practice diversity, that we have
17 attorneys from special needs planning, that we have
18 litigation attorneys, that we have planning attorneys,
19 that we have public benefits attorneys. We consider that
20 to be very important that our committee is comprised of
21 those various elements. And we are concerned that if this
22 were a trade association, would it be dominated by maybe
23 people that come out of local Bar Associations,
24 particularly, the bigger local Bar Associations.

25 So geographic diversity in our executive

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1 committee membership is really important to us. And
2 again, we look at not only now, but we talked about the
3 future, five, ten, 15 years out, what would this look like
4 if it was a volunteer trade association as opposed to the
5 way it is right now. And when I say the way it is right
6 now, we know what we are. And we are look back in time,
7 and we know what trust and estates executive committee has
8 been. But we have no idea what it could be in the future
9 if it was spun off.

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10 We also talked about our involvement in
11 legislation. I mean, some people might look at the
12 confines of having our section be affiliated with the
13 State Bar as being a detriment, and we actually look at
14 that as being a positive. We know that nobody within our
15 committee can come up with some off-the-wall concept and
16 try to push through some vendetta from a legislative
17 perspective, because we know what our purview is. And we
18 know that we really need to make sure we protect the
19 reputation that we have earned in the Legislature as
20 technical, objective, non-biased experts in trust and
21 estates law.

22 We think we think protect the public by providing
23 technical input to the Legislature. In fact, they do
24 reach out to us and ask us for our subject matter
25 expertise on trust and estates legislation that's pending

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1 in Sacramento. We have considerable practice expertise
2 through our experience with the probate court that's
3 valuable for the Legislature to draw from. And in most
4 cases, we can provide positive changes by inputs on the
5 legislation that might be pending to make sure that it

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6 doesn't get enacted in a way that would be harmful to our
7 profession.

8 So then we look at, you know, now we know what we
9 do, and we have got this hard earned respect, we believe,
10 in the Legislature. But what would that be if we weren't
11 affiliated with the State Bar, if we weren't confined by
12 the purview that within which we operate, if we were a
13 trade association. If we were just for lawyers as a trade
14 association as opposed to the dual purpose, which is legal
15 profession and protecting the public. What would that be
16 like in a few years or five years or ten year or 15 years.
17 And we don't think that's our purpose. So for that
18 reason, we are in favor of ongoing unification.

19 And then with respect to neutralities in general,
20 the Board of Trustees knows that when we are presenting
21 legislative proposals, we are always trying to remain
22 neutral, and staying within purview on when we are
23 focusing on. And that kind of goes back to the prior
24 point that I raised, but it's same principle that we want
25 to remain objective. We don't feel like the trade

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1 association is the best way for us to serve the public or

2 the members of our section. Being a part of a State Bar
3 or statewide is a different mandate, and we feel strongly
4 about that.

5 We are concerned about future membership. I know
6 there's a lot of discussions about what -- there's
7 predictions about what a new voluntary association
8 membership might be like. We have no idea. I know that
9 from talking to the chair of family law, the sentiment has
10 been expressed that if they were spun off, they may not
11 survive. And I think that same sentiment is concerned by
12 a number of smaller sections. If they were spun off,
13 would they even survive. Would TEXCOM survive? We don't
14 think it would survive in the form that it is right now.
15 And nobody really knows for certain until you do it, and
16 once you take that step, the step has been taken.

17 We have some concerns, and those concerns were
18 expressed by the immediately preceding speakers on the use
19 of our dues. We would like to have more input, since the
20 dues are voluntary. Bagley Keene. Bagley Keene is
21 something that we were exempted from in the past. We have
22 adapted. The trust and estates section has modified
23 entirely on how we work. We are complying with Bagley
24 Keene. Our standing committees are complying with it. We

25 believe we'll be able to get all the work done. We have

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1 planned to get all the work, and we will do that. We are

2 committed to doing that.

3 In reading Bagley Keene, in -- we don't think it

4 applies to us. We don't serve -- we are not politicians.

5 We are all volunteers. But we have changed the way we

6 work, and we'll survive under Bagley Keene, but we're

7 concerned about it. We have referred that, and again, we

8 have an exception.

9 I look back. I'm also a member of the Silicon

10 Valley Bar Association. I'm a liaison to the executive

11 committee. And the Silicon Valley Bar Association left.

12 It was a group of members that left the Santa Clara Bar

13 Association about 15 years ago. And the initial people

14 when the break off occurred were very passionate and

15 motivated. But now, we are 15 years out, and it's kind of

16 settled in, and some of that initial zest is gone, and

17 trying to find people that want to be on the executive

18 committee is much different than it was in the past.

19 So there are examples out there which caution at

20 least our executive committee, the trust and estates

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21 executive committee, to be careful on what we want to
22 become. For all these reasons, our position on our
23 executive committee, nearly unanimous. The trust and
24 estates section is to remain unified. In talking to Perry
25 Siegel, that's the position of the Council of the State

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1 Bar section as he's expressed to me, at least his position
2 as the chair of that task force, and we think that's the
3 best way for us to service our members and protect the
4 public.

5 MR. PASTERNAK: Thank you. Any questions or
6 comments?

7 MS. MEYER: My only thought, David, was that we
8 may want to ask whatever official person will submit in
9 writing to us the position of the Council of the State Bar
10 section.

11 MR. PASTERNAK: I was actually thinking that it
12 might be wise for us to ask each of the sections what
13 their views are on unification or deunification. We have
14 heard from two sections today, the trust section and the
15 business law section. But we have what, 17 sections,
16 Danette, something like that?

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17 MS. MEYER: We have 16 sections, and Perry Siegel
18 will be testifying at the next meeting on the 25th.

19 MR. PASTERNAK: I think it might be valuable to
20 ask the other sections to tell us their views. They could
21 be in writing. They don't need to appear orally. If they
22 all did appear, that could take the entire day. But at
23 least tell us if they favor, disfavor unification, or
24 where do they stand on that issue generally?

25 MS. MOORE: Gwen Moore. I have a question. How

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1 much is your decision driven by the Bagley Keene issue?

2 MR. SZURLEY: We look at Bagley Keene as a
3 labyrinth of additional procedures we need to comply with,
4 but we don't see that as at all long-term affecting our
5 ability to function as the trust and estates executive
6 committee to get our work done. It's just made it harder.
7 So Bagley Keene initially, I think it was shock and awe,
8 but we have adapted and modified. We have had a lot of
9 discussions with the State Bar on how to properly modify
10 what we do. And I believe we have accomplished that. So
11 we are going to keep getting the work done. It's just
12 harder to get the work done.

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13 But the members of our executive committee are
14 committed, because the overarching purpose here is that
15 all the members of our committee are devoted to being on
16 TEXCOM. And we are going to -- so that didn't factor into
17 our decision, our decision to support ongoing unification.
18 You would think that it would work the other way, that we
19 want to unify to get out of Bagley Keene. But really, our
20 position to support ongoing unification is based more on
21 the factors that I went through, the importance of the
22 committee to continue as we are, and to keep those
23 attributes part of our DNA.

24 MS. KRINSKY: I'm looking at the problems that
25 are a result of Bagley Keene, and looking at the overhead

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1 charges and stuff would certainly make your support for
2 remaining stronger, I would take it.

3 MR. SZURLEY: If there was -- so we are in favor
4 of staying with the State Bar. If Bagley Keene -- if we
5 had an exemption, that would be more favorable. But
6 Bagley Keene is on its own didn't dissuade any of our
7 members from taking a position that we did. And we
8 understand the costs and we know that. And we have had

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9 discussion with the State Bar on that. There's the
10 Council State Bar section on that particular task force as
11 well. And at least at this time, that that is not
12 something where we said, this is going to be the death of
13 all our section. So that, again, is not something that
14 tipped the consensus of our group.

15 MR. PASTERNAK: Thank you. Any other, Jason.

16 MR. LEE: Thanks for representation. I think
17 this was the first time I've actually heard the other side
18 of the argument for the sections, that I think as we get
19 more and more information about when the sections are
20 coming out, it doesn't appear from what you're saying that
21 Bagley Keene is an absolute impediment to the work of the
22 section. So I'm happy to hear that, and I look forward to
23 hearing more details about that.

24 As for, I think your second asterisk, or maybe
25 your first one was for fiscal transparency relating to the

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1 allocation. I think there's, from the last meeting of the
2 Board of Trustees a real commitment to make sure that is
3 there is transparency relating to the allocation. And
4 after having many discussions with Leah about that, I

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5 think the -- as well as Elizabeth, that that transparency

6 and the will for it is there.

7 And I won't speak for the other sections, but I

8 was participating in the ad hoc conference calls, and I've

9 had discussions with some of the other chairs. So I know

10 a number of other sections have taken positions on this

11 issue. And I'll let them speak for themselves and who

12 they are. But to my knowledge, all the sections that I've

13 talked to that have taken positions have come to the same

14 conclusions that our section has, to continue on with the

15 unified structure.

16 MR. PASTERNAK: Thank you.

17 MS. KRINSKY: In addition to getting the thoughts

18 of the other sections, I think it might be useful to also

19 reach out to the commission and councils. And the Council

20 on Access and Fairness to get a sense of their views or

21 concerns with moving in one direction or the other. And I

22 also think it will be helpful that -- one area that kind

23 of seems to be a little bit in limbo in terms of where

24 would it go or how do we view is the Office of Legal

25 Services. And I mentioned to Kelly during one of the

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1 breaks, I think it will be useful for Kelly to perhaps
2 give a little bit of background to the full task force on
3 the work that they do. And I know that the white paper
4 went into it, but just an opportunity to play out a little
5 bit more at the next meeting. Some of the areas.

6 MR. PASTERNAK: We will plan for a longer session
7 at the next meeting. Patrick, thank you very much. And
8 thank you for your willingness and your endeavors to
9 continue working with the Bar. We appreciate it.

10 MR. BRANDEL: Roland Brandel. And I'm rising to
11 speak because of --

12 It's R-O-L-A-N-D. The last name is Brandel,
13 B-R-A-N-D-E-L. Since this testimony is being recorded,
14 it's going to be reported as factual, the question I have
15 for you, Patrick, is this, because I either misunderstood
16 or you may have misspoken, one of the two. But as I
17 understand it, the council of sections has not taken a
18 position on deunification, and neither has the council
19 task force that is preparing a recommendation for the
20 council. And I thought I heard you say something to the
21 contrary when you talked about Perry Siegel's views. I
22 take it those were his individual views?

23 MR. SZURLEY: So I am -- I'm here today as the

24 chair of the trust and estates sections, and I appreciate

25 the clarification. When I talked to Perry, who said he

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1 couldn't make it, I told him what I intended to say, and
2 he said those thoughts were consistent with what he was
3 thinking. But I cannot say -- but I'm not going to speak
4 for him. And as far as what he said, he's the chair of
5 the task force, and I don't know whether he's saying those
6 were his views in his individual capacity or as chair of
7 the task force, that I would like to clarify that. I'm
8 not speaking at all for him on that issue.

9 MR. PASTERNAK: That's fine. Perry can clarify
10 that at our next meeting. Any other questions or
11 comments? Any other members of the public to speak? I
12 see a hand in the back.

13 MS. GAMEZ: Not to speak, but just.

14 MR. PASTERNAK: Please come up.

15 Thank you, Patrick.

16 Please identify yourself.

17 MS. GAMEZ: My name is Alicia, A-L-I-C-I-A.

18 Gamez, G-A-M-E-Z. And I'm here. I am a member of the
19 board of the San Francisco Bar Association. I'm not here

20 -- I don't -- my comment here is more personal, because
21 I'm not authorized to speak on their behalf. But I think
22 it would be important to get the voice of local Bar
23 Associations as well involved in this discussion. And
24 that's my only comment is that the suggestion that Local
25 Bar Associations --

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1 MR. PASTERNAK: I can tell you that I -- in
2 speaking and meeting regularly with local Bar
3 Associations.
4 MS. GAMEZ: Absolutely.
5 MR. PASTERNAK: I was at the Orange County Bar
6 Association last week, and I consistently encouraged them
7 to give us input and views about all the issues we are
8 dealing with. Including the board's representation or the
9 geographic diversity of board members, which, for example,
10 does not include Orange County. So we have solicited
11 them, and are hopeful that some of them will appear at our
12 next hearing or have some written comments. I would
13 encourage you to go back to them and encourage them to
14 either travel down to Los Angeles on April 25th or submit
15 written comments to us.

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16 MS. GAMEZ: And I have done the same, and I think
17 Yolanda Jackson has been contacted by for that reason too.
18 And I'm here on the -- at the request.
19 MR. PASTERNAK: Good. So hopefully, you'll
20 submit something to digest. Thank you. Anybody else.
21 Then we are adjourned until April 25th in Los Angeles.
22 And I thank everybody for their comments. I think that we
23 have received a wide array of views and, and I think we
24 have heard from various sides on various issues, and I
25 appreciate the input we receive. Thank you.

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1 (Time noted: 3:09 p.m.)
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1 STATE OF CALIFORNIA)

2 COUNTY OF MARIN)

3

4 I, LINDA VACCAREZZA, CSR NO. 10201, do

5 hereby certify that I am a Freelance Certified

6 Shorthand Reporter in and for the State of California,

7 and that as such, I reported the proceedings had in

Page 187

8 the above-entitled matter at the time and place set

9 forth herein;

10

I further certify that my stenotype notes

11

were thereafter transcribed by me, and that the

12

foregoing pages numbered 1 to 157, constitute a

13

full, true and correct transcription of my said

14

notes.

15

16 I declare under penalty of perjury under

17 the laws of the State of California that the foregoing

18 is true and correct.

19

20 DATED: 14th day of April, 2016.

21

22

LINDA VACCAREZZA, CSR, RPR, CLR, CRP
License No. 10201

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