

Josh Blackman:

I'm Josh.

Juan Thomas:

Hi Josh.

Josh Blackman:

Good to see you. Thank you so much for coming.

Juan Thomas:

Good to see you. Nice to meet you finally.

Josh Blackman:

Likewise, likewise. Likewise. Phil's registering. He'll be here momentarily.

Joe Crossworthy:

Hi, I'm Joe Crossworthy.

Juan Thomas:

Hi Joe. Juan Thomas.

Joe Crossworthy:

I don't think we've ever met in person.

Juan Thomas:

No. I don't think we have.

Joe Crossworthy:

But I know all about you.

Juan Thomas:

Oh, don't believe any of that.

Joe Crossworthy:

I-

Speaker 1:

[inaudible 00:00:21]

Juan Thomas:

You. Glad to be here.

Josh Blackman:

Oh, of course. If you storm out my remarks, I'll know because of what I said.

Juan Thomas:

I hope so.

Josh Blackman:

No, that's okay.

Juan Thomas:

You're in Oklahoma City? Okay. You know a preacher there by the name of Byron Coleman?

Josh Blackman:

Yeah.

Juan Thomas:

Heard of him? No, he's a college buddy of mine. He's a pastor there. I can't think of the church.

Speaker 2:

[inaudible 00:01:03] so if the mics were live [inaudible 00:01:03]

Juan Thomas:

Okay. Right. Right.

Speaker 2:

If they're talking way back here, it's not going to pick you up, but if you bring it closer, it's going to sound a lot better.

Juan Thomas:

Got it. Yeah.

Speaker 2:

If the microphone is really far away, it's not going to pick you up, but the closer you get, it'll be louder than the speakers and the recording. You might just have to move this one.

Joe Crossworthy:

I'm here. If I want to move it, then I'll move it back, but otherwise people speaking from the table, that's probably-

All right. Many assumptions.

Josh Blackman:

Did Chicago warm up a bit?

Juan Thomas:

No.

Josh Blackman:

I was there a few weeks ago after... I had a conference and I came after. It was like 30 below, so it wasn't quite that cold, but I got out of O'Hare. I'm like, oh man. Just going from the door to the cab. I was ah.

Ellen Rosenblum:

Hi, I'm Ellen.

Juan Thomas:

You live in Dallas?

Josh Blackman:

Hey Ellen, I'm Josh. So good to see you.

Ellen Rosenblum:

Josh, really great to see you, too.

Josh Blackman:

Likewise. Likewise.

Ellen Rosenblum:

Yeah. I'm excited to be on the panel with you.

Josh Blackman:

Likewise. You got a lot of ribbons too.

Ellen Rosenblum:

Oh yeah.

Josh Blackman:

[inaudible 00:02:45] ribbons.

Ellen Rosenblum:

Oh yeah. I've been collecting them over the years.

Joe Crossworthy:

[inaudible 00:02:49] removed.

Speaker 2:

Phil, here we go. They got you registered? You good?

Phil Williamson:

I'm good.

Speaker 2:

All right.

Juan Thomas:

Hi there, long time.

Josh Blackman:

I brought... You can have one if you wanted them.

Ellen Rosenblum:

Are you sure?

Josh Blackman:

Yeah. You can have one.

Ellen Rosenblum:

I don't want to take anything away from you. I'll go find my own. I thought I brought [inaudible 00:03:00]

Josh Blackman:

If I get thirsty though... They don't have bottles of water. I brought this my room, but you're welcome to have it.

Ellen Rosenblum:

No, no, there's a water. I'll go get a water.

Josh Blackman:

Okay. Okay. Not bad for 9:00 AM. People actually in the room.

Juan Thomas:

Yeah. Are you in Dallas?

Josh Blackman:

Houston.

Juan Thomas:

Houston, okay.

Josh Blackman:

Houston, yes.

Juan Thomas:

You just had a marriage race there, I saw.

Josh Blackman:

We did. We had a marriage race, right. Yeah.

Juan Thomas:

I had a colleague who was running, then she shifted to the Congressional race. Amanda Edwards.

Josh Blackman:

You know, I don't know the local races too well. I should know, and I don't. I'm embarrassed. I knew those in [inaudible 00:03:38] race, but I didn't follow the Congressional races.

Juan Thomas:

Okay. Well the Congressional race is actually on, I think, March.

Josh Blackman:

Is that for Jackson Lee's district?

Juan Thomas:

Jackson Lee. Yeah.

Josh Blackman:

Oh, she's the one challenging her.

Juan Thomas:

Right.

Josh Blackman:

Oh, is it a runoff?

Juan Thomas:

No, it's the primary.

Josh Blackman:

The primary. Oh, so primary, okay. See, I don't know what I'm talking about. Oh, so she's challenging Sheila.

Juan Thomas:

Yeah.

Josh Blackman:

Oh wow.

Juan Thomas:

She thinks she might be vulnerable this time.

Well, Sheila lost in the [inaudible 00:04:05] race by a good number.

Josh Blackman:

I know.

Juan Thomas:

Wow.

Ellen Rosenblum:

Am I the only girl?

Juan Thomas:

I think so.

Josh Blackman:

You know what...

Ellen Rosenblum:

[inaudible 00:04:28] Hi, Ellen Rosenblum.

Phil Williamson:

Phil Williamson.

Ellen Rosenblum:

It's really nice to meet you.

Phil Williamson:

Likewise. Likewise.

Ellen Rosenblum:

Happy to be on the panel with [inaudible 00:04:28].

Phil Williamson:

Looking forward to it.

Josh Blackman:

Thank you.

Ellen Rosenblum:

[inaudible 00:04:28].

Josh Blackman:

I don't live in that district. I used to live in Sheila's district when I first moved to Houston, but not anymore. So-

Juan Thomas:

Where are you from?

Josh Blackman:

Staten Island, New York.

Ellen Rosenblum:

Are you guys all going to just speak from the mics or go up?

Josh Blackman:

I don't know. If you ask people-

Juan Thomas:

Yeah. That's what they suggested.

Ellen Rosenblum:

Is that what they're saying? Even for our moments of fame here, you want us to just stay seated here to speak?

Joanne:

I think so, because we're going to be [inaudible 00:04:52] and I think it's not easier to [inaudible 00:04:57]

Josh Blackman:

That's fine.

Ellen Rosenblum:

Okay.

Joanne:

May I borrow your microphone?

Ellen Rosenblum:

Oh yes.

Joanne:

Just to make the introductions.

Ellen Rosenblum:

Of course. Is it working?

Josh Blackman:

She's always on top of everything. It's very good. Every caucus needs a Joanne.

Joanne:

Oh, thank you. I hope that's the case. Yes, we are live.

Good morning everybody. We'd like to begin.

I'm Joanne Engelhardt, a founding member of the Crossroads Caucus. Thank you for joining us this morning. A warm welcome to our chair, Joe Crosswait. The caucus members who are here, will you please give a wave so we know who you are. Thank you. And to our distinguished moderator and panelists.

Just a couple of housekeeping notes. This program will be recorded. I know some of you have to leave before the program's over to go to other obligations, but we will have a full audio and visual recording. Also, there will be a meeting of the caucus membership directly after the panel. I want to thank our sponsors who made this program possible. They're listed on the program poster outside. I also want to thank the many ABA leaders, including President Smith, President-elect Bay, Chair Vance, past President Enix-Ross, and our executive director Alpha Brady, for encouraging us to form and grow this caucus.

At the risk of sounding strange, let me use an idea from medieval alchemy to explain how I understand this new caucus.

Josh Blackman:

It's pretty noisy.

Joanne:

Those early, somewhat misguided chemists thought if they could bring together opposite metals or chemicals, they could produce something new and marvelous. The marvelous product was, and here you'll remember your law school Latin, the tertium quid. This third thing, however, could not be known in advance, but there was every confidence that it would appear if the opposing substances were put into the same pot, if the vessel could be heated, and if one had sufficient patience.

Although this turned out to be bad chemistry, I think it's good human behavior. I believe that putting together opposing ideas on important issues and letting them cook in the vessel of respectful intelligent discussion can produce a third thing, an unexpected meeting of minds. I consider that a marvelous possibility. It may not appear immediately and the process may tax our patience, but I believe it is worth a try. And now it is my great honor to introduce the president of the American Bar Association, Mary Smith. Thank you, Mary.

Mary Smith:

[inaudible 00:08:03] Well, good morning everyone. I'm so glad to see all of you. I'm so excited about this caucus because at the ABA we celebrate diversity in all its forms, and I really appreciate that you all are here this morning. And thanks to Joe Crosswait and all others who have started this caucus.

Today, it's my distinct honor. I'm so thrilled that we have Judge Boggs with us to moderate the panel. Judge Boggs has had an amazingly distinguished career. He's done almost everything. He was born in Cuba actually, and he grew up in Bowling Green, Kentucky, and then attended Harvard. He won the



Coolidge Debate prize, not once but twice, and he served as the president of the National Model General Assembly. Then he attended my alma mater, the University of Chicago, and he also won the moot court competition.

He returned to Kentucky where he served as legal counsel to the governor. Then he was called to Washington, and he served as assistant to the Solicitor General of the United States, and he was assistant to the chairman at the Federal Power Commission and Deputy Minority Counsel to the Senate and Energy Committee. He then left government and entered private practice, and then he returned as assistant director of the White House Office of Policy Development, and he was a special assistant to the president and the Deputy Secretary of the U.S. Department of Energy. What a career.

Then he entered the judicial branch and he became a judge in the U.S. Court of Appeals for the sixth circuit. And he has served as chair of the Appellate Judge's Conference.

So this is a very distinguished career. You may have known all of that about Judge Boggs, and it's very just inspiring to hear his career. But the things you might not know about Judge Boggs is he is a fan of knowledge, and he always sends out questionnaires to all his clerks-

Josh Blackman:

I passed.

Mary Smith:

... to ask questions of them before he selects a clerk. For instance, one of the recent questions was who gave the famous speech, "Ain't I a woman?" Does anyone know? I'll tell you. It's Sojourner Truth.

Hon. Danny Boggs:

You're hired.

Mary Smith:

Great, I can do that after ABA President.

And the other thing you might not know, since he attracts clerks who are curious about the world and like to have knowledge, he has had several clerks appear on Who Wants to be a Millionaire. And he himself has twice been the lifeline for his clerks.

Josh Blackman:

[inaudible 00:11:10].

Juan Thomas:

I didn't know that.

Mary Smith:

So with that, he is truly a Renaissance man, and we are so thrilled to welcome him to the American Bar Association [inaudible 00:11:26] meeting. Thank you so much, Judge Boggs.

Hon. Danny Boggs:

Well thank you for that generous and detailed introduction. You do get the feeling that all the things that she listed after that the prospect of life tenure, after having had about nine jobs in 12 years, the prospect of life tenure seemed quite attractive. So when the president and the Senate were willing to place me here, and it has been a privilege because not only that in itself, but the things that you get to do as, for example, a member of the ABA, of a friend of lawyers, of having law clerks, is part of what our profession is about.

Well, I was asked to moderate this with no great background, but my understanding is that as with many panels, you look at a situation, you try to say, is there a problem? What kind of problem is it? And can we address it?

To some, the questions of diversity in the ABA and all of its aspects, is it only a problem of perception? Is it an erroneous perception? I think the ABA has changed over time as it has historically. Once it was thought of as being very stodgy and reactionary, and there was some truth to that. It has now come to be seen by some as perhaps radical and one-sided, and there may be some truth to that as well.

But has this perception had an effect on the ABA? The ABA has always been proud of itself as the voice of the profession, and it still is. It is still the largest voluntary professional association in the world.

But at the same time, those of us who have been in it quite a while always thought at the peak we were told there were 400,000 members of the ABA. That was kind of the peg point at a time we had maybe 800,000 lawyers in the country. Well, that number is down significantly, perhaps by half or so, and we have 50% more lawyers. Now, there are many factors in that. There's insularity in the profession that we have. There's a decline in civic commitment, if you've read *Bowling Alone* by Robert Putnam.

But surely we all know lawyers and judges who are good people, but who will say, "I just don't want to be associated with the ABA." It's seen as being too far to the left. At the same time, is that perception accurate and is the perception a problem?

The ABA also differs with sections. I was chair of the Appellate Judges conference, and perhaps because we were judges, we could always and frequently would abstain on contentious issues, and everybody was pretty calm with making that decision. At the same time, sections do work quite different from "the big ABA." A lot of people are more comfortable there, but a lot of sections and delegates are ready to plunge into contentious issues.

Well, we have four excellent speakers to address different aspects of this. The first speaker will be Ellen Rosenblum. I always promote her as General Rosenblum. She's in her third term as Attorney General of the State of Oregon, having previously served as a trial judge and as an appellate judge. Now, I would never ask an Attorney General the Attorney General's age, but she has been a distinguished ABA member for quite a long time. She's been a member of the House of Delegates for almost 35 years, and still is. She has been chair of state and local government, and she has been Secretary of the Association serving that three year term. So she has seen it both hierarchically and chronologically and will lead off with her views of the topic.

Second speaker will be Josh Blackman. Josh is a full professor at South Texas College of Law. He is a prolific writer and blogger. He is author of three books, the most recent one of which appears to have put pretty high up on the Amazon Con law list, which is a book of the hundred Supreme Court cases pitched at a student level, but he also has two earlier books on aspects of Obamacare and religion with the titles *Unprecedented*, *Unraveled*. And I see a path here. I think his next books will be *Uncredible* or *Unbelievable*. You know, if you're going to do a series, you need a theme, and Josh has certainly done that. His other talent, he had a very minor gig as a law clerk to a sixth circuit judge, me.

Josh Blackman:

I passed the quiz.

Hon. Danny Boggs:

It may not account for his being here, but may account for my being here.

Our third speaker will be Phil Williamson, who is a partner at the Taft Law Firm, very prestigious, long-standing firm up the road in Cincinnati and in Northern Kentucky. Phil is a graduate of the University of Virginia Law School and sort of, as they say, had a triple crown. He clerked for Ray Kethledge on my court, who was rooted about as one of the leading candidates for the Supreme Court. He had previously clerked for Amul Thapar who was also on my court, but as a district judge who was also on the short list for the Supreme Court. And he also clerked for Laverski Smith as Chief Judge of the eighth circuit. So that was a triple crown.

Our last speaker is Juan Thomas. Juan has his own law firm in the Chicago area and is also of counsel to a Chicago firm. He also is a triple header, I noticed. In addition to his JD from the University of Illinois, he has a Master's in Education and more recently a Master's in Divinity. So apparently if you believe in serving both God and Mammon, he may be... Or perhaps the other is to address yourself to both God and Caesar. That is a combination that I found quite impressive. He has been the president of the National Bar Association. He has been the chair of the section of Civil Rights and Social Justice. And for those of you who are going to stick around and go to the Spirit of Excellence lunch today, he will be one of the awardees there.

So I believe we have a distinguished panel that can cover this. They're each going to speak for about eight minutes or so. Then I'll pose some questions, and then we'll open it to the audience. So we'll start with General Rosenblum.

Ellen Rosenblum:

Thank you, judge. Good morning, ABAers, and thank you for coming to the mid-year in Louisville and for coming to this conversation. What an honor to have Judge Boggs as our moderator. And I can't wait to hear from this august panel, my co-panelists.

And I'm going to admit this, when I was first invited to do this, my first reaction was, "Why me? Oh my goodness." I mean there's so many more currently actively involved members of our beloved ABA who literally live and breathe our professional association on a daily basis, and many of you are in this room today. So thank you to all of you.

But the more I thought about it, I concluded that I was after all a good choice to speak on this morning's topic. Why? Well, because I'm one of the few elected officials, other than some elected judges, who are actively involved in the ABA. And given my background, I may have a perspective on the ABA that could actually be somewhat unique and may be helpful to the discussion.

After all, I grew up with the ABA more or less in my backyard. My dad, who was a professor at Northwestern University Law School in Chicago, used to take me downtown from Evanston with him to the Edgewater Beach Hotel, and this was in the early 1960s, for his administrative law section meetings. And I was a mere adolescent at the time, ageless, of course, so no counting the years, but I'll admit it took a bribe of a hot fudge sundae at the fancy Bismarck Hotel for me to go along with him. But I could feel from then on in my core that the ABA was dad's professional home. Even later in his career, when my otherwise liberal constitutional law professor, father became an active member of the Right to Life movement.

First, though, a little more about me and my path in the ABA. Practically the minute I passed the bar in Oregon in 1975, because I'd moved to Oregon, dad bought me my first-year membership and appointed

me to co-chair the Consumer Protection Committee of the Administrative Law section, which he was chairing that year. Now, if that's not nepotism, what is? I couldn't afford to travel to meetings from the West Coast, but some years later, in the late 1980s, I was elected as the first woman member of the Oregon delegation to the ABA House of Delegates, and I've served there in multiple capacities ever since. As noted by the judge, I've served as a member of the Board of Governors, as a secretary, as state delegate, as state bar delegate, as delegate at large, and now as the delegate from the National Association of Attorneys General, of which I'm currently president.

So fair to say, I've seen the house from a lot of perspectives, including serving as liaison to the rules and calendar committee back when our current chair of the house was a young lawyer member on that committee, as he reminded me last night. I've served on the Board of Governors for seven years, starting in 1995, so it was a long time ago. I see Judy Perry Martinez, our wonderful past president. We served together on the board. Roberta Ramo was the president my first year on the board. She was the first woman president of the ABA. So just a little historical perspective here.

If you look at the photos at the ABA offices from the three-year cycle that I was on the board initially, you'll see that my first year I was the only woman in my board class. There were no minorities at all. In the following year, we started the special positions for women and minorities, and suddenly there was racial and ethnic diversity on the board.

Now, I loved my board class of all white men, which by the way included Tom Susman and Bill Paul, but these new members were a welcome addition. That was also the year the ABA's theme line, "Defending liberty, pursuing justice" was adopted by the board. And that's a really interesting story, but I don't have time to tell it to you all now.

But during all this time and through all these experiences, I have always felt welcome and included and respected in the ABA, and I've always tried to go out of my way to make others feel similarly. I believe that the ABA's greater diversity has enhanced everything it does. And since my first meeting of the House of Delegates, we've had great debates on the floor, and the recent changes that require the content to be related to one of the ABA's four goals have improved the debate process.

Having an association whose membership is more reflective of the society at large, and a house of delegates that's representative of the legal profession today, in my opinion, makes our debates more interesting, engaging, and valuable. And in turn, they lead to better policy and hopefully even better laws.

So this morning we've been asked to speak about whether we have enough viewpoint diversity in the ABA as reflected in the legal profession. And it's my observation that this relatively new diversity of membership has also resulted in a significantly expanded diversity of points of view.

My other observation is that the lawyers in the ABA are overall slightly to the left of center, and that is also true of my observations of our profession. But it does not prevent more liberal or more conservative points of view from being presented. I understand the frustration of those who are considerably more liberal than the typical lawyer and those who are considerably more conservative than the typical lawyer.

I understand that people whose points of view are not totally in sync with the majority occasionally do find themselves frustrated with positions that the ABA takes, both on the left and on the right. As an elected official, I am especially sensitive to these concerns. In my role as Oregon's Attorney General, I have to work with legislators whose politics are all over the map. Now, as president of my National Association of Attorneys General, I have to work with attorneys general whose points of view go from far left to far right. So I understand how challenging all of this is-

PART 1 OF 4 ENDS [00:25:04]

Ellen Rosenblum:

Far Right? So I understand how challenging all of this is and how some people throw up their hands in frustration. For my part, I try not to do that, and I don't think our association does or should, and I think we're the better for it. But I must also tell you that in my role as the people's attorney in Oregon, I see all the time the degree to which the most vulnerable in our society continue to be terribly mistreated. And I would hope that our professional association will continue to address those concerns. Put it another way, if our profession doesn't commit itself and work to creating a fair and more just society, then we lack a fundamental reason for being.

So now let me just go back to my dad for a minute. His views on abortion were decidedly in the minority among ABA members and certainly differed from mine. But I believe he was respected and listened to and to his dying day he loved our association and he cherished his involvement in it. His example speaks volumes to me about the issue of acceptance of diverse perspectives in our association.

At the risk of overstaying my welcome this morning, I hope I'm still within my time limit. Let me tell you about my dad's brother Albert, who was a corporate lawyer for a pharmaceutical company in New York City. And he held very conservative views. It was sometimes fun to hear them arguing on the phone. Near the end of Uncle Albert's life when he could no longer travel, he made a request of me. Could I send him an ABA bag, the kind we get at annual meetings with the ABA logo on it. When I got him choice of three bags from my collection and sent them off to him, he sent me a last message that he was incredibly appreciative of this memento of his lifelong professional association. And I later heard from his kids that he was actually buried with the bag by his side.

So there are at least three of us in my family who cherish this association and who do so because of the big tent of people and ideas and policies that it represents and the feeling that the members are respected and that the work that we do is of true importance regardless of our own points of view. So I look forward to continuing to do my part, to make everyone feel welcome, to feel heard, and to feel included in the ABA. Thank you.

Hon. Danny Boggs:

Thank you. Now we'll hear from Professor Blackman.

Josh Blackman:

Thank you so much. It's a pleasure to be here. It's my first time speaking at an ABA conference. Also first time attending an ABA conference. I'm only a member because my school pays my dues. I frankly forgot I was a member until pretty recently, and they give that by way of introduction to say General Rosenblum is correct, the ABA does wonderful work. But I think a perception may differ from reality. And if the perception exists that there's a skew to the left, then people may see not much value in joining this group. Judge Boggs mentioned the numbers. At one point half of the lawyers in America were members. I heard the number now is closer to 10%. I don't have the most recent numbers from Fed Soc, but the number of dues paying members is probably reaching what the ABA has, may eclipse it at some point.

And you have to ask yourself why? Why has there been such a disparity? You're still doing important work. You've all these committees, lots of committees I've learned. You have all these bureaucracies, you have these resolutions, you make headlines, you publish a journal. But why are people not joining? Why are people choosing not to keep the memberships active? Maybe there's a lack of civic

engagement. Maybe people just don't see benefits in discounts and insurance and the like. But there is a perception at least among Fed Soc members, which I'm a card-carrying member of, that this organization skews the left. I'll give some examples. ABA Model rule 8.4(g). This was a rule designed to perhaps promote diversity, but it's been a lightning rod of controversy. A federal court declared it unconstitutional. That was reversed by the Third Circuit on sort of standing grounds, which are not important, but that the ABA would even propose a rule that's maybe unconstitutional, I think reflects a lack of diversity on that group to actually put forward this proposal, right? Many lawyers see this as a speech code.

There are other instances, the amicus briefs. If you look at the Supreme Court briefs filed by the ABA, they are consistently on the left side of the case. And I've done the numbers, consistently. General Rosenblum would mention abortion, the ABA files briefs on things like abortion, which, yes, there's a connection to legal profession, but it's quite tangential and that could turn off a lot of pro-life lawyers. Recently, the Florida Supreme Court found that the ABA's diversity requirements for CLE speakers is a quota. I think a lot of the ABA's resolutions during conflict with students of fair admission, I think there's a delegate proposal to say we favor these DEI policies that very likely may be illegal under current law. The ABA delegates may get rid of the LSAT as required for law school because it might be viewed as harming diversity.

I can go on and on, but whenever you'll pick up the ABA Journal and look at what's the House Delegates doing, it's not usually something that conservatives will agree with. And I think this manifests itself outside of the House of Delegates. And one example is judicial selection. Now, I know that's somewhat different, but for generations, the ABA was a gold standard of making recommendations for judges, right? In fact, the ABA would get a preview before the president made the nod to say, "Can we pick this person?" George B. Bush got rid of that and it's not really been brought back. As far as I know, the Biden Administration's continued not to give advanced notice. Now, of course you can review candidates, there's no problem with doing it, but it doesn't really matter if you oppose it, right? People who are deemed not qualified still get confirmed and I think it moves nothing.

So you might say, "Okay, so what, we don't have a say over judges." The real weight of the ABA is actually accreditation for law schools. That's the world that I live in. The ABA has a monopoly on accreditation power. That's not chiseled in stone. If this Republican administration, your guess is good as mine, they can decide that the ABA has been a poor steward of that power, even though I know it's separated, and decide to seek other means. Maybe devolve to the states the power to license law schools, maybe have alternate accreditation agencies. And if the ABA loses its monopoly and accreditation, that is your big influence. That's your weight. And I don't think this is a light threat. I think it's serious, especially if the various proposals pushing forward DEI requirements. Depending how those are implemented, you may actually have state supreme court's say, "No state schools, you cannot do this. It's against the law."

So again, the pursuit of what many see as progressive goals will run into legal power and administrations. And I don't think this is limited to the national ABA. State bars also face threats. [inaudible 00:32:19] called integrated bar situation where under the Janus precedent, maybe lawyers won't have to pay dues to these mandatory integrated bars. The Fifth Circuit's already held as much. Texas had to just walk back and separate all of its political activities from the dues paying. So I mean, again, as I say, the walls are closing in on this monopoly.

Okay, now look, it's true. A lot of people in this building think this group is too conservative. I know this happens. There are a lot of lawyers think ABA, it's too right wing. Fine. I'm not going to argue with them. That's what they think. That's fine. But if the ABA wants to represent the mainstream of all lawyers, it has to actually represent the mainstream of all lawyers. Okay, now how? The last year has been actually



a learning experience for me. Again, I am not a member of this group. I'm a member barely. But I've learned a lot. Joanne and Joe have run this caucus. I've learned a lot. I've learned is this organization's big and it's a lot of bureaucracy. It's sclerotic. To do anything takes a million committees and that's just a factor of that it's a hundred-year-old organization. It's been around for a long time.

Our humble Crossroads caucus, which I'm very proud to be a member of, has tried to put forward something to the House of Delegates. It was a very, I thought, simple proposal, but it proved to be not so simple. And the proposal works like this. Whenever the ABA says we're promoting diversity on race, on religion, on sex, and so on, it just adds to our viewpoint that if there's lots of things that are important, lots of diversity are important. What about viewpoint diversity? In fact, President Smith made that point a moment ago, "All types of diversity are important." I agree. We couldn't find a sponsor for a resolution. Now maybe we didn't give enough time. Maybe we need to go through more processes, et cetera. But we've had trouble finding anyone to sponsor a simple resolution saying viewpoint diversity is important.

And maybe this is a poison pill. I don't want to just hide the ball maybe having a vote in this. People say, "No, we don't want viewpoint diversity." And I think that would be important because it'll signal where this delegate stands. So I don't know what the future is for this group. I have no idea if this is sustainable or redeemable. I regret that people want to be buried with ABA swag. That's a lovely story. But for people going forward who did not come of age in this sort of renaissance of ABA, I don't know where this organization's headed. I truly don't.

And I think it's up to you all and these people with all these ribbons and their badges, all these blue, yellow, green ribbons to actually take some sort of stand. Otherwise, memberships will continue to atrophy. People will simply say, "This is not valuable." And you might lose your political power. And at that point you have lovely meetings, you have beautiful dinners, but the influence that you had a generation ago may not be sustainable. So I thank you all for your time for having me on this lovely panel. I look forward to engaging with it. Sorry to be the bearer of bad news, but that's sort of why they brought me in here. Thank you all so much.

Hon. Danny Boggs:

We'll now hear from Phil Williamson.

Phil Williamson:

Well, good morning everyone. My name's Phil Williamson. I am glad to be here. Very grateful for the invitation and a chance to join my fellow panelists and Judge Boggs here. If you are playing the game of one of these is not like the other, that's me. So I am just a lawyer. I'm an appellate practice partner in Cincinnati. I am not an ABA member and probably the youngest person on the panel. I started my journey in the legal profession as a law student in 2010, entered private practice post-clerkship in 2016. So I'm your oddball here. The attorney general came to you with praise. Professor Blackman came, I think I will charitably describe, with warning. I come to you with questions because again, I'm an appellate litigator, this is where we live. And the questions are pretty straightforward.

Number one, are right of center lawyers welcome here. Second related but independent question, would right of center lawyers feel that they are welcome and represented here? And as it turns out, the answer to that question number two tends to be no. And here's why. Again, speaking as an appellate litigator, I started rolling through the history of ABA amicus briefs in the Supreme Court since I started my legal journey. If it's a big tent, if it represents the legal profession generally, you might think that somewhere in there there is an ABA amicus brief aligned with a Red State attorney general. Boy, that is

hard to find. Well you might say, "Okay, fine. Maybe it's just that when we talk about things like about diversity or the rule of law or management of legal profession, maybe it's just that your Red State Attorney General or your Blue State Attorney General don't necessarily see eye to eye on what that means." Fine.

And let me caveat here and say I sort of take no beef with the fact that the ABA's amicus briefs and criminal matters tend to be pro-criminal defendant. I don't think prosecutors necessarily need all the help. They hold many of the cards, as I think Judge Boggs would agree, given his legal career in the cases he's seen. But you might ask why does the ABA have a policy on whether a state that issues concealed carry permits ought to be a may issue state rather than a shall issue state?

Independent of the question, sort of the objective question of whether that is a good policy or a bad policy for a state to have, I would no more expect the ABA to weigh in on may issue versus shall issue than I would expect the American Roofers Association. It's sort of not your bag, right? You might ask things like why is there an amicus brief on the importance of independence protections for, within the executive branch administrative law judges in Jarkisi, and not a hint of concern at the construction of the Consumer Financial Protection Bureau, where you have a single director which is immediately suspicious for rule of law purposes when we're talking about independent agencies, who cannot be fired. Who, we noticed in one fight, could appoint his own successor, has a budget that does not depend on Congress and retains the in-house authority to craft rules, to interpret the rules, to enforce the rules and claims sort of jurisdiction over almost every facet of American life outside of the military.

No questions about that arrangement and how that comports with rule of law. Because what I described to you is a monarchy, not a republic, these are the kinds of questions your right of center lawyers are asking. You might ask, so suppose you believe that stare decisis is really important legal principle for the rule of law. And I agree, I've talked about this at conferences on the right and the left. But you are going to run into the interesting question. So in Dobbs, the ABA files a brief arguing, stare decisis is a really good reason to stick with Roe and then filed a brief in the same space in Ramos arguing that stare decisis for an opinion older than Roe, was not a good reason to uphold non-unanimous juries.

You might ask, which way do you actually think stare decisis cuts from a rule of law perspective. You might ask, okay, Biden v. Texas, no state laws should be permitted to limit U.S constitutional rights. Well and good. Except that wasn't the take in the ABA's amicus brief in Bruen where, as it turns out, the Feds ought to stay out of the way of state regulations. You might think that the ABA's brief in Howland, the Indian Child Welfare Act case, the ABA took the position that because Indian nations are sovereign states, classifications based on membership in a tribe are political classifications rather than racial ones. Except when the travel ban cases came up where exclusion decisions were made based on country of origin, it was suddenly a racial classification and not a political one.

Again, sort of the question if you're a right-of-center lawyer is, there are a lot of issues where the ABA has filed an amicus brief asserting diametrically opposite legal principles, ostensibly based on the rule of law within a single term of the Supreme Court that seemed to only track with the policy priorities of one party. Why? Especially when some of those briefs weigh in areas where you might legitimately ask, what does the ABA care about this for?

That ultimately, I think, at least for your young post-2008 right-of-center lawyers who are just lawyers and just sort of watching the public dockets. That's the sort of question we find ourselves asking. But don't let me just come and ask questions and just make it sound like I am your enemy or trying to make you look bad because I think actually there are some places where the ABA can stick with the overall goal of many of the amicus briefs that it's filed. And in fact promote, encourage, continue on even in its DEI efforts in ways that actually increase the size of the tent and don't come across as immediately off-putting to guys who litigate like I do. Students for Fair Admissions, for example. You might have



proposed that diversity is important, diversity in higher education is important, racial diversity in higher education is important. But the six-box racial categories we use to make those determinations are, I'll give you a menu of adjectives here, stupid, lazy, and racist.

For example, you might ask, why do we put two and a half billion people in the box? Asian, you might have asked, what is it that you think a person from Bangladesh and a person from Thailand and a person from China all have in common that make them interchangeable when you're making diversity calculations, you might ask, "What exactly do we want to do with the Hispanic and Latino boxes?" Because it turns out those two words don't refer to the same thing. One of them includes Spaniards, one of them doesn't. One includes Brazilians, the other doesn't. Those are some rather large countries and large groups of people.

See, you might propose some better fine-tuning of the way we think about race than simply saying people who vaguely speak Romance languages and people who sunburn in Miami in half an hour, people who sunburn in Miami in five minutes, and people who have a certain immunity to Sun's rays. So with that, I'm going to pass it to my colleague. Thank you.

Hon. Danny Boggs:

[inaudible 00:45:04] And we'll now hear from Juan Thomas.

Juan Thomas:

Good morning. Can you hear me listening to this discussion around diversity of viewpoints and are we welcoming to differing thoughts? I often ask myself, are these people married? Because if you've been married longer than a week, you know that there's diversity in your life every day. And so I'm struggling with this conversation because I'm wondering to answer your questions, Phil, diversity of viewpoint. You said you're not a member of the ABA. Well, let me tell you something. About 80 years ago, you nor I would've been a member of the ABA, and can I be candid? They didn't give a damn what we believed.

And so this conversation must be put in some historical context. Diversity of viewpoints are welcome under one condition. And let me read it to you. These aren't my words. I wish they were, but James Baldwin beat me to it when he wrote, "We can disagree and still love each other unless your disagreement is rooted in my oppression and the denial of my humanity in right to exist." And so I will debate the likes of a Liz Cheney, a Mitt Romney, a John McCain, may he rest in peace, former President George Bush all day long on policy, on views that we disagree on.

But I will not debate any of those people if we're debating if I have a fundamental right to vote in this democracy. I will not debate if the votes in urban Philadelphia, in urban Detroit and Fulton County in Atlanta counted or not. And so we welcome diversity of viewpoints, but let's talk about what we disagree on. I'll be a bit tongue-in-cheek. For my friends who live in Detroit and Baltimore, you won't like this, but next Sunday, the San Francisco 49ers are playing the Kansas City Chiefs in the Super Bowl. We can debate all day long who's the better team, but we will not debate if they play football. That's fundamental. We understand that.

And so my question to my conservative friends is this, what is your commitment to diversity, equity, and inclusion? What do you really believe? What do you really stand for? Is your viewpoint absent of the historical context, of irrespective of what Philip or I believed. In 1924, he nor I could be at this table. There was a window of time that Ellen, my AG friend here, could not be at the table. We cannot ignore that context. And I often wonder, when I hear my conservative friends talk about these issues, are we trying to erase that historical reality?

And so I am all in favor of a conversation about how do we improve DE&I. I concur with you, perhaps we need to look at the different categories because I can tell you, I know my friends in the Latino Hispanic community, there are distinct differences among that cultural group.

PART 2 OF 4 ENDS [00:50:04]

Juan Thomas:

... the differences among that cultural group. There's Afro-Latino and European Latino and Mexican and Cuban, I've heard the debate, I've heard those conversations. And if you get that community together, they are more than willing to tell you about their internal differences. But if your interest is rooted in a denial of their right to get an education or to participate in our democracy, then you're arguing in bad faith. If you want to create this colorblind society only when it's time to promote and appoint and elect and select people of color but want to ignore the historicals of the reality, that, with all due respect to my white male friends in the room, you have an affirmative action policy too. It's called the Good Old Boy system. And if we cannot have a discussion around the fact that we live in a society where there's a presumption that white people in positions have gotten there because they are competent and they worked hard, let me be very candid. I've worked in corporate America at two major law firms. I've been a local elected official for 10 years. I've served on numerous civic boards in my community.

I've worked on a national, state and local level for all of my career. I have worked with incompetent white people before. Not everything they got, did they earn. But if I get selected, the first thing you think is, "Oh, he got that because he's black." So let's have a diversity of views but let's be honest about what's at the core of our disagreement. And if it's because you don't want me to exist, that is a line we will not cross. So let me encourage my conservative friends to think about something. And my progressive friends won't like this. Here's a dirty secret. Not all people of color are progressive. There are issues that the conservative, so center-right, could appeal to black America on, and dare I say, other cultural groups on, if you spoke to us in our language. A lot of us privately have frustrations with some of our progressive friends and those are real and hard conversations. But if your premise is I can't exist, I can't vote, I can't have a job, I can't have an opportunity, you lose us.

And to put this in just one other historical context of our democracy, I'll end with this. I was born in 1970. Richard Nixon was president. I've asked my now deceased grandparents, I've asked my parents, I've asked other older relatives of mine and mentors that I've had over the years, "Is this era like Watergate? Is it like Nixon?" And they have said to me without any equivocation, "No, this is worse." And I see people who were around during that time nodding their heads. Because no matter what we think of Richard Nixon, he was not trying to subvert our fundamental right to exist as a democracy. Now, maybe he needed Fox News. That would've changed his views. That was a joke, by the way. But seriously, he decided to step aside, to resign, for yes, significant political pressure. Why? Because he lost the support of his own party. And I'm sorry. I know that this is not a political organization. I take issue with that because in my mind, it's hard to separate law and the political process.

We are not a partisan organization but we are an inherently a political one. And for my friends on the centre-right, if you stand behind a party and a candidate that is fundamentally trying to destroy our democracy, unlike your forefathers and foremothers who told Nixon he had to resign, frankly, shame on you. And that's what's at the core of this conversation and that's what's at the core of this debate. Thank you.

Hon. Danny Boggs:

We've had some very vigorous views, and I'm supposed to have the moderator's privilege to ask a couple of questions and then turn it over to the audience. My perception of the presentations was they went along two tracks. One was, you might say, an ABA process track. How do we deal with people within the ABA? Are we welcoming? As Phil put a couple of the questions, as Attorney General Rosenblum gave a good presentation on that side, and then we had some, frankly, as Mr. Thomas ended up with, political, purely political, is this policy good or is that policy good? So let me ask a couple of questions that address that. Mr. Thomas, you quoted James Baldwin about, "I'm not going to debate anything that's rooted in oppression and denial of my right to exist." Can you think of any resolution in the ABA and the House of Delegates where opposition to that resolution would've been rooted in oppression or denial of the right to exist?

Juan Thomas:

I think historically, the ABA has had a challenge around that, as I've alluded to.

Hon. Danny Boggs:

I wasn't alive in 1924.

Juan Thomas:

Neither was I.

Hon. Danny Boggs:

Right.

Juan Thomas:

You mean current resolutions?

Hon. Danny Boggs:

Yes, part of what Mr. Williamson, Professor Blackman have talked about is what the ABA is doing now and you gave an eloquent presentation based in part on James Baldwin, which makes a lot of sense. But are you saying or implying that opposition to this or another ABA policy, perhaps the ones that Mr. Williamson doesn't like, is rooted in oppression or denial or the right to exist?

Juan Thomas:

I don't think opposition by itself speaks to that. But again, I put opposition in context. I want to know what you're opposed to. It's not just that you disagree. Let's understand why you disagree and what would you propose in the alternative. So we had a vigorous debate about three years ago around qualified immunity and the ABA adopted policy to ask states and territories around the country to curtail or eliminate qualified immunity. If you disagree with that, then let's talk about how we make policing in this country safe where people of color can trust law enforcement to make it better. But if you're not offended or concerned by the fact that too many unarmed black men are being killed in this country for simply having a headlight busted out, then rooted in that, I think is a question of my right to exist. Because my friends, let's just be candid, and I'm not meaning to be offensive, I'm going to be very clear about this.

Racism has become sophisticated. So you don't have to call me the N-word anymore to treat me like one. And I know when I'm being treated like one. So your Honor, I am interested... And again, I lifted up the names of the centre-right people that I miss. I miss George Bush.

Hon. Danny Boggs:

[inaudible 00:59:37] said that 10 years ago.

Juan Thomas:

No.

Phil Williamson:

He was definitely depicted as a Nazi at the time.

Juan Thomas:

Right. Yes. But in context of what we're dealing with today, I'll take Bush any day of the week if these are my choices.

Hon. Danny Boggs:

Okay, thank you. Let me peg off of that then perhaps to Josh is because, Mr. Thomas was quite eloquent but I heard a great deal of it to me as a moderator or perhaps a right of center judge, as policing the discussion. That is, I put the question to you pretty strongly, and I thought you might've said, "Oh no, all ABA discussions have been okay," even if you opposed it and you really didn't. Josh, did you hear that the same way? But also, let me cause you to get into this, which is neither one of you, you or Mr. Williamson, are an ABA member. I have been forever. I've belonged to organizations. I will not go into the exact quote where I preferred to be inside the tent rather than outside the tent. So how did he make you feel about becoming a member and getting inside the tent and perhaps fighting in the other direction?

Josh Blackman:

I think what I heard is if you're going to vote for Donald Trump, you're not welcome. I hate to break it to you, about half the country voted for Donald Trump. Maybe not 50% but something close to it. You might be shaking your heads, but it's true. And a substantial number of lawyers will vote for Donald Trump and they're not welcome. I should note that the decline of the ABA membership long predated Red Hats, came long before Trump. 10 years ago, we were talking about signing statements in Guantanamo Bay and the end of the rule of law. I remember that. I was in law school during the Bush administration. That's not new. So look in every generation, Richard Nixon, George W. Bush, Ronald Reagan, the Evil Empire, it's always evil. It's the same thing over and over again. No, it's true. And let me make another point. I live in the academy. I hear the word oppression on a daily basis. Everything is viewed through the lens of oppression. I get it, it's an academic theory. It's one that most lawyers simply do not accept.

And if you keep speaking in terms of oppression, oppression, your membership numbers will continue to decline. Again, I think Mr. Thomas is candid and I appreciate it. If I can't oppose qualified immunity because I think it's not grounded in the history of the 14th Amendment, does that make me a racist? If that's the argument that taking positions on QI is about racism and oppression and not based on views in the 14th amendment and what it actually means, then look, I don't know. Look, maybe Mr. Thomas'

views are not in the majority. Maybe they're not. I have no idea. But this session's being recorded. It will be on the internet. People will watch this and they will say that if you're voting for Donald Trump, shame on you. I heard...

Hon. Danny Boggs:

Let me throw it to General Rosenblum first because you gave an eloquent overview of the history and you've been in the House of Delegates, I won't say how long, forever and ever. So your presentation was on what I called a process basis. These gentlemen have gotten very vigorous on the specifics. I think you might look at what has been your experience from your point of view about how diverse viewpoints come to the House of Delegates and in programs. Again, do you see a difference in sections? Are some sections more, "Even-handed" than others?

Ellen Rosenblum:

Thank you for the question. It is interesting to be on a panel, really about the ABA, but also about the legal profession with such diverse, not just viewpoints, but backgrounds. I'm sitting next to someone who's not a member, right? Or you're becoming a member.

Josh Blackman:

I am. My school pays for my dues. It's not by choice.

Ellen Rosenblum:

So you're forced to be a member.

Josh Blackman:

Yeah.

Ellen Rosenblum:

Okay. Welcome to the ABA. We're happy to have you.

Josh Blackman:

Thank you.

Ellen Rosenblum:

Okay. And I wish more schools would pay and I wish that more law firms would pay and we really ought to. If we did that, if we could really push that more and we've done a pretty good job, we would have more members because truthfully, it's expensive. We try to make it as inexpensive as possible. But I know I'm really fortunate, I actually got a special group membership because I'm an attorney general, which I'm very grateful for. But I do want to mention, because you're in the academy, which I'm familiar with that, having been academic brat of being a child of a professor. And there was mention of a proposed resolution that didn't go anywhere because you couldn't find a sponsor. Let me tell you something. There is a resolution, Monday, okay? There's a resolution Monday on viewpoint diversity. Did you know that?

Josh Blackman:

I didn't.

Ellen Rosenblum:

It happens to be proposing a new standard for legal education. I can't believe you didn't know that.

Josh Blackman:

That one, yes. That's the viewpoint diversity one?

Hon. Danny Boggs:

That's the [crosstalk 01:04:50]

Ellen Rosenblum:

Absolutely. Let me read to you the proposed interpretation 2086. Okay? You should probably read the whole report but this part's especially important. And I quote, "Effective..."

Josh Blackman:

Oh, that one, yes. That one, yes, yes, yes.

Ellen Rosenblum:

Let me read it. "Effective legal education and the development of law require the free, robust, and uninhibited sharing of ideas reflecting a wide range of viewpoints." Okay? That's the first sentence. "Effective advocate or counselor requires learning how to conduct candid and civil discourse in respectful disagreement with others while advancing reasoned and evidence-based arguments." And I think that's in part what Juan was talking about. So that is before the House of Delegates on Monday. I intend to vote for it. I assume that there are lots of sponsors. And here's the deal. If you understand how the ABA works, the process is complicated and you will not necessarily get a sponsor if you have not maybe fleshed out your report so that everybody can understand. What do you mean by viewpoint diversity? Okay? Is that some code word for something nefarious or is it actually something very reasonable? Look, I ran into a friend, a brilliant professor in the elevator 10 minutes before or 5 minutes before this program today and I said to her, "Hey," we were hoping to get together at some point. I said, "Hey, I've got to run. I'm on a panel."

And she says, "What's it about?" I said, "It's about viewpoint diversity." And she looked at me and she said, "That is fantastic." She said, "I'm so tired of hearing just about racial diversity." And I'm like, "Ooh." And by the way, she's white and she's liberal and she's brilliant. There's viewpoint diversity folks within the liberal community in this building right now and it's part because we don't really understand what you're talking about by viewpoint diversity. When I first heard that, I was like, "Ooh," like I said, "Why me? Why should I be here to talk about this?" But I'm beginning to understand that first of all, there's a whole academic world of articles written on this topic and some of them are a little hard to understand. They're a little dense. Some of them are a little scary. Some of them make a little bit more sense.

So I am glad we have a Crossroads Caucus because I know Joe and I know that Joe's been in the ABA for many years, and Joanne, and I know that if there is a resolution, you're going to help to shepherd it and to find sponsors. If it is well reasoned and if it is thoughtful and if it is understandable to those of us who will be voting.

Hon. Danny Boggs:

Okay, I'd like to go to the audience now. And in the audience, you can address to specific people if you want to hear further on the...

Tom Lyons:

Can we get one of the microphones [inaudible 01:07:39] ask them.

Hon. Danny Boggs:

Here, you can take mine because I'll speak loudly. All right. So if anybody wants to ask a question, address it to a particular person if you can. And let's have a question mark somewhere near the end.

Tom Lyons:

As the person who's holding the microphone, I'm going to exercise the right of asking the first question. My name is Tom Lyons. I'm a member of the Crossroad Caucus and I'm going to address my question to Mr. Thomas as the immediate past chair of the Section of Civil Rights and Social Justice. Two things. One is at the annual meeting this past August, I went to the section's presentation on the 303 website design case. I was surprised that no one on the panel had anything positive to say about the decision. Every single presenter said it was a terrible decision and it was almost a competition to talk about how bad it was. That was one thing that concerned me. The other thing is, I presently have a cert petition, I'm not the author on that Supreme Court counsel, pending before the US Supreme Court on the issue of qualified immunity.

In my case, it involved a graduate student who was conservative who alleges he was oppressed by the progressive faculty at his school. We asked the ABA to do an amicus brief and supported the petition. And my understanding is the Section on Civil Rights declined to do so because they opposed qualified immunity for police officers but supported it for the faculty members. So I'd like your response to both of those circumstances.

Juan Thomas:

So for the second one, I'm not familiar with that. I need to read about that. So let me just, full disclosure, I've not seen that in writing so I need to read that. But I'll say this about the 303 case. When we put together a panel, we often are looking for diverse views. One of the challenges that we've had is that our friends on the right who are not members don't engage, aren't willing to participate. And that has been a real challenge. So we welcome diverse views within our section. In fact, I'll say this, many members of our section think that the ABA is not progressive enough. We have that debate all the time within CRSJ. So I would welcome the conversation to be part of those forums and debates because again, I go back to this fundamental question. What do you believe? What are your views and what are they based on? What are they rooted in?

One of my Divinity school professors, Judge would recall, what are your core beliefs? What do you really stand for? And is your stance rooted in something that is oppressive and harmful or is it just a genuine disagreement rooted in how I see the world? So I think that's what I'm trying to push the centre-right to say. And I need to say this. You said I alluded to people that vote for Donald Trump aren't welcome. My question to those who vote for Donald Trump is this. Why are you voting for him? Tell me why. Explain that. I can tell you why I'm not voting for him. And what often my centre-right friends don't want to do is say the unspoken because it's not politically astute.

Hon. Danny Boggs:



But then on procedure, is a person going to have to explain themselves to you? Let's say he was a member of your section who says, "I believe that SFFA was right." Are they going to have to explain themselves to you before you'll let them be on a panel to take that position as simply one member of the panel?

Juan Thomas:

When you say explain yourself, I'm not sure...

Hon. Danny Boggs:

You just said you have to explain yourself to me about where you're coming from.

Juan Thomas:

As a member of the panel, you would share the why behind your belief.

Hon. Danny Boggs:

Okay, so you would let them on the panel in advance?

Juan Thomas:

Yes.

Hon. Danny Boggs:

Okay. All right. That's a good answer.

Juan Thomas:

Yes, yes, yes.

Hon. Danny Boggs:

That's the question I was asking. Okay. Audience, we've got this gentleman and then the lady here and then the lady behind her two rows. Okay?

Dick Lipton:

Hi, I'm Dick Lipton. I'm, I guess a longtime ABA on the board. And my question, I don't want to pick on just one because... And I am centre-right and actually proud of it, but I will give a little background and then my question. The problem is yes, the organization is perceived as, I like to describe it, as part of the progressive wing of the Democratic party and I think that has had a negative impact on membership and I'm really concerned about that and I'd like to avoid that. The question really becomes one of, how do you do it? When you think about the positions that we take on things like briefs and Phil really laid it out well, you can see how there can be a perception issue.

So to go to Juan's point, if you think about the positions that civil rights and social justice has taken in the house or when it used to be individual rights and responsibilities during my 20 years in the house, there is a consistency query. Is there no issue on which CRSJ could say, "You know what? The progressive side is not correct and we should take a different approach"? There's never been one.

Juan Thomas:



Actually, that's not true, Rich. Last year, we had a Renter's tax credit policy resolution and we worked with the tax law section.

Dick Lipton:

I'm well aware of what you did but actually no, you still took on the liberal side. But we'll leave that aside.

Juan Thomas:

But we did partner with the tax law section.

Hon. Danny Boggs:

We've got your question [inaudible 01:14:14]

Dick Lipton:

Yeah, I want to get to the question is, what does this group think we can do to change the perception? My personal view is, and I'd like you to react to it, is what we really need is an outreach from things like CRSJ to look at things that are going on and maybe say something is wrong. So for example, I've always thought, which was very improper, unpopular, that Roe v. Wade was wrongly decided as a constitutional matter. Even though I am completely pro-life, I mean, excuse me, pro-choice. I said it backwards. I knew what I meant to say. My err. I am completely pro-choice.

Hon. Danny Boggs:

I think we've got let the panelists react. We got you.

Dick Lipton:

You got my question. And I'm done. Thank you.

Juan Thomas:

Again, I go back to what I said in the very beginning.

PART 3 OF 4 ENDS [01:15:04]

Juan Thomas:

Again, I go back to what I said in the very beginning. I would welcome Josh and Phil to join the ABA, become engaged in the rigorous debates of our association. I see my colleague and friend Jason here who I had on a chair chat when I was chair of this section. Jason is a moderate to conservative member of our association, but he's engaged in the work and he participates in the process. And so here's what I want to say to the center right again. If you're not engaged and we have a vote and the vote doesn't go your way, you can't pick up your ball and chain and say, I'm not going to play anymore. You're not engaged. Come to the association. We are the Association of Lawyers of America and let's have these rigorous conversations.

I've told you what my line is. I'm not willing to debate my right to exist, but we can debate policy, we can debate ideas, but you've got to come and you can't walk away because you disagree with something that you weren't even participatory in. And that's often what's happening now. And again, I go back to

this question. I think we would be able to articulate what progressives are trying to move forward towards. I call it a more multicultural democracy, but for those who use the word conservative, I often want to ask you, what are you trying to conserve? And please articulate that.

Speaker 3:

Yeah. I think that there are some fundamental misunderstandings about how the ABA works among this panel and I just wanted to ask the question, did you know? That any member of the ABA may file a resolution, so needing a "sponsor" is a complete irrelevancy, and did you know that no section has a veto over any other sections desire for an amicus brief? The way amicus briefs filings are decided are by the ABA, by the general counsel's office. I don't even know who all, I mean, some of it might be the Board of Governors, but in any event, it's not like civil rights and social justice can say to tax or tips or whoever you can't file that amicus brief because the brief is filed by the ABA. That's my do you know question?

Hon. Danny Boggs:

I'm sorry. There's a lady, two rows back is the one I called on and then after that, back to you if you were trying to guess.

Michal Rogson:

Hi, good morning. My name is Michal Rogson. I am a member of the Section of Litigation and I'm also commissioner on the-

Hon. Danny Boggs:

Can you get a little closer?

Michal Rogson:

A little closer? There we go. Okay. I'm a member of the Section of Litigation and I'm also commissioner on the Sexual orientation and Gender Inclusion Commission. I wanted to address the panel and I will end with a question. The first thing I wanted to say was that I have been a member for roughly nine years now of the ABA. I wasn't for the first 15 years of my career. My experience in the Section of Litigation has absolutely been replete with differences of opinion and I have enjoyed every minute of it. Now, that may be a function of being a litigator. I went in wanting to argue with people and understanding that we could still respect each other, we could eviscerate each other in our arguments and then go and have a very pleasant launch.

But that has been my experience with the ABA. So it actually is something of a surprise to me. And I understand that the amicus briefs have been certainly to the left of center, but in terms of the actual experience, that just hasn't been my experience. But I wanted to address some of the things that I'm hearing from the panel.

The first thing that I want to say is that anytime someone tries to convince me using fear, it feels like a bullying tactic and I immediately want to rebut it. I say that as a litigator, I say that as a person. I don't think good decisions are ever made out of fear. And so I would encourage everyone not to factor fear in when we make this decision. That said, of course, it is very important to have a group of diverse opinions if we are to celebrate diversity. Diversity in and of itself, I mean when we talk about diversity that is either racial or ethnic or gender-based, it is about getting the opinions of those people and incorporating them into how we approach any question.

So we are already engaged in diversity of opinions and there is no reason we should not engage in more diversity of opinions. But the question that I would ask, and I also come from a family where we run the gamut politically and things used to be a lot more respectful in our discussions. I do think that there has been a devolution in terms of the respect and common decency that involved in these conversations. I think lawyers should be the ones who can engage in it in that way, and certainly the ABA is a wonderful place for that. But my question, and I wrote it down so I would read it well, do you want to change my mind in good faith and are you open to me changing yours?

And I can tell you that going into any conversation with anyone who is right of center, and for what it's worth, I am not defined by politics. So I am neither left nor right. Come to me. I'm happy to talk about anything, but you've got to do it in good faith. And I can always tell if you are or if you aren't.

Josh Blackman:

I'll take a stab at that one. I'll approach it differently. Instead of trying to change my mind or me trying to change your mind, maybe the answer is don't take positions. I wrote two columns in the ABA journal last year criticizing this organization. I'm actually grateful they did it. The editors came to me and said, "We want you to write this." I wrote one criticizing the membership issue, the one talking about the DEI issues, and I got a raft of emails from members saying, "Thank you for saying what I think" and a common thread in those responses, stop taking positions in which people disagree. Focus on the core of the legal profession and when you sprawl out like an octopus in all the other areas, you're going to alienate people.

You don't need to take a position in everything. You don't have to. And if you do, there are consequences for that. So look, we can have a debate on a panel. I mean maybe I'll persuade you, I change my mind from time to time. It happens. But the bigger issue is maybe do less and by doing less, you can focus more on the core.

Hon. Danny Boggs:

Here and then the gentleman way in the back and then you.

David Tenner:

I'm David Tenner and I'm a member of the Colorado delegation. And whenever we get together to talk about the resolutions, the ones that always spark discussion about viewpoint diversity seem to come from the section of civil rights and social justice. And so I need, somebody could give me some insight into how that committee does its work, that would be really helpful to me. Because it seems like there's one this year about trans rights and you could easily, it seems to me, also have a resolution that supports the rights of parents to raise their children as they see fit within the bounds of the law. That would surely be the counterbalance to that. But it doesn't seem to me like we get those counterbalancing resolutions.

We get one side to vote on, but we don't get... So in that process within civil rights and social justice, does somebody ever look and say, well, wait a second, there's another side here. Maybe we should propose a resolution which also everybody could support, like parental rights. Okay, who wants to argue against parental rights? And so does that process happen within that section? I would sure like if it did or if it would happen more frequently.

Juan Thomas:

So let me answer that question as the immediate past chair. We have 21 substantive committees within our section made up of members in the association all across the country and the globe. They meet on a monthly basis to debate, talk about, plan programming around issues that are germane to their particular committee. I would invite you to join the section and join a committee and be part of that conversation. Viewpoints that aren't in the room are not going to be addressed unless someone brings them up, right? And so we're not opposed to hearing your ideas, your thoughts, your opinions. And in the programming we're often looking for a balanced conversation.

However, let me just say this. Our section was founded in the 1960s in response to the civil rights movement. And my concern when I hear my colleague Josh talk about do less, don't stand up on certain issues, for me that sounds like we want to preserve the status quo. We want to keep things just the way they are. And Josh, with all due respect, as a black man in America, that's unacceptable. I don't speak for all black people, but the ones I know, a lot of them agree with me on that. Maintaining the status quo, doing less preserves a term that I know might be offensive to you, but it's called white supremacy. And we're not even in our section, not only on a racial context, but also on a gender identity, sexual orientation, we're not interested in maintaining the status quo.

You talk about parental rights, that is a fair and honest debate because as I alluded to earlier, this is an important point. In the black community, there is often a conversation around family values. Strong father figures, two parents in the home, living in a safe neighborhood. A lot of African-Americans will engage in that conversation. But the center right has to understand, you can't ignore the racial context for us in that same conversation.

Josh Blackman:

Okay, I think I need to respond. I was called a white supremacist.

Juan Thomas:

No, you weren't.

Josh Blackman:

No, no, no. I think-

Hon. Danny Boggs:

I'm the moderator.

Phil Williamson:

I'm just sitting I right here.

Hon. Danny Boggs:

We've got about [inaudible 01:26:26] minutes left.

Josh Blackman:

30 seconds. If the ABAs organization about legal process-

Hon. Danny Boggs:

Josh!

Josh Blackman:

Sorry. All right, go ahead.

Hon. Danny Boggs:

I want to hear from this gentleman.

Josh Blackman:

Thanks.

Hon. Danny Boggs:

I want to hear from this lady in the front. I'm afraid that may be all we have time for.

Speaker 4:

I want to thank you.

Hon. Danny Boggs:

Short question, good short answer from the panel.

Speaker 4:

I think the questions that have been asked, the facts that have been identified are salient and require, for any serious thinking person, require rigorous, thoughtful analysis. In the organization, we are at a tipping point, a crossroads where we are evaluating many fundamental parts of our organization from membership to governance to how do we move forward and hell, who are we going to be in the next several years and into the future? And the issue these gentlemen have raised are parts of the issues that we really do need to take a hard look at. We've all agreed that continuing to do what we've been doing isn't a formula for success. And it could be that in the polarized world that we live in, that we have no choice but to be on one side or another because there are other institutions that have grown up in the last 10, 20 years that can provide a professional home for conservative thinking lawyers and individuals.

I hate to think, and maybe the answer is we are a progressive organization and that's the answer. But if we aim to expand our membership to entertain broader viewpoints, we need to ask address the question that Dick had asked, which was, how do we do that? How can we do that? And yet remain faithful to goal three and our other goals, which include the rule of law, the independence of the judiciary, the independence of lawyers, which is our wheelhouse and fundamental to our purpose.

Hon. Danny Boggs:

Thank you. Let's hear from this lady here. You can get the mic over to her.

Speaker 5:

Not coincidentally, there's a reason we call ourselves the Crossroad Caucus. Thanks to Joanne's suggestion.

Ellen Rosenblum:

Thank you very much. Lauren Stiller Rikleen. I'm a longtime member of the ABA and often critical of the ABA. But I want to just say a couple of things and I didn't have a few question marks. When we say "if

you keep talking about oppression, oppression, oppression, you'll lose members", I would be very proud to be the last person standing in an organization that cares deeply about and tries to address oppression. When we talk about the, is the two bureaucratic, there are too many committees, well, you can't say that and then also criticize the fact that your voice isn't heard. It is in fact a bureaucracy that encompasses all the voices and makes it so difficult. And we have in this room people who are leading strategic planning processes that are open and inviting and asking, begging people to fill out surveys and come to meetings and talk about their visions for the organization.

So there is enormous opportunity for input in this organization. And my questions. I was on the board of governors and people would raise the fact that the ABA made a decision on choice years ago and lost many. I'd hear all kinds of numbers thrown out. I'd ask for data. There was no data. I've been in other committees or other areas where they say our progressive views have lost members. I ask for data. There is no data. So my question is, where is the data that supports we lose members by the position we take? That's one question.

The other just quick, real quick, the other question is it that your view isn't heard or that your view doesn't prevail? And my third question is this. And this is a sensitive question, but it's important if we're going to be transparent. In one of the last drafts before the information became public about this panel, there were special thanks given, and it named number of very esteemed people, longtime important people in the ABA and the Federalist Society. When the final version was printed in the materials, the Federalist Society was dropped. And I would like to understand why and what was the Federalist Society's role in the caucus and in this panel?

Josh Blackman:

Joanne?

Joanne:

I don't know where it was, sorry. Let me just, so everybody can hear the answer. I don't know why that might've been dropped. It's certainly on the placard that thanks all our sponsors. The Federalist Society is one of our sponsors among many other individuals and corporations and law firms and they should be acknowledged. They are not running anything any more than any one position is, but they have been a sponsor and two of our panelists are members.

Hon. Danny Boggs:

We've had real questions. Mr. Williamson's been quite quiet here and is asked to take part into that. You'll take that and then I'll wrap up. Somebody else as well but go ahead.

Phil Williamson:

I felt a little bit during a lot of that Q and A, like the lighthouse that got passed in the night. Because I want to sort of come at this as a space that's maybe slightly softer than my two colleagues to my physical left here. One is, look, my views on Bruin, on Jarkesy, which is the independence protection of ALJs at the SEC, have nothing to do with my belief on anyone's right to exist, right to vote. Actually, my views on Jarkesy do actually have a lot to do with my views on how we protect people's liberty. That is to be able to hold decision makers accountable and make them fireable. But you don't have to think particular groups of people shouldn't exist to think the racial categories underlying the decisions made by Harvard and UNC and students are for admissions is not great. When your lawyers get up in front of

the Supreme Court and say, "We actually don't know where we categorize Egyptians and Jordanians" like, that's a problem. That's a problem.

I have a nuanced take to respond to one of the questions asked earlier. Open to having my mind changed on qualified immunity. My view on QI has actually evolved. I think there's some cases where it's really important that you maintain it. There's some where to come in and say with a straight face as one group of police officers did in the Ninth Circuit, that they didn't know they couldn't steal from people. Very odd. The last, and then I am done, as the Judge has indicated.

You might ask questions like, what happened when someone tried to assassinate a Supreme Court justice? Is that a question? Is that an issue that has a partisan valence or should in the name of the rule of law, we take the hard line that you shouldn't try to kill judges. What happens when you have people parked outside a justice's home following their kids to school for six months? Can you take the nonpartisan rule of law position that that's just out of bounds? You might take the view that regardless of how you feel about how the Dobbs' decision came out, people ought not be fired for having been involved in the case, which is a real fight I had.

Hon. Danny Boggs:

All right, are there-

Josh Blackman:

Let me make one, yeah.

Hon. Danny Boggs:

Down the table.

Josh Blackman:

Yeah. Let me make one final comment. I have no objection if people want to speak up for civil rights, you should. The question is whether this is the organization-

Phil Williamson:

[inaudible 01:34:46].

Josh Blackman:

If this organization is committed to the legal profession, and that is why it's given monopoly over accreditation otherwise, as it grows outward, you might run that risk. So look, if you want to have an organization that speaks to these issues, that's fine. Other people will not wish to join that and that's a risk.

Hon. Danny Boggs:

Thomas than Ms. Rosenblum and [inaudible 01:35:04].

Juan Thomas:

Josh, I guess my question to you is thank you for allowing me the right to stand up for civil rights. My question is, will you join me?

Josh Blackman:

I stand for lots of civil rights, perhaps different than you.

Juan Thomas:

Well, I'd like to hear what they are at some point. So what I'm going to say-

Josh Blackman:

Yes, I'm happy to.

Juan Thomas:

That's another panel.

Hon. Danny Boggs:

You can take that out.

Juan Thomas:

But to Phil's point. Will we respect the rule of law and when a court rules that the election was not fraudulent, will you accept that. Will you also be critical when a presidential candidate attacks a judge because of their race? Will you say that is wrong. Will you oppose the removal of prosecutors for political and partisan reasons by governors in certain states. This is not just a one-sided conversation or questions you're raising. There are things on the other side that we don't hear the center right saying are also fundamentally wrong. And so, I'll stop right there.

Hon. Danny Boggs:

General Rosenblum and then I will wrap up.

Ellen Rosenblum:

I don't know about the rest of you, but I am super busy in my life. I am a member of a lot of organizations and I am not going to continue to be a member of this organization if we pass a resolution that says we're going to do less. I want to do more, I want to make sure that we are all under this tent together. I think I'll leave it at that.

Josh Blackman:

Very good.

Hon. Danny Boggs:

Well, this has certainly been a vigorous debate. I will say for myself, there's a quote from the poem, Ulysses by Tennyson. Ulysses has gone to Troy and he says, for I have drunk, "I have drunk delight of battle with my peers far on the windy planes of ringing Troy." Okay?

And for me, the issue of this is do we have debate on issues or do we have an organization that takes positions such that people are feeling excluded? Maybe they are, maybe they aren't. I heard some people on both sides. I heard people say, it's all okay. Everybody is there. That tends to be my personal position. I also heard a lot of things that sounded like, if you don't want to do more, I'm not sure I want you in my organization. If you don't tell me whether you support one thing or another, I'm really not



going to listen to you. And I think that's the issue that we've laid out and that perhaps both for the ABAs good, for our own good. We should think about those issues and see what we can do about bringing them together. Thank you all very much.

Josh Blackman:

Thank you, Juan.

Juan Thomas:

You were a friendly opponent.

Josh Blackman:

What's that mean?

Juan Thomas:

It means your strong and I appreciate your [inaudible 01:38:11].

Josh Blackman:

I like iron for iron.

Juan Thomas:

Yes, it's good.

Ellen Rosenblum:

It was a pleasure to meet with you.

Phil Williamson:

Thank you General.

Josh Blackman:

Phil, always a pleasure, sir.

Phil Williamson:

Good to see you, professor.

Josh Blackman:

I am never at your left Phil. This guy...

PART 4 OF 4 ENDS [01:38:20]