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SUPREME COURT ADVISORY BOARD MEETING
Held at 1414 Colorado,
Austin, Texas 78701
May 17, 1986

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1 CHAIRMAN SOULES: We are going to
2 start with Proposed Rule 364-A, which that may not
3 be the best number for it, but that's the way we
4 called it so far. That information is set out at
5 Page 445. Actually, it would be a new rule. It's
6 on 446. And Hadley has had a subcommittee working
7 on this and, as you know, it is my judgment to
8 step aside while it's being debated so that there
9 wouldn't be any question about where somebody was
10 coming from.

11 So, let me turn that over. The reason I'm
12 taking this out of order is there's a TTLA meeting
13 here in Austin today where some of our members
14 need to go, and we're going to try to get this out
15 of the way within an hour, if possible. Maybe it
16 won't take that long, maybe it will take longer --
17 so that they can, when it's done, go forward to
18 their other meeting. And with that, Hadley, it's
19 your report.

20 PROFESSOR EDGAR: I wish Rusty were
21 here. Maybe he'll come in while we're talking
22 about it and I'll tell you somewhat of his
23 position in just a minute.

24 In reading the minutes of the last meeting,
25 our committee concluded that, really, what we are

1 supposed to do was to look at this rule and
2 determine whether it might be a proper rule
3 without regard to the constitutional acts that
4 might be being held over our current rule.

5 And so, in order to do that, we looked at the
6 second circuit opinion in the Pennzoil case, and
7 some of the members of this committee were very
8 helpful in providing me with information which
9 they had already obtained.

10 Luke gave me some information, Harry Reasoner
11 gave me some information, Kronzer did, Jim Sale
12 did. And we tried to compile all this
13 information, and I have it available for anybody
14 that wants to inspect it.

15 But after looking at all of this, our
16 committee was of the view that, as I stated in my
17 letter to Luke, the committee was unanimous in
18 concluding that a rule of this general nature is
19 desirable; I'm talking about Rule 364-A.

20 Now whether it takes the precise form that we
21 have it in now is something that we really didn't
22 consider because that had already gone through the
23 Committee on Administration of Justice, and I
24 thought that would be more properly the subject of
25 debate here in this committee.

1 But as far as the philosophy of allowing the
2 Court to, in certain cases, not require a
3 supersedeas bond of the type we now have, we felt
4 this was a desirable rule.

5 Now, that's basically what we have done.
6 Sam, have I correctly stated our position?

7 MR. SPARKS (EL PASO): That's right.

8 PROFESSOR EDGAR: Broadus isn't here
9 yet but he has concurred in this also.

10 Now, let me say that Rusty had some serious
11 questions about Proposed Rule 364-A. And I just
12 had an opportunity to talk to him about it very
13 briefly yesterday, and I really feel I would not
14 be doing him justice if I tried to speak for him.
15 But I just want to state that he does have some
16 question about it.

17 CHAIRMAN SOULES: Okay. Hadley is
18 going to conduct the debate if there is any debate
19 because I'll be identifying people to speak.
20 Rather, you would, so we're sure no question that
21 someone besides me has recognized all speakers who
22 care to address the issues.

23 PROFESSOR EDGAR: Is there any
24 discussion?

25 MR. MORRIS: Hadley, let me just

1 comment. I'm awfully unknowledgeable, I guess is
2 the word that's used, regarding this whole issue.
3 Could you just kind of educate me a little bit
4 about what the Court has said and what problems
5 you're trying to cure?

6 PROFESSOR EDGAR: Well, of course, the
7 origin of 364-A as you see here on Page 446 was
8 something that was in the mill long before there
9 was ever a Texaco/Pennzoil case. And this had
10 gone through the Committee on the Administration
11 of Justice, and they have proofed it and sent it
12 to us for consideration.

13 During that period, Pennzoil vs. Texaco held
14 in part that our statute as applied in that case
15 was unconstitutional. And I have a copy of the
16 opinion here if you want to take a look at it. At
17 least, that's the way we interpret it.

18 There's another kicker to that, though: that
19 the Court really spoke not only to the supersedeas
20 bond aspect, but also to the fact that once a
21 judgment is abstracted, it then becomes a debt of
22 the company.

23 And, therefore, in the Texaco case, the
24 supersedeas bond coupled with the abstract of
25 judgment, simply precluded Texaco from obtaining a

1 line of credit from anybody because they now had
2 an 11 billion dollar debt. So those coupled
3 together, the Court said, rendered the supersedeas
4 bond unconstitutional as applied in that case.

5 MR. SPARKS (EL PASO): I don't know if
6 they really said "unconstitutional." What they did
7 say was that their 1985 theory, it was a taking of
8 property without due process to execute the
9 judgment or to abstract the judgment you had to
10 use state officials, so it was under state law and
11 under the Equity Relief of 42 United States Code,
12 1985. An injunction was appropriate in this
13 case.

14 They go on to talk about a lot of big
15 numbers, which, of course, that case has. But
16 really, the logic to it, I don't think, is
17 differentiated between whether it's 11 billion
18 dollar judgment that one person or one firm has
19 trouble paying or 100 dollar judgment.

20 MR. SPARKS (SAN ANGELO): It shouldn't
21 be.

22 PROFESSOR EDGAR: That's right,
23 logically it shouldn't make any difference. And
24 also, there are, I think, approximately 35 states,
25 and I have the statutory references here if you

1 want to examine them, which have a provision
2 similar to our current rule.

3 So I guess, if our statute is
4 unconstitutional across the board, then so is
5 everybody else's. I don't know whether misery
6 loves company is a comforting thought, but any
7 how, I'll just give you that information as well.

8 But in spite of all of that, it was our
9 committee's view that we should have some
10 provision in our rule that in certain types of
11 cases the Court may do something other than
12 require a bond equal to the amount of the
13 judgment.

14 JUDGE WOOD: Let me ask you this
15 question: What would the proposed rule would do
16 under this situation? I know a case where a man
17 worth \$200,000, and that's all, is being sued for
18 4 million. The plaintiff probably doesn't have
19 200,000.

20 Now, the judgment is taken for, say, 1
21 million or 500,000, or whatever it is. My man
22 simply, I say "my man", couldn't supersede it, no
23 way in the world. And, on the other hand, if he
24 doesn't, if his stuff served on his 200,000 is
25 gone in the hands of his plaintiff, and by the

1 time he reverses it, if he does, why, that's
2 gone.

3 Would this rule address that, that he ought
4 to be able to put up everything he's got and hold
5 it for a while.

6 CHAIRMAN SOULES: Yes.

7 PROFESSOR EDGAR: Well, I would think
8 so.

9 JUDGE WOOD: I would assume that's the
10 purpose of it.

11 PROFESSOR EDGAR: Yes.

12 JUDGE WOOD: But I'd be for such a
13 rule, of course.

14 MR. SPARKS (EL PASO): Well, what's
15 been happening all over the state, but I know I've
16 got six or eight cases just in our firm even
17 before Texaco, is if you get a large judgment,
18 there are two ways to do it. You can make an
19 agreement with the appellee. Now, usually when
20 the plaintiffs lose, they don't lose a million
21 dollars. When they lose, you're usually talking
22 about defendant.

23 But you can make an agreement for cash
24 consideration, or some type of thing, they'll
25 agree not to execute during the appeal. And

1 that's not really good because usually it has, at
2 least, a theoretical conflict between the party
3 and his lawyer whose getting the money or getting
4 part of it.

5 Or what has been done far more frequently in
6 large judgment cases is you go into
7 reorganization, get an injunction. And I know
8 that we had, our business lawyers had, six
9 entities including the Texas Association of
10 Realtors in a reorganization until some -- these
11 were anti-trust cases -- got included into the
12 fifth circuit.

13 All of them were reversed but none of them
14 could have been appealed. And so we find that
15 with the sophisticated client that does have a lot
16 of assets, your playing a lot of games in
17 bankruptcy. And for the nonsophisticated client
18 who doesn't have a lot of assets, they just go
19 under, and there's no relief.

20 And the federal system -- I lost a case for a
21 couple million dollars two years ago and got it
22 reversed in the fifth circuit. And I tried every
23 way in the world not to put a supersedeas. It was
24 Jefferson Standard Life Insurance Company. They
25 could have one, but the premium was \$68,000 a

1 year.

2 And so they finally cut a deal by putting up
3 some security with a company and got one issued.
4 But I tried every way in the world, even to put up
5 a CD in escrow for the appellee, and they wouldn't
6 do it because, of course, they were trying to
7 negotiate a settlement. And that's not criticism,
8 they just wouldn't do it. It's just their own
9 strategy.

10 But in a federal court you can get it back.
11 I just got a check from them for \$16,000 on that
12 supersedeas. But there's no relief. But the
13 relief, even if we gave relief in the State court,
14 doesn't eliminate the problem as Judge Wood is
15 saying, and it's forcing lawyers, in my judgment,
16 to play games with the bankruptcy court. There's
17 not as much tarnish because every other person is
18 in bankruptcy now anyway it seems like.

19 But you go in, you convince the judge of the
20 situation, you get a stay ordered and it just
21 remains dormant for eight months, a year, however
22 long your appeal is. Something really needs to be
23 done, I think.

24 MR. BEARD: It looks like the courts
25 are going to have to have some guidance. One of

1 the problems that the plaintiffs are going to face
2 is that anticipating an adverse judgment, the
3 defendant, one, prefers himself. He puts a lien,
4 if he's got that, to his company for his
5 corporation. He puts liens on all the property to
6 himself. He's the guarantor. He makes sure the
7 banks are covered if he hadn't up to that time.

8 And the preference time is running. So
9 without guidance to the courts, they have got a
10 lot of problems to try to face. Is the party
11 seeking this relief going to file a schedule
12 showing what preferences made within the last
13 year? It's almost like you're going to force them
14 to file a Chapter 11 or bankruptcy petition as
15 part of the proceeding, because a whole lot goes
16 on when the parties are anticipating an adverse
17 judgment.

18 MR. SPARKS (EL PASO): There's one
19 other problem, too. And that is, even if you've
20 got the money and the assets for security,
21 insurance companies don't want to sell a
22 supersedeas anymore. The judgments are getting
23 large. You've got the exemplary damage, you've
24 got judgment, prejudgment and postjudgment
25 interest. There are very few companies that would

1 write supersedeas above \$500,000 now in the United
2 States.

3 MR. BEARD: We all know one of the
4 ways you settle in a case in Texas you cannot
5 collect from this defendant if you don't have an
6 insurance. So you settle or else, because we'll
7 see you never collect any money. And in Texas,
8 that's generally true; they're very difficult to
9 claim.

10 PROFESSOR EDGAR: We're talking about
11 Rule 364-A, Rusty. We just passed it. And I
12 stated that you had some concern about it.

13 CHAIRMAN SOULES: First of all, I'd
14 like to have the committee's view as to whether or
15 not David and I and Rusty should even speak to
16 this. We all have some history with it, which we
17 might want us to share. But I don't want to start
18 that unless the committee is willing. Could you
19 see that, at least, Hadley?

20 PROFESSOR EDGAR: I'm recognizing that
21 you do have a professional interest in a case
22 involving this subject. I think we can take that
23 into consideration and listen to what you have to
24 say.

25 MR. NIX: I'd like to hear from you on

1 the experience part of it. After all we're
2 looking for an equitable solution.

3 MR. SPARKS (EL PASO): Just for the
4 record, there's not a rule that goes by here that
5 every lawyer in here doesn't have some interest in
6 at any time.

7 MR. SPARKS (SAN ANGELO): I want to
8 hear what you've got to say. I recognize bias and
9 prejudice.

10 CHAIRMAN SOULES: Well, I was biased
11 and prejudiced on this about two and a half years
12 ago when it started. So that was before I had the
13 case. And that was coming out of another case,
14 actually. The realization that we discovered at
15 that time and I don't know exactly how many
16 million it is -- I think it's like 100 million,
17 but it may be a few hundred million dollars is all
18 the supersedeas money there is in the world.
19 That's all of it. So if it's a few hundred
20 million, we're now talking about seeing verdicts
21 at least that may exceed that.

22 For example, in the construction of nuclear
23 power plants, you run through a few hundred
24 million in a hurry, as everybody at this table
25 knows, because we're probably all serviced by

1 Texas utilities, or most of us, that are involved
2 in those kinds of construction plants right now.

3 And just the world is getting bigger and the
4 numbers are getting bigger. So, even if you could
5 make a supersedeas bond, there are going to be
6 cases that there's not enough supersedeas money in
7 the world to make.

8 But beyond that, in a smaller case, people
9 had a nice business; they got sued. The trial
10 went very close both ways on the evidence. Jury
11 finally came in with a small seven-figure number.
12 And those people could not make that bond and lost
13 their business, and the case was reversed.

14 Just like Judge Wood's \$200,000, it didn't
15 make any difference. That was the kind of money
16 that a lot of people look at, a couple of million
17 dollars. And they lost their business and when
18 the case was turned around, there was no way to
19 recover their losses. They could not put Humpty
20 Dumpty back together again.

21 So, this rule really starts from a different
22 place than the litigation that's on file in New
23 York. It came through the Committee on
24 Administration of Justice. It was not in this
25 form at all when it started. And it took about a

1 year there. When it did come out of the Committee
2 on Administration of Justice, there was a very
3 heavy majority, very few dissents, concerning
4 whether or not this rule should be recommended.

5 And the debate had to do primarily with the
6 last paragraph, trying to get words that would
7 impose on the judge that was reviewing the
8 question of supersedeas, whether it be in the
9 trial court or whatever court it's pending in at
10 the time, whether it be in the trial court or the
11 appellate court, to preserve the plaintiff's
12 rights, the plaintiff who has the judgment to the
13 fullest extent possible by language and rule; and
14 we so we got into this.

15 It says, "An order granting, limiting or
16 modifying a stay must provide sufficient
17 conditions for the continuing security of the
18 adverse party to preserve the status quo and the
19 effectiveness of the judgment or order appealed
20 from."

21 Now, for example, a receiver could be
22 appointed for that corporation that was lost. Of
23 course, that corporation would have to pay the
24 bills. And there would have to be some showing
25 that the cash flow of the corporation could pay

1 the bills without reducing its assets in an
2 interim period.

3 An accounting firm or some organization would
4 make reports, frequently, monthly, perhaps, on
5 profits and losses and balance sheets. Those
6 reports to go to the secured party, the judgment
7 creditor and to the Court. At any time that's
8 reviewable under this rule, whether or not the
9 status quo is being preserved and the
10 effectiveness of the judgment is being preserved.

11 Pat Beard's point earlier about, do they have
12 to file schedules? That can be one of these
13 conditions required to be sufficient for the
14 continuing security and to preserve the status
15 quo.

16 MR. BEARD: Luke, aren't you just
17 talking about a Chapter 11. Why should our courts
18 run Chapter 11?

19 CHAIRMAN SOULES: We're not talking
20 about a Chapter 11 because --

21 MR. BEARD: You're asking the State
22 Court to run the equivalent of 11.

23 CHAIRMAN SOULES: No, I'm not, because
24 I'm not putting every one of that party's
25 creditors into a bankruptcy situation. I'm not

1 putting a party into the bankruptcy situation. I
2 don't have a situation now where the secured
3 creditors come in and want lists of stays to
4 foreclose on the company's real estate asset.

5 All I'm saying is, the company is going to
6 have to -- one of the things may be that this
7 judgment creditor gets a lien of record on all of
8 the assets of that company so that notice to
9 creditors is given.

10 Maybe there's something in lieu of that where
11 the lien does not go of record but the Court and
12 the judgment better monitor the business affairs
13 on a monthly basis or frequent basis. And if it
14 should ever become apparent that there is change,
15 those things would then go of record. And there
16 would be an injunction punishable by contempt
17 against the company and all of its officers that
18 they shall not borrow money without leave of the
19 Court and mortgage any of their assets.

20 MR. BEARD: But it's substantially
21 equivalent of 11 and 13.

22 CHAIRMAN SOULES: It's just not, Pat.
23 Because whenever you go into 11, you have to pull
24 in everybody into that proceeding that touches
25 that business and make them parties. You don't

1 have to do that under 364-A.

2 MR. BEARD: But still the Court is
3 going to have to consider the effect of -- if
4 somebody's out there foreclosing on you, you've
5 got a million dollar equity. You know, somebody
6 has got to consider what the effect of that is
7 going to be on this judgment creditor. I'm just
8 saying, I think it's practically 11 or 13 that
9 you're talking about.

10 CHAIRMAN SOULES: Well, I don't, but
11 it may be. This is a much narrower proceeding in
12 the sense that it goes to just one debt and
13 preserving the status quo for one debt. And it is
14 not the broad proceeding where every debt there is
15 now has to come in, assert its rights of record.
16 This proceeding could be relatively inexpensive
17 compared to an 11 proceeding.

18 MR. BEARD: Well, I think there's no
19 way that you can handle one debt. All creditors
20 are affected when you do that. And that's why my
21 comment to begin with is this Court would have to
22 have a great deal of guidance. They really would
23 have to have schedules.

24 CHAIRMAN SOULES: Well, maybe.

25 MR. BEARD: A list of questions.

1 CHAIRMAN SOULES: I'll finish and then
2 I'm not going to chair this part of it. Then
3 we've got the situation where there's a million
4 dollar judgment against the party that's got
5 \$200,000. There's a hearing and the Court
6 concludes that's all there is.

7 The plaintiff is not going to get more than
8 \$200,000. That's the status quo, and that's all
9 the security there is for his judgment. Once that
10 is covered then the Court could rule that that's
11 adequate under this rule.

12 Now if the judgment creditor finds that there
13 are other assets, then Court might rule that full
14 discovery, postjudgment discovery, proceeds so
15 that they can attempt to come back and show the
16 Court there really is more. And if they find some
17 more, do that too.

18 There could be part supersedeas. If the
19 party could show I can supersede to the extent of
20 \$100,000, I can afford that. And I can lien the
21 \$200,000 worth of assets that I have, but I can't
22 make more than \$100,000 supersedeas; so there can
23 be part.

24 And then the final one, if the parties have
25 hidden assets in anticipation of judgment, the

1 effectiveness of the judgment to preserve that,
2 the Court would have to enter an order that
3 permitted the freezing of those assets where they
4 are.

5 And that might require the agreement of the
6 persons holding those assets to freeze them.
7 Because if they were not frozen there and if there
8 was not some alternative relief granted, that
9 judgment creditor could file suit to set aside
10 those transfers in violation of rights of
11 creditors immediately upon the getting of the
12 judgment.

13 So the courts say, "Look, either you get
14 those frozen where they are, and the Court
15 monitors them, or I'm not going to give you any
16 relief." You can either file supersedeas bond or
17 the plaintiff is going to be able to go after
18 those assets.

19 Now, all of those types of things and
20 anything else that you can imagine that would go
21 towards preserving the status quo assets held
22 wherever they are, and not subject to diminution,
23 and the effectiveness of the judgment, that is,
24 preserve the ability to pay that judgment in the
25 same shape it's in when the judgment is granted,

1 would fulfill the two points that are mandatory.
2 They're not discretionary; they're mandatory in
3 this third paragraph.

4 Now, as far as reviewability is concerned,
5 what the trial court does is reviewable in the
6 Court of Appeals by the express language of this
7 order of this rule. Because either the party from
8 which an appeal is taken or to which the appeal is
9 taken has the power to monitor for preservation of
10 the status quo and the preservation of the
11 effectiveness of the judgment at all times.

12 So that's, in a nutshell, I think, a couple
13 of years' work in the COAJ, and that's the end of
14 it.

15 PROFESSOR EDGAR: Sam, do you want to
16 speak?

17 MR. SPARKS (SAN ANGELO): Yes. I've
18 got a basic, just a philosophical problem. I've
19 noticed that courts and juries sometimes disagree
20 on their feelings about how a case should turn, at
21 least, start off with that premise.

22 But I keep hearing about the person that
23 loses that gets it reversed later on. What about
24 the man that wins and it's appealed and he still
25 wins? I haven't had this situation myself.

1 But you take a fight over a closely held
2 corporation or a partnership and one man has been
3 excluded and he tries it in court and he wins.
4 And a stay is issued by the Court because the
5 judge might have thought the other party -- you
6 know, but a jury disagrees. That man is being
7 deprived of his winnings for the next two or three
8 years, if you want to put it that way. And he
9 wins on appeal.

10 And yet while it's going on, the other person
11 that he's been fighting has been paying himself a
12 half million dollar year salary -- I mean the
13 money -- you are getting into Chapter 11, just
14 like Pat's talking about.

15 And then it gets down to preferential
16 payments and you say, "well, the guy has got to
17 pay it back." He doesn't have it. He's in the
18 Caymen Islands, you know. There are problems
19 on both sides of this thing, is what I'm
20 saying.

21 The person that prevails at the trial court
22 level and gets a judgment would seem to have some
23 rights, too. In my opinion, more so than the man
24 that loses because I believe in our system of
25 trials and juries.

1 MR. LOW: The only experience I've had
2 with that -- Gilbert and I were just talking.
3 We've had a rule like this in Beaumont that judges
4 at least on one or maybe more occasions, have
5 applied, and the other side just decided not to
6 mandamus him. We had a situation where it was a
7 pretty closely held company. And just like Sam
8 was talking about, one side won.

9 And this fellow who is still a judge there
10 right now made him put up 100,000 supersedeas and
11 he said, "I'm going to keep everything at status
12 quo. You're not going to pay yourself anymore,"
13 and any details. So it would just be maintained
14 like it was rather than coming in and interrupting
15 and have, you know, somebody else taking over the
16 business that other people might not want to deal
17 with just to keep it running as smooth as it
18 could.

19 That plaintiff prevailed on appeal. He ended
20 up getting it. But in the meanwhile, he got, you
21 know, the whole thing. I'm not saying it works
22 that way everytime but it sure did that time,
23 didn't it, Gilbert?

24 MR. BEARD: We have a bench of trial
25 level and appellate level that substantially knows

1 nothing about bankruptcy law. All this bankruptcy
2 litigation and all has really come along since
3 most of the members of the court went on the
4 bench.

5 You know it's only since '73 or '74 that so
6 much of your bankruptcy litigations began for this
7 part of the country, as far as I'm concerned. The
8 Court is going to have a difficult time
9 understanding just what all the problems are.

10 I guess what I'm saying is, the threshold
11 issue that the courts should decide is that
12 Chapter 11 and 13 is not an appropriate remedy.
13 And, you know, it can be that a company or a man
14 cannot operate under 11 or 13 for whatever
15 reasons, but that they have to cross that
16 threshold. That's not a proper remedy before we
17 apply these.

18 MR. BRANSON: I had a question. Did
19 we cross the threshold question of whether we we
20 were going to address this issue?

21 PROFESSOR EDGAR: Yes. This was
22 placed on the floor as the first item of
23 business.

24 MR. BRANSON: I know. But last time
25 it was tabled because we had several members of

1 the committee who had involvements and we didn't
2 want to do anything, even though proper in nature,
3 that might appear or have the appearance of
4 improprieties. Did we address that issue
5 already?

6 PROFESSOR EDGAR: Yes. At the last
7 meeting the committee appointed the subcommittee
8 of which I was Chairman, and Broadus Spivey and
9 Sam Sparks of El Paso were members. And we made a
10 report before you got here. And now we're
11 addressing the issue. So it is an item which was
12 placed on the floor for this meeting. Is that
13 your question?

14 MR. BRANSON: Yes. And I'd like to go
15 on record opposing that. Because I really don't
16 think it's appropriate with the high percentage of
17 members on this committee who have involvement in
18 that case for the committee to make
19 recommendations to a court who has no involvement
20 in the case.

21 Even though I agree that all the members of
22 this committee, particularly those who have
23 interest in the case, are really above reproach on
24 the issue in the political times in which we
25 exist, I just think appearance could cause damage

1 to the reputation of the committee and perhaps the
2 Court.

3 MR. NIX: Hadley, you mentioned
4 earlier that Rusty had some problem of a
5 constitutional nature. Did you say --

6 PROFESSOR EDGAR: I just said he had a
7 question about it that I wanted him to address.

8 MR. NIX: All right. I see.

9 MR. SPARKS (EL PASO): Before you got
10 here several people stated that we would like to
11 have everybody's input if they felt like they
12 could give it. Because I don't think there's a
13 rule that comes up where every person sitting at
14 this table doesn't have a case that relates to
15 either the rule, even in discovery, or, I bet,
16 everybody at this table has some potential case
17 right now, if not an actual case, that involves
18 Rule 364-A.

19 CHAIRMAN SOULES: Let me make this
20 clear right now on the record. Since Frank
21 Branson made the remarks that he has just made and
22 gone on record in the way he has, I'm going to
23 leave this meeting. And I'm not coming back until
24 this issue is resolved. Because I don't want
25 there being anything in any brief that quotes that

1 that record that's just been made, without it
2 being clear, that when it was made, that this
3 Chairman left this room. So I'm gone.

4 MR. BEARD: Well, I think the record
5 should be clear that we asked for your opinion
6 recognizing your conflict.

7 CHAIRMAN SOULES: But that was before
8 Branson's comment, and I can't stay here after
9 that. I'll see you. Let me know when this issue
10 has been resolved.

11 JUDGE WOOD: Well, if that's the case,
12 I've got a situation just the same way involving
13 exactly the same manner. So I guess I ought to
14 leave too.

15 MR. MCCONNICO: I guess I was going to
16 say exactly what Sam said. Everyone of us has an
17 experience on this rule, and I think that's why
18 we're here. We're not here to speak about our
19 cases, just our experience on how this proposal
20 might help the law of the State of Texas.

21 And what I was going to respond to, what Pat
22 was saying, is, this isn't going to stop people
23 from going into bankruptcy. If it's to their
24 advantage to go into Chapter 11, they're going to
25 go into Chapter 11 regardless of this rule.

1 My experience with this, a little variation
2 of this rule, it's been very easy to enforce.
3 We've had oil and gas cases where there's been a
4 reservoir being drained. And the only thing the
5 person draining the reservoir, the only asset they
6 had was that reservoir. And the only thing the
7 plaintiff had was the judgment for the drainage.

8 Well, if you let -- the party draining the
9 reservoir could not put up a supersedeas bond.
10 And so what happens is then, are you going to
11 continue to allow the defendant to drain the
12 reservoir? Because if he does, the plaintiff
13 doesn't have a judgment. It's no good. He's
14 out.

15 So the Court has put in an injunction and
16 said, "No. You're not going to continue draining
17 the reservoir while it's on appeal." It's very
18 simple and everybody was satisfied. So I think in
19 a practical situation where we've applied this
20 rule, it's worked. And, of course, we've never
21 had this rule, but to be honest about it, we've
22 all had variations of this rule applied in
23 practice.

24 PROFESSOR EDGAR: Any further
25 discussion?

1 MR. MCMAINS: Let the record reflect,
2 as everybody has probably noticed, that I am still
3 in the room. In regards to Steve's last comment,
4 our supersedeas rules have been developed
5 extensively over the years to accommodate
6 situations in which monetary damages was not the
7 only thing in the judgment.

8 If there's anything else in the judgment,
9 there are all kinds of discretionary rules that
10 apply with regards to injunctions, et cetera;
11 that's already in the rule. We're talking about a
12 monetary judgment and what is the protection.

13 For the record, I was on the subcommittee
14 that examined this rule for the Appellate Rules of
15 Procedure, in fact, when we were going to put them
16 in, which examination was done in the spring,
17 summer and fall. Our last subcommittee broke,
18 and, in fact, I think Steve was there, in
19 September long before any of us, at least, any of
20 us in this room at the present time, were involved
21 in Texaco/Pennzoil litigations.

22 And my feeling at the time was antagonism to
23 the rule, both philosophically, and the merits of
24 this rule as written, which I find to be rather
25 markedly deficient in standard. And the

1 subcommittee voted it down.

2 Now, I'm not sure whether Steve dissented or
3 not; I don't remember. But we had Steve there, we
4 had Judge Guittard there, we had Judge Tunks
5 there. Bill Dorsaneo, myself. And the committee
6 substantially voted not to recommend the adoption
7 of the rule for a number of various specific
8 reasons.

9 And it's only to give you the flavor of those
10 reasons that I can stay. And if the committee
11 would like me to leave, then I'll take my cigar
12 with me and I'll be glad to do so.

13 My concern from a philosophical standpoint of
14 this rule is much in line with Pat's. And that
15 is, that there are federal remedies, in terms of
16 bankruptcy, for what happens when somebody gets in
17 deep water in debt, whether it results in a
18 judgment or doesn't result in a judgement, whether
19 it's early on in the game or late in the game.

20 And the federal bankruptcy courts are set up
21 to manage that to protect all the creditors'
22 relative rights. I think, just from what you
23 heard Luke's description of what he expected our
24 trial courts to be doing, it gives you an idea of
25 the incredible administrative task with virtually

1 no guidelines, no rules. At least the bankruptcy
2 courts have rules; they may not follow them very
3 often. But they have a whole bunch of them and
4 the people who practice in those courts have some
5 good idea of what's going on. And they have some
6 pretty hard clashes on procedural things that
7 occur with regard to everyday transactions.

8 But the example that I heard which I didn't
9 hear the complete of was somebody could only
10 afford \$200,000 so you put up \$200,000 and that
11 maintains the status quo. Well, they inherit a
12 million the next week. But your judgment stayed;
13 you haven't bothered to look. You don't know
14 about it. And you find out about it when the guy
15 has left for Monte Carlo. You don't have --
16 unless you appoint a receiver in every case, that
17 you don't get a supersedeas bond. And, in
18 essence, a bankruptcy trustee and closely
19 administered.

20 I just tell you my experience, which has been
21 some more substantial than I wanted to be recently
22 with defendants in bankruptcy court, has been
23 rather atrocious in terms of being able to get
24 much done. But that's the reason that there's so
25 much protection. And they're geared and set up

1 for that. And if that is, in fact, a remedy that
2 is available to a judgment debtor, you cannot
3 otherwise secure a supersedeas bond if it's only a
4 money judgment.

5 Now, I want to make just one point. I'm not
6 attempting to prejudice anybody or any statement.
7 I think the committee has already concluded, the
8 subcommittee, as I understand it, was charged with
9 the idea of examining constitutionality of these
10 rules, and determined that you didn't have any
11 problems with -- or didn't think that was an
12 issue, essentially.

13 And I agree because a lot of people have,
14 while they criticize or not have understood the
15 Texaco/Pennzoil litigation -- the fact of the
16 matter is the essence, as I perceive it, of the
17 inadequacy of post-appellate stay procedures in
18 Texas, was not just the supersedeas bonds. In
19 fact, that wasn't even the principal problem.

20 The principal problem is the statute. It's
21 abstracting judgments, which gives you an
22 immediate lien which puts companies that have any
23 substantial debt or any substantial agreements not
24 to create debt in default immediately.

25 So that the only remedy they have then is a

1 Chapter 11 proceeding. That's fine if a Chapter
2 11 proceeding will give you the protection. It
3 doesn't give you international protection. So in
4 a multi-national corporation there are some
5 problems with regards to exactly how you've
6 administered it.

7 And that's really -- generally, we're not
8 going to be talking about -- and I think that the
9 Texaco case was kind of a one in a billion, if you
10 will. But in terms of a multi-national
11 corporation not being able to make supersedeas on
12 money judgment, the -- whenever I reviewed this on
13 the subcommittee -- we are not unusual, this state
14 is not unusual, in terms of requiring a
15 supersedeas bond or other security to avoid a stay
16 in the full amount of the judgment of a monetary
17 judgment. That is the rule rather than the
18 exception across the state.

19 The Rule 41 procedure in Federal Court is
20 substantially different and substantially not
21 used. I think Buddy probably, in all his
22 experience, very seldom has had a stay of judgment
23 without full protection in terms of the level of
24 the bond. And this rule almost encourages its
25 regularity of use which is what gets the courts in

1 administrative postures that they ought not be in
2 right now.

3 But the final philosophical problem I have
4 with it is just from a standpoint of what type of
5 litigation that I do. And this is purely
6 personal, purely prejudicial, I suppose and bias,
7 and I throw it out with that exposure and
8 reference.

9 Most of the litigation in this state
10 involving people who want to partially supersede
11 are not private litigants. They're insurance
12 company representatives. They're individual
13 defendants who are represented by an insurance
14 company who's got limited coverage, who basically,
15 at least in my experience in all the cases that I
16 have that are extra limits cases on appeal, every
17 single one of them could have been settled within
18 limits.

19 And what you're doing, basically, is with
20 those, you essentially relieve all of the
21 pressure, or substantially diminish the pressure,
22 that is put on the movement of litigation in the
23 first place.

24 That is the risk of a trial of a case in a
25 limit situation in an insurance policy situation.

1 That is the precise place where movement of
2 litigation through the courts by settlement, which
3 is the thing that I think basically is the only
4 way we're going to get out of a lot of fixes that
5 we have, in terms of the docket load. That's
6 where it ought too come in, is from that.

7 And, like I say, this is a pure-docket
8 oriented problem. But when an insurance company
9 is controlling the handling of litigation, knowing
10 full well that they have the availability of
11 remedies, post-judgment for the ostensible
12 protection of the insured and the actual
13 protection of them, that basically postpones all
14 efforts at maintaining any kind of a Stowers
15 (phonetic) action or anything else for the
16 pendency of the appeal, which these days in Corpus
17 Christi, Texas in significant cases means,
18 basically, it takes me three years to come
19 anywhere close to getting through the Supreme
20 Court, because I'm in the Court of Appeals
21 fighting around for 18 months.

22 Now, we don't even know, in terms of
23 substantive law, when the statute of limitations
24 starts to run on a Stowers (phonetic) claim. You
25 may have to be trying to litigate that at the same

1 time that the other case is on appeal if there is
2 no supersedeas. So there is arguably some damage
3 to the rights of the insured if he's subjected to
4 receivership or something. I suppose that's
5 damage that could give rise to a Stowers claim.

6 But at any rate, from a standpoint of the
7 insurance docket, and from giving insurance
8 companies the benefit of their handling and or
9 alleged mishandling of lawsuits, ostensibly
10 protecting the little men, I am really offended by
11 that notion and from a philosophical standpoint.

12 PROFESSOR EDGAR: I want to call on
13 David next. But first, I don't know whether you
14 intended this, Rusty, but in response to your
15 remark about Steve's case, even in Steve's case,
16 under current law, a bond is required. And I
17 don't think he meant to imply that only cases
18 involving money judgments required bonds.

19 MR. MCMAINS: No. What I'm saying is
20 there is much discretion, much supplemental orders
21 that can be done, and the parties have much
22 broader view to working with each other when
23 they're talking about, in general litigation
24 matters, in specific performance or injunctive
25 relief or that sort of thing or even modifications

1 of the bond.

2 MR. MCCONNICO: In my example, that's
3 not injunctive relief. You know, that is a money
4 damage. If you sue someone on drainage of an oil
5 and gas field, what you get is a money damage. So
6 we're talking about the same money damage award
7 that you would get in a PI case.

8 MR. MCMAINS: But, of course, you have
9 a remedy of putting them into the receivership
10 anyway if there's not a posting of the supersedeas
11 bond. That's what I mean.

12 We have available remedies for the judgment
13 debtor if there's not protection by the bond. You
14 have alternatives either receivership or force
15 them into a Chapter 11 which will give them the
16 capital.

17 MR. MCCONNICO: But that's the
18 problem; we don't want to put them in Chapter 11.
19 So we have been using a variation of this proposal
20 in the past and it's worked.

21 And, you know, I can give two examples of
22 drainage cases in South Texas that I'm very
23 familiar with. One of them I worked up the case
24 and tried and the other one's in our law firm. And
25 we use both of these and it worked in both cases.

1 We're just saying, you know, "You're going to
2 stop draining this oil field, although you cannot
3 put up two and a half to three million dollars
4 during the pendency of the appeal."

5 MR. MCMAINS: But as you point out,
6 it's a fact that you have the leverage that you
7 had, is the point that would make them be
8 reasonable, is what I'm saying. They would have
9 -- with the existence of this rule, you would have
10 been fighting in court in my judgment on
11 adversarial levels for something they could have
12 kept a whole lot more.

13 Maybe your judge wouldn't have given it to
14 you, but maybe he would. Maybe he would have done
15 a lot worse for you and you wouldn't have been
16 able to do it. It's the leverage that you have
17 that gives you the ability to agree. There's
18 always the ability to enter into some kind of
19 waiver or an agreement under the situations. But
20 without the absolute rules that are available in
21 monetary judgment cases you don't have a
22 bargaining position to accommodate from. You end
23 up fighting it out in front of the trial judge,
24 who has a tendency, first of all, not to have time
25 to want to consider it, and certainly not to have

1 time to put somebody into receivership to report
2 to him all the time.

3 If there were to actually be implemented
4 substitute remedies to absolutely preserve the
5 priority of that judgment in time, it would
6 require regular monitoring of virtually every
7 defendant's activities -- defendant judgment.

8 Anything less than that is not full
9 protection. And that's just not anything
10 different than appointing a receiver in every
11 case. As it stands, we don't have hardly any
12 guidance. We have no standards for appellate
13 review. Good cause for modification, I don't know
14 what that means.

15 MR. MCCONNICO: Well, this rule does
16 not take away any leverage from a plaintiff if you
17 compare it to a personal injury situation than a
18 plaintiff in a commercial case that I was just
19 talking about.

20 This rule doesn't take away, that I can see,
21 any leverage from someone that has a judgment. He
22 still has his judgment. All he's trying to do is
23 to make sure he can execute on that judgment. And
24 it's a lot harder to execute once somebody's in
25 Chapter 11.

1 If what we're trying to do here is to prevent
2 defendants from going into Chapter 11, all we're
3 doing is writing something in the long run that
4 can benefit both plaintiffs and defendants.

5 MR. MCMAINS: But what I am telling
6 you is that I disagree wholeheartedly if you say
7 that this does not reduce your leverage. Because
8 I think that you're going to go to the courthouse
9 first with this. Right now you know what the
10 alternative extremes are. You execute immediately
11 or provide for your post-judgment remedies
12 immediately unless they post on a full bond, or
13 they go to Chapter 11.

14 If neither one of you want that to happen,
15 then you've got something to work out. You know
16 what your positions are and you know what the
17 ultimate -- what's going to happen to you if one
18 or the other step has to be taken.

19 This is going to mandate the litigation of
20 that issue and not the negotiation of the issue.
21 And that's what I contend is going to happen.

22 MR. BECK: I have two questions, one
23 to you and one for Rusty. The question to you is,
24 is it your notion that if this committee
25 recommends a rule of this type to the Supreme

1 Court, that it would or would not affect cases
2 presently on appeal?

3 PROFESSOR EDGAR: I have no thought on
4 that. I haven't thought of it. I don't know.

5 MR. BECK: I guess my comment would be
6 that if there's the concern among the members of
7 the committee along the lines of that expressed by
8 Frank, one way to handle that, that is, the high
9 visibility of the Pennzoil case and possible
10 reverberations in the media about us tampering
11 with rules that affect such a highly visible
12 case.

13 One way to handle that would be to make any
14 rule inapplicable to cases in which appeals have
15 already been perfected. My question to Rusty is,
16 Rusty, do I understand then that you,
17 conceptually, are just opposed to any rule which
18 would provide for any stay of enforcement of any
19 judgment?

20 MR. MCMAINS: Do you mean as a money
21 judgment for less than posting of either money
22 substitute securities?

23 MR. BECK: Right.

24 MR. MCMAINS: See, I don't have a
25 problem with the substitute security rule in terms

1 of stock or other liquid assets. We made a move
2 in that in our Appellate Rules for the first
3 time. It required something other than cash as a
4 possibility, but it still had to be government
5 bank instruments. You could use CD's.

6 There may be alternative liquid-type security
7 that could be devisable, but anything less than
8 the full amount of the judgment -- I fear the same
9 as San Angelo Sam pointed out, that a trial judge
10 who differs from a jury, whichever way, could well
11 substitute his judgment in bonding requirements
12 and have the same impact as if he just --

13 In fact, from your standpoint, I'm not sure
14 -- and I just throw this out from a defendant's
15 philosophical standpoint. If you've got somebody
16 that's able to pay, although, like I say, an
17 insurance company who has agreed to sign on the
18 hook. But by the same token, the insured doesn't.
19 And this is talking about a judge of debtor. The
20 insurance company is not a judge of debtor. If
21 you get that kind of relief, that may well
22 discourage courts, trial courts, from genuinely
23 considering remittitur points and saying, "Well,
24 we'll just wait and see what has happened,"
25 because I'll make that argument in this rule.

1 I'll say, "You don't have to mess with this; no
2 hardship on anybody. We won't require
3 supersedeas. We'll just go ahead and let it go
4 up, or you can agree to this modification and that
5 modification."

6 I think it distorts, really, the function of
7 the trial courts, what they should be, considering
8 the real impact of the judgment is.

9 MR. BRANSON: What is the history of
10 this rule? When did the current rule come into
11 existence?

12 PROFESSOR EDGAR: The rule we now
13 have?

14 MR. BRANSON: Yes.

15 PROFESSOR EDGAR: It came from the
16 statutes.

17 MR. MCMAINS: It was by statute prior
18 -- it's been in, I know, at least since 1911, and
19 I'm sure it was before that.

20 PROFESSOR EDGAR: It was Article 2270
21 2271, probably at least by about 1925.

22 MR. BRANSON: What are the
23 philosophical reasons for the rule having been
24 passed some 60, 70 years ago and having been in
25 existence that long? Why have we needed it all

1 that long on something we don't need?

2 PROFESSOR EDGAR: Judge Wallace wanted
3 to say something.

4 JUSTICE WALLACE: One thing that I
5 think we ought to consider and it's just a choice
6 to be made, and that is, what are you going to do
7 on appellate review once this trial judge, if he's
8 the one who determines the substitute security?

9 Because the only review you have is abuse of
10 discretion. We've said abuse of discretion is a
11 violation of the clear principles of the law. And
12 there's no clear principles of any kind in the
13 rules. So, in effect, you've got no appellate
14 review, as I see it, as the rules are written
15 now. And I wanted to throw that out to you.

16 MR. MCMAINS: Another comment that I
17 have about the form of this rule: This rule
18 allows you to go for the first time to the Court
19 of Appeals or the Supreme Court because it's
20 whatever court it's appealed to and just ask them
21 to do something. And it increases the original
22 motion practice, which basically is a fact-finding
23 power in the Appellate Court which, is a very
24 strange animal to me.

25 I don't imagine any of our courts or appeals

1 want that power, frankly, and I don't think the
2 Supreme Court does. And I'd assume that at the
3 very minimum any fact findings or anything else in
4 fact determinations would have to be made at the
5 trial court level first before you bothered to go
6 upstairs. And then as you say, we've got problems
7 with how it is that you review it.

8 MR. SPARKS (EL PASO):

9 Philosophically, I have to say that I've always
10 been opposed to Rusty's theory of abandoning the
11 remedies of trial on appeals with regard to, if
12 insurance companies have enough coverage, it ought
13 to be settled and get the dockets in current
14 shape.

15 But I've got two questions because it appears
16 to me that some type of security under this rule
17 as proposed or a similar rule puts a judgment
18 creditor in better shape than if the party goes
19 into bankruptcy. I pose that as a question
20 because I don't do any bankruptcy law, but
21 everything I hear from my bankruptcy law partners
22 makes me think that there's not anything very fair
23 over there.

24 And the second comment is: Rusty said
25 something about the federal courts having this

1 similar ruling. I know in the Western District
2 the judges will not do anything unless you have a
3 supersedeas bond because of the Texas rule. They
4 just won't let you have any. I've tried equal
5 security and an escrow account with a national
6 bank.

7 MR. MCMAINS: I'm just saying it is in
8 the rule. I mean, it is a federal rule.

9 MR. SPARKS (EL PASO): The judge's
10 don't intrepret it that way. But my question is,
11 if you have an individual security circumstance on
12 a particular judgment, and I'm asking the
13 plaintiff's lawyers, primarily, aren't you better
14 off than in the federal court, in a general
15 reorganization? It seems to me it would be; I
16 don't know.

17 MR. LOW: Let me add to one thing that
18 Frank said. And I'm not making a suggestion; I'm
19 just bringing it out. The Pennzoil/Texaco case
20 has gotten down to the point they're even
21 attempting to attach records of what Judge Casseb
22 said, put everything in the record.

23 And I have no doubt but what they would some
24 way attempt to put the record of the
25 recommendation of this committee in there to show,

1 well, if you change it -- they knew it was wrong,
2 they wouldn't change it. I mean, you know, they
3 may not. I'm just saying that's just something
4 you may want to consider. I'm not saying that I
5 would vote to not do something now, but that's one
6 thing going through my mind.

7 Because you've raised a good point that
8 almost any rule which passed has cases pending on
9 it. But most of them aren't focused upon just
10 like this one, and I'm afraid they would even
11 attempt to attach to the records of this
12 proceeding of the recommendation of this Committee
13 just to show that the Supreme Court Advisory
14 Committee, regardless of the people being on it,
15 I'm not saying that the Supreme Court Advisory
16 Committee knew something was wrong with it and
17 recommended it.

18 PROFESSOR EDGAR: Are you moving to
19 table?

20 MR. LOW: No, I'm not moving. But I'm
21 not sure that's what I'm saying. I'm just simply
22 saying that's something we ought to consider.

23 MR. SPARKS (SAN ANGELO): Hadley, I'm
24 kind of like everybody at Texaco. It doesn't
25 bother me or Pennzoil or either one of them. If

1 you've got rules that need to be changed, they
2 need to be changed. I just don't think this one
3 needs to be changed, and I wanted to respond to
4 what Steve was saying.

5 Steve, in your cases on the drainage of the
6 fields, if you win, you've got a choice. You're
7 making a conscious negotiating decision for your
8 client or your client is participating in it.
9 Whether to just shut the field down and not drain
10 it anymore.

11 But if you've got this rule into effect,
12 you've got a judge that says, "shut the field
13 down." And the plaintiff, if that was done three
14 years ago, oil was \$45 a barrel and now it's 12.
15 And he's lost a fortune when he wins on review;
16 because oil may never get to 45 again. So you
17 have imposed, as Judge Wallace says, a
18 discretionary call by a trial judge that costs
19 your client a fortune. I agree it may be
20 happening right now, but your clients did it by
21 negotiation by choice. It wasn't just imposed
22 upon me. And it's that philosophical difference
23 that bothers me.

24 MR. MCCONNICO: Sam, you still in my
25 situation, the fact situation I gave, we have to

1 go to the trial judge and ask for that
2 injunction. It's not a decision that we make.
3 We're the plaintiff. We're being drained by
4 someone else.

5 Now, that someone else cannot put up the
6 bond. There's no way they can make the bond to
7 cover our judgment. The only thing they have is
8 that field. And since they can -- if it goes up
9 on appeal, they're allowed to continue draining
10 the field. The only asset that we ever have we
11 can collect on is gone.

12 So we make the choice, the plaintiff makes
13 the choice to enjoin the drainage, and to ask the
14 Judge to enjoin the drainage. But, yes, the
15 plaintiff is making that choice, okay.

16 Because at least there we can recover
17 something. We can have something we can hold on
18 to. And to me this rule is giving the same
19 situation because you're going to have a lot of
20 people -- like Luke said before he left, there's
21 only so many millions of dollars out there for
22 bonds. And there are a lot more judgments
23 floating around than there is money to put up
24 those bonds.

25 MR. BRANSON: I don't believe that.

1 Statistics do not bear that out. That is a part
2 of this alleged crisis we're hearing it is
3 absolutely crap. A Pennzoil bond may not be able
4 to be made. We've managed to practice law in this
5 state under this rule for 76 years before Pennzoil
6 and Texaco started screwing each other. They
7 happen to have done it at higher levels than the
8 ordinary citizen in this state is accustomed to.

9 And I do not believe there are more than
10 hundreds of millions of dollars worth of judgments
11 -- pendings out there that an insurance company
12 cannot write a supersedeas bond for and for a
13 premium won't do it. And there are no statistics
14 before this committee that bear that out.

15 MR. SPARKS (EL PASO): Let me provide
16 some. I've got cases right now where companies
17 who are worth far more than the judgment can't buy
18 a supersedeas because insurance companies aren't
19 selling supersedeas right now.

20 MR. BRANSON: Perhaps the thing to do
21 is address the insurance problem rather than
22 attempting to reform the substantive law of the
23 state.

24 MR. SPARKS (EL PASO): The problem is,
25 if you can't buy a supersedeas bond, even if you

1 could afford to do so, we've got a rule that just
2 leaves the problem impossible. That's what we're
3 doing.

4 MR. BECK: I don't think we're going
5 to solve the alleged or actual court reform
6 problems today. And I would suggest that we may
7 have discussed this point enough and hope that
8 somebody would move the question or move something
9 so we can --

10 MR. BEARD: Let me point out, you
11 know, later on today if we get to it, under my
12 subcommittee we have a proposal to change 621-A,
13 which allows discovery as soon as the judgment is
14 rendered, so long as no supersedeas bond has been
15 posted.

16 Now, I recommended to my subcommittee that we
17 not change that rule, and no one responded to the
18 contrary. So you have a corollary -- you know,
19 somebody doesn't want any discovery once they get
20 the judgment.

21 PROFESSOR EDGAR: Is there any further
22 discussion. All right, Gil.

23 MR. ADAMS: I move we reject this
24 proposed rule.

25 PROFESSOR EDGAR: Is there second?

1 MR. BEARD: Second.

2 PROFESSOR EDGAR: All right. Is there
3 any further discussion?

4 MR. BECK: I would like the record to
5 reflect that I'm not participating in the vote.

6 PROFESSOR EDGAR: The record will
7 reflect that David Beck and Rusty McMains have
8 excused themselves while this vote was being
9 taken. Judge Wood has also excused himself and
10 that Luke Soules has left the room and will not be
11 voting.

12 All right. All those in favor of the motion
13 to reject this rule, raise their hands. 8 in
14 favor of the motion. All against raise their
15 hands. 4. The motion passes 8 to 4. All right.
16 Next item of business, let's get Soules in here.

17
18 (Off the record discussion
19 ensued.)

20 CHAIRMAN SOULES: Okay. Let's get
21 back on the record now. Of course, I've been out
22 of the room until we resumed at this point. I
23 want to make that clear.

24 MR. SPARKS (EL PASO): I have a
25 motion. I don't even know if it's in order; you

1 can make it in order. But I move that the
2 transcript of the discussion on Rule 364-A not be
3 prepared.

4 CHAIRMAN SOULES: That's overruled.
5 I'm just not going to agree to it. I want it
6 prepared for me if it's not prepared here, because
7 if it's stricken, it's just going to look worse,
8 and I just don't want it done.

9 MR. SPARKS (SAN ANGELO): In response
10 to that --

11 MR. LOW: Well, I think what Sam's
12 getting at is it not that it not be prepared, but
13 it not be getting into the hands of just
14 everybody.

15 CHAIRMAN SOULES: No way.

16 SAM SPARKS (SAN ANGELO): I object to
17 this whole line of discussion. I think everything
18 we're doing here is above board and certainly can
19 be seen by anybody in the world.

20 CHAIRMAN SOULES: Absolutely.

21
22 (Off the record discussion
(ensued.

23
24 CHAIRMAN SOULES: When I was driving
25 up this morning, I got to thinking about the

1 Administrative Rules aspects. And it is
2 troublesome to me, the point that was raised
3 late. And I'd like to get your input on whether
4 we should have a special subcommittee on this. We
5 may or we may not have a chance to look back at
6 those rules.

7 What is most troublesome about it to me is,
8 as I think I about Rules 3, 4 and 5, I'm more
9 impressed with the fact that those do belong in
10 the Rules of Civil Procedure as they give guidance
11 to lawyers about how they're supposed to conduct
12 their civil proceedings.

13 On the other hand, they do not contain much
14 about -- that directs trial judges, how they
15 handle the problems that are there in 3, 4 and 5.
16 And it seems to me that we may need a committee to
17 carefully look at those, and to the extent they
18 are, indeed, administrative, leave them in, those
19 parts that are administrative and directed to
20 judges who are the administrators; the lawyers are
21 not.

22 And then the other parts of those rules that
23 are instructive to lawyers as to how you handle
24 civil proceedings, before those judges who are
25 administrative, be put in the rules. And that's

1 not going to be an easy task. But I'm troubled by
2 not having directives to lawyers in the Rules of
3 Civil Procedure, and the Administrative Rules then
4 can tell the judges how they're supposed to run
5 their dockets and handle any business. And I do
6 want your input.

7 MR. SPIVEY: Luke, would that mean
8 that a subcommittee would study the rules with a
9 limited suggestion you'd made or, are we going to
10 get an opportunity to have some substantive debate
11 about the rules themselves?

12 CHAIRMAN SOULES: Well, we've had
13 that, and we can have it some more if we get a
14 chance. But this is a troublesome aspect to me
15 that we just have not dealt with. And we are a
16 rules committee first and foremost, although,
17 obviously, our jurisdiction runs all the way to
18 helping locate facilities for the Court.

19 I'm talking about a committee to do that
20 narrow thing, which is going to be a big job. But
21 it's a narrow assignment in the sense that the
22 scope of the assignment is one thing, but it's a
23 lot of work, probably will be a lot of work.
24 What's your view on that?

25 MR. SPARKS (EL PASO): Luke, it seems

1 to me, and following up what Broadus was saying,
2 that no matter how you isolate the portion of
3 those rules which anybody thinks should be in the
4 Rules of Civil Procedure, then what do you do with
5 it? It seems like it would have to come back to
6 the committee.

7 CHAIRMAN SOULES: That's what I mean.
8 I mean an interim committee to say that the rules
9 that deal with the assignment of cases should be
10 put in the Rules of Civil Procedure where the
11 rules now deal with assignment of cases. And the
12 rules that affect discovery be put in the
13 discovery rules, either in scope or maybe a new
14 timing provision. And the ones that go to 166 be
15 put in 166.

16 And I'm not identifying all the points
17 because I haven't had time to. But we now have
18 leg traps here, the Administrative Rules traps.
19 We now have leg requirements in the Administrative
20 Rules for lawyers representing clients that have
21 serious consequences if they're not observed, and
22 they're not in the Rules of Civil Procedure.

23 And when driving up here today, it occurred
24 to me that they're really not administrative;
25 they're directive to the lawyers how you handle

1 your cases. On the other hand, how judges are to
2 administer their dockets, I guess, is
3 administrative. And I think if the rules come
4 down, one of the biggest contributions that we may
5 be able to make is to get those rules where they
6 may belong to give guidance to the practice of law
7 as opposed to maybe things creating some
8 confusion.

9 MR. MORRIS: The only thing I'm
10 thinking, Luke, is, of course, that this whole
11 Task Force thing is in response to some
12 legislation. And there are going to be hearings
13 at the State Bar Convention on this matter. And I
14 think there's a tremendous amount of controversy
15 about whether any of this is desirable by people
16 from all walks of life, no matter what side of the
17 docket.

18 And I would hate to see it be in any way
19 where part of that was peeled off and put over in
20 here as if it was a regular Rules of Procedure
21 amendment. But it's really being perceived as a
22 real major change in the way we handle our cases.
23 And I'd hate to see -- there's already a lot of
24 comment and a lot of criticism, frankly, that this
25 thing is being handled in a rather high-handed

1 fashion at the Task Force level.

2 CHAIRMAN SOULES: Lefty, I'm sorry to
3 interrupt you. We debated that on Thursday. And
4 if you have a point to make about whether we ought
5 to do, what I'm asking, that we've got a lot of
6 other work to do, and we can't redebate.

7 MR. MORRIS: I'm trying to make my
8 point. And maybe I'm not doing a very good job of
9 it. I'm not being critical of anyone, Luke. The
10 point I'm trying to make is that perception out
11 there in the Bar is that this thing has been on
12 the fast track anyway. So I think that until some
13 hearings have been held, and further determination
14 has been made whether we should go further with
15 it, that our committee shouldn't pick to get
16 involved in it.

17 CHAIRMAN SOULES: A view may prevail
18 that these rules be effective before the
19 legislature convenes. I'll just tell you this.
20 So, if we're going to do this, we need to do it by
21 September, what I'm talking about right now.

22 Whether it goes hand and glove with the
23 legislative hearings, whether it goes hand and
24 glove with the promulgation of the Administrative
25 Rules, whether we tell the Court that we want to

1 do this job and we would like to have an
2 opportunity to get it done by September before
3 they promulgate these rules to be effective before
4 the legislature convenes, we have got to make that
5 decision today. Because if we don't, we may not
6 have the opportunity to make it again.

7 And whichever way it goes is fine. I just do
8 want us to make a decision whether this committee
9 wants to -- you know, subject to the imposition of
10 these rules, if you'd want to call it imposition,
11 do we want to scrub through to separate them, as
12 I've indicated, between now and September, or do
13 we just not want to take that task?

14 MR. MCMAINS: We can align with that.
15 I don't know whether this is exactly what you had
16 in mind. But I would certainly move or be in
17 support of a motion of proclamation, or whatever,
18 of this committee, that we are prepared in both
19 subcommittee and full committee forum, to attempt
20 to do something insofar as making some
21 Administrative Rules that, in our judgment, are of
22 some help.

23 I think that the time -- what I would like to
24 do is to move, basically, to make our views known
25 to the Court that we would like an opportunity to

1 review anything that comes out of these hearings
2 with carte blanche to amend them insofar as making
3 them and fashion them to where they really
4 accomplish what we think and what the committee
5 thinks are the problems and the problems that we
6 can realistically address.

7 I'm not trying to supersede the Task Force,
8 and it may not be appropriate. I think, however,
9 that there is input that the lawyers are going to
10 give, and in order for that to be meaningful at
11 the Bar Convention, is at least I'm sure a lot of
12 them are going to the Bar Convention thinking that
13 input is going to be made. But I don't think we
14 should be pretentious enough to try to do anything
15 before then, but that we should after that input
16 is taken, and if there is something that comes out
17 of that in terms of proposed revisions then this
18 committee should be willing to get high behind to
19 do whatever anybody wants to do to try to put
20 something together that works. And I'm perfectly
21 supportive of that. I think everybody's position
22 was that what's recommended we don't think will
23 work.

24 MR. BEARD: I think we should assume
25 that Chief Justice might prevail and start to work

1 on trying to coordinate it and put it over in the
2 rule. I guess everybody that sat on the Task
3 Force has some idea how strong the Chief Justice
4 feels. And I think we ought to be taking that
5 assumption that something is going to come out
6 similar to this and then start to work on it.
7 Because the Chief Justice feels strongly that if
8 something isn't done by the time the legislature
9 meets, then the problem will be taken away from
10 the Force.

11 MR. LOW: I think Justice Wallace was
12 smart in philosophy; he's going to return to the
13 court and, obviously, tell the Court that this
14 committee voted, you know, that we don't like the
15 rules. But then what effect that is going to
16 have, we don't know. So if it has an effect, then
17 it won't be a problem. It appears that it may not
18 have an effect, and I agree with both Pat and
19 Rusty to some extent, I think, that we need to
20 have the Court aware of the fact that we think
21 strongly that some of these rules are not just
22 Administrative Rules; they are Rules of Civil
23 Procedure. And the ones that affect, are they --
24 ask us to dovetail with the rules, ought to go
25 into the rules. And we should have a subcommittee

1 or somebody prepare to move forward as soon as
2 possible and advise the Chief Justice of that.

3 CHAIRMAN SOULES: Any further debate
4 on the question?

5 MR. SPIVEY: Buddy, isn't the problem
6 that any move that we make would, number one, be
7 futile, and number two, wouldn't be material until
8 after we get the inputs from the Bar?

9 I wouldn't have any objection. I thnk it
10 would be proper to create such a committee, but
11 it's my understanding, not to commence
12 deliberations until after they've heard the input
13 from the general Bar, because we're probably going
14 to get some good suggestions.

15 MR. LOW: I'm not disagreeing with
16 you, but I think we should let the Chief Justice
17 know that we don't like what they're doing, but
18 we're prepared to pick up the task and go forward.

19 Because it would be wrong to just make a separate
20 set of rules and call these Administrative Rules
21 when they're really Rules of Civil Procedure.

22 MR. SPIVEY: I agree with you.

23 MR. LOW: That's all I'm saying.

24 CHAIRMAN SOULES: Let me have a show
25 of hands. How many of the people here are willing

1 to start work right now to separate out what seems
2 to be Civil Procedure from what's Administrative
3 and then to revise that based on what we get at
4 the Bar Convention and thereafter? Are there any
5 people willing to do that? Okay. I'm going to go
6 to work on it because I think it's important, but
7 whether I have help or not is a different story.

8 MR. BRANSON: Luke, let me ask you a
9 question. Having sat through the Task Force and
10 having seen some problems brought to bear, some of
11 which looked more real than others, there might
12 well be several members of this committee who
13 would be interested in working with people like
14 Judge Casseb to look at what areas of the state,
15 such as Harris County, seem to be really having
16 problem with docket control, and attempt to
17 address pockets of problems with recommendations
18 to districts, rather than attempting to revise an
19 entire Rules of Civil Procedure and create new
20 Administrative Rules. Is that something that
21 you're envisioning within your request?

22 CHAIRMAN SOULES: No.

23 MR. BRANSON: Or are we talking about
24 merely taking Dean Friessen's package and trying
25 to separate it out and use it in terms of Civil

1 Procedure Rules and Administrative Rules. Because
2 I think several of us really were not responsive
3 to Dean Friessen's approach.

4 CHAIRMAN SOULES: I'm talking about
5 taking the draft that we started with on Thursday,
6 as we marked it up through the day on Thursday,
7 and separating out what we feel is Rules of Civil
8 Procedure from what's really Administrative Rules
9 and trying to integrate the Rules of Civil
10 Procedure that we identify into the present rules,
11 you know, on condition, or whatever, that they
12 come out that way so that we are heard by the
13 Chief Justice, if this is going to happen anyway,
14 if the Court is going to do it anyway, then let's
15 get them in the right place. That's all I'm
16 talking about.

17 MR. BRANSON: Luke, maybe I'm not
18 perceiving what this committee's marching orders
19 are. If you are telling us as Chairman of the
20 committee, that without regard to our input, those
21 rules or some form of those rules are going to be
22 done anyway?

23 CHAIRMAN SOULES: I'm not telling you
24 that. I don't know that.

25 MR. BRANSON: Okay. That's one

1 matter. If on the other hand you're saying, are
2 you all willing to sit down and attempt to address
3 the problems that were discussed within the Task
4 Force, then I submit you find a different
5 responsiveness to this committee than someone
6 saying that the Court or the Chief Justice has
7 said these rules are going to pass.

8 CHAIRMAN SOULES: I didn't say that.
9 I am not saying it, and will not say it.

10 MR. BRANSON: Didn't we vote at the
11 meeting the day before yesterday that we would not
12 pass those rules even in the amended form, or they
13 did not pass our scrutiny, and therefore wouldn't
14 it be better for us to, perhaps, look at it, as
15 Broadus suggested, with the input of the Bar at
16 the Bar Convention, some alternative ways of
17 addressing the same problem?

18 CHAIRMAN SOULES: What I'm troubled by
19 is that these rules come down in a confusing way.
20 And I want to get that addressed by this committee
21 so we can at least, if they do come down, try to
22 prevent that from happening.

23 PROFESSOR EDGAR: Let's try and place
24 this in kind of an overall perspective and think
25 about what our role really is.

1 Now, the Supreme Court could go ahead and
2 promulgate these rules tomorrow if it wanted to,
3 and we all know that. They have asked us for our
4 input. And I think that we would not be
5 performing our responsibility if we didn't give
6 them the benefit of our input.

7 I'm not talking about philosophical input.
8 You've already told me what you think about that.
9 But if they're going to do it, then I think it's
10 certainly to our advantage and our responsibility
11 to prepare these in a way that will implement the
12 philosophy which the Supreme Court might say is
13 going to be utilized in this state.

14 Now, my concern, though, is that if we're
15 going to have this public hearing at the Bar
16 Convention, is it likely that some change in these
17 proposed rules will emanate from that public
18 debate.

19 Now, if it's not likely that they're going to
20 emanate, then I think we might as well go ahead
21 and get to work now. On the other hand, if the
22 purpose of this is to get input and possibly
23 result in some change, then I think it's probably
24 not productive for us to volunteer to get the work
25 until we see what the changes are.

1 And I'd like to know, really, whether or not
2 this public debate is one in which change will be
3 seriously considered or, perhaps, ignored. Now,
4 that to me is a basic question, and I don't have
5 the answer to that.

6 CHAIRMAN SOULES: I don't have any
7 answer but in my view, it's like approaching trial
8 preparation. I really don't know what my
9 adversary is going to do. But when it comes time
10 to pick the jury, I want to be as prepared as I
11 possibly can, because from that day forward I'm on
12 a fast track.

13 And that's all I'm saying is, do we want to
14 address the possibility of a fast track by having
15 our view heard that certain of these rules be in
16 the Rules of Civil Procedure. That view will be
17 heard.

18 PROFESSOR EDGAR: Well, some of these
19 rules should be in the Rules of Civil Procedure if
20 we're going to have it.

21 CHAIRMAN SOULES: No question about
22 it.

23 PROFESSOR EDGAR: And I think we're in
24 a better position to recommend to the Court the
25 form in which those rules could take than simply

1 saying, "Okay, Court, we're not going to do that.
2 We're going to leave it up to you to do it good,
3 bad or indifferent." I think we would shirking
4 our duty if we did that.

5 MR. BEARD: In that public debate, why
6 should we not express an opinion from this
7 committee that certain parts of 3, 4 and 5, a
8 great deal of it belongs over in the Rules of
9 Civil Procedure as part of that public debate?

10 PROFESSOR EDGAR: That's just a
11 housekeeping chore; if it belongs in the rules, it
12 belongs in the rules. I don't really know if that
13 makes any difference in the public debate.

14 MR. SPARKS (EL PASO): I think what
15 you're suggesting is, that I feel -- the only
16 thing that concerns me is that Dean Friessen did
17 -- they had the concept of all of the
18 "Administrative Rules" in one package so that
19 everybody can absorb them at the same time. And I
20 wonder if somebody might think that we're being
21 even more critical by suggesting that we pull out
22 or recommend a pull-out of those portions of the
23 rules that we think ought to go in the Rules of
24 Civil Procedure.

25 I would be inclined, through Justice Wallace,

1 to ask Chief Justice Hill if he wants us to do
2 that, and if we do, to have a subcommittee and a
3 place to do it.

4 I think that in the June hearing, we're going
5 to hear a lot of just "I-don't-like-this" type of
6 thing. And, you know, it's going to cause
7 sensitivity again, but I think that if the Court
8 and Judge Hill wants us to do that, we ought to be
9 ready to do it.

10 CHAIRMAN SOULES: The organizational
11 problems can be handled. They can be published in
12 the Bar Journal, as here the new Administrative
13 Rules and here are the consequential changes to
14 the Rules of Civil Procedure, and they can be all
15 in one place, and they can be published in
16 pamphlets all together.

17 The organization of getting them all before
18 the public or the Bar in a single series can be
19 handled. But whether three or four years from now
20 lawyers looking in the Rules of Civil Procedure
21 feel like they found the answers, not knowing that
22 they ought to also be looking some place else, I
23 don't know, and that's my concern.

24 MR. BRANSON: Would it be possible,
25 Luke, since the committee did vote overwhelmingly

1 to object the proposals even after our amendments
2 to get a charge from the Court, at this point, as
3 to whether they would prefer us to go back and
4 work on that set of rules, redrafting the entire
5 method of law practice in this state, or whether
6 they would like to take a different approach and
7 look at the individual problems of some of the
8 court dockets in the state on an individual basis,
9 as opposed to an overall system form?

10 And you're really dealing now, I think, with
11 philosophical approaches to the problem. You can
12 either throw the wash out and hope you don't throw
13 the baby with it, or you can go back and attempt
14 to spot clean the problem.

15 And having witnessed the Task Force, I left
16 with an impression that a spot cleaning would be a
17 much more logical and efficient approach to the
18 problems than an overall system form.

19 CHAIRMAN SOULES: Well, I think, you
20 know, we can ask for that explanation and ask that
21 it be a part of the agenda at the Bar Convention
22 where the Chief Justice addresses the entire Bar
23 Association and ask that he speak to that issue
24 and have it available for debate.

25 MR. BRANSON: Without regard to the

1 Chief's position, could we get a feel from the
2 Court whether the Court would like an overall
3 attempted change from this committee or whether
4 they'd like to look at the individual problem?

5 In the end, it's going to end up in the
6 Court's lap, and that's a decision they're going
7 to have to make. It would sure assist this
8 committee in our work if we then join in.

9 CHAIRMAN SOULES: Well, I'll ask
10 Justice Wallace to forward your inquiry then to
11 the Court and get us a response, if the Court
12 would like to respond, to the questions you've
13 just asked.

14 MR. BECK: Luke, I was not here
15 Thursday, but by the tenor of the comments, I
16 detect that there's not a lot of enthusiasm of
17 doing what you want to do, basically, for two
18 reasons. One, there seems to be some sentiment
19 that by doing that, we're somehow acquiescing in
20 those rules when, philosophically, this committee
21 seems to be opposed to it.

22 The second objection seems to be logistical,
23 and that is, why begin work on something that may
24 be radically changed at the State Bar Convention?
25 I guess my response to all that is that I think we

1 may be able to resolve all those problems.

2 One, if you want to appoint a group to do
3 this, why not have them begin work after the State
4 Bar Convention so that they've got something
5 tangible to work with? And with respect to any
6 suggestions that this committee makes, we can
7 still in the recommendation make very clear that
8 this is in no wise to be construed as acquiescence
9 in the concept which this committee opposes.

10 And that way, I think we solve our
11 responsibility to the Court of advising them with
12 respect to the Rules of Civil Procedure, but at
13 the same time go on record as being
14 philosophically opposed to what Dean Friessen
15 recommended.

16 CHAIRMAN SOULES: I think that's a
17 very good approach.

18 MR. SPARKS (SAN ANGELO): I
19 wholeheartedly agree with what David just said.
20 And I was here during the whole, but I did not
21 vote, and I think Broadus did not either and maybe
22 Mr. Nix didn't.

23 But I will go ahead and go on record as
24 joining that vote on the majority side being
25 opposed to the Administrative Rules presented to

1 us even as amended and cleaned up. And I think
2 that's necessary because Judge Wallace is supposed
3 to be reporting back and I join that viewpoint.

4 CHAIRMAN SOULES: I'm sure that our
5 Thursday action is going to be reported back. Let
6 me try to straighten this and one single thing up
7 with David Beck.

8 The track that I have been given to
9 understand by Chief Justice Hill -- and I don't
10 know what form these rules are going to take or
11 whether they will pass -- but it is that soon
12 after the Bar Convention input is received by the
13 Court, the Court intends to address these rules
14 and perhaps promulgate them.

15 Our input is today, or was Thursday. And the
16 Bar Convention input is coming then and then the
17 Court plans to go to work on these rules. So this
18 gets right to your point of scheduling, David.
19 I'm not sure that we will have a redrafted work
20 product to look at after the Bar Convention and
21 before it becomes more finalized. So it's only a
22 matter of time.

23 MR. BECK: Luke, what you could do is
24 you can put your committee in place today. They
25 don't need to begin work until after the State Bar

1 Convention. And depending upon what happens at
2 the State Bar Convention and what the Supreme
3 Court wants us to do, you may need to call a
4 special meeting.

5 CHAIRMAN SOULES: We won't have a work
6 product that comes out of the Bar Convention.
7 There will be a lot of hearings.

8 MR. BECK: I understand.

9 CHAIRMAN SOULES: But we won't have a
10 different work product to work with. If we
11 haven't worked in the interim, we may never have a
12 work product that inputs into the final rules.

13 PROFESSOR EDGAR: Then my question is,
14 if you're saying that a different work product
15 will not emindate from this hearing then why have
16 the hearing? I mean, the purpose of the hearing
17 must be to the possibility --

18 CHAIRMAN SOULES: It's a question of
19 whether or not there will be an interim work
20 product before the final work product comes down.
21 That's the point I'm making. After the Bar
22 Convention, there may not be an interim work
23 product between that convention and the action of
24 the Supreme Court. The next action may be --
25 Judge Wallace, did you have a comment to make?

1 JUSTICE WALLACE: It seemed like what
2 I have told the Task Force everytime we met, and
3 what I said here Thursday, it seems to be falling
4 on deaf ears. And that is that what I report to
5 the Supreme Court is what I honestly feel to be
6 the feelings of the practicing Bench and Bar.

7 Now, the State Bar Board of Directors
8 recommended -- so I got a call from Ed Koltis
9 (phonetic) yesterday, that not only we have these
10 public hearings at Houston, but you have some of
11 them around the state. And I wanted to get
12 you-all's input because you-all do pretty well
13 represent the state geographically. And I'm sure
14 you've heard comments on this project from your
15 people.

16 Would the Court be better informed if we had
17 some of these public hearings around the state as
18 opposed to that one in Houston?

19 CHAIRMAN SOULES: How many feel the
20 Court would be better informed and should conduct
21 hearings around the state on this? That's
22 unanimous. How many opposed to that? That's
23 unanimous.

24 JUSTICE WALLACE: And another thing:
25 Now, the Chief Justice and myself are probably the

1 only members of the court who have given a whole
2 lot of attention to this so far. Everybody, as
3 you know, over there has administrative duties.
4 This happened to be mine, the whole rule gamut.
5 And everybody else has their own job, and they've
6 got more to do than they got time to do, and they
7 haven't focused in on this as yet.

8 I know the one that has campaigned for office
9 has heard a lot about it. And I assure you that
10 they are -- if you-all could set through one
11 Tuesday over there when we're discussing opinions,
12 you'd know that there are nine strong independent
13 voices over there and it takes 5 to pass
14 anything.

15 And I don't see any indication that these
16 Administrative Rules are going to be different
17 than anything else. You know how the Chief
18 Justice feels. And he's the Chief over there.
19 And the Chief usually carries more weight than any
20 of us. But you still come down and it's going to
21 take five votes out of that nine to pass
22 anything.

23 And my concern is to find out what the
24 practicing Bench and Bar of the state feels about
25 these, and to transmit all that information

1 possibly, including a complete transcript of
2 what's gone on here these three days and what's
3 gone on in Houston in any other hearing we've had
4 have, and make sure every member of the court has
5 that information, and it is discussed before we
6 vote. Now, that's my viewpoint of that, and
7 you-all make your decision from that.

8 CHAIRMAN SOULES: We've heard that
9 clearly now from you, Your Honor, and through the
10 days, that not only gives us a lot of comfort to
11 know that that will be the case. Any other
12 comment on that?

13 MR. MORRIS: I have one. I think what
14 I didn't say very well earlier, and that prompted
15 me to be able to say it a little better, is that
16 if they're having trouble with Administrative
17 Rules that are really going to affect a major
18 change in the way law is practiced in Texas and
19 can't get it done through the right hand, that is,
20 the Administrative Rules change then I don't, at
21 this stage, want to be a party of effectuating
22 change through the Rules of Civil Procedure, that
23 really are, in effect, making the major change
24 that the Task Force was set out to do.

25 And the reason I wanted to wait and hold off

1 until after all of the hearings before we do
2 anything is for my fear that if we get off into a
3 Rules of Civil Procedure change, we've really
4 circumvented the process that was set up by the
5 legislature, and that was, it called for a Task
6 Force by the Chief Justice.

7 PROFESSOR EDGAR: Well, I want to pick
8 up what David said earlier. If the Court, after
9 the hearing at the Bar Convention, wants a
10 subcommittee of this committee to examine those
11 rules to see which ones, if any, might be more
12 appropriately placed in the Rules of Civil
13 Procedure, then I would be happy to serve on such
14 a committee. But I would kind of like some
15 expression from the Court that that's what they
16 want us to do, and that it be done after we have
17 the public hearings.

18 CHAIRMAN SOULES: All right. Should
19 we go on record as seeking leave from the Court to
20 give us the opportunity to look at any proposed or
21 tentatively adopted rules for that purpose?

22 MR. LOW: Having made a motion, I
23 second it.

24 MR. BRANSON: I'm not sure I
25 understand Hadley's motion.

1 PROFESSOR EDGAR: Well, I just said
2 I'd be willing to serve on such a committee. I
3 really didn't make an motion.

4 CHAIRMAN SOULES: I think the
5 difference between what Hadley is saying and what
6 I'm saying is that Hadley has indicated that we
7 would want to hear from the Court that they want
8 the work done.

9 My approach is, do we want to tell the Court
10 that we would like to have an opportunity to do
11 the work if these rules are going to pass to try
12 to clean them up?

13 MR. SPARKS (SAN ANGELO): You're
14 saying that although we're very opposed to it, if
15 we're going to have to have it anyway, let us get
16 in a workable form?

17 CHAIRMAN SOULES: That's right.
18 That's exactly; that's well put. Is that a
19 motion?

20 MR. BRANSON: My only question is I
21 don't perceive from what Judge Wallace said that,
22 number one, we're going to have to have them
23 anyway. And number two that at this point, it
24 does us much good to go on record requesting that
25 opportunity until after the Bar has had an

1 opportunity, either at the public hearings
2 throughout the state or at the Bar Convention, to
3 address it. Because I don't know the experience
4 of the other members of this committee, but any
5 time practicing members of the Bar or Bench have
6 surreptitiously found out I was on this committee
7 or on the Task Force, they have come near lynching
8 me with regard to my involvement in the
9 recommendations of Dean Friessen.

10 And so I perceive the vast majority of the
11 Bar, based on their response to me, is going to be
12 more inclined to want to put these in the garbage
13 can than in the Rules of Civil Procedure.

14 CHAIRMAN SOULES: Well, I guess we've
15 asked this enough. I don't know whether we're
16 going to get any consensus, but I want to hear
17 Broadus because his hand is up.

18 MR. SPIVEY: I rise the point of
19 order, Luke, and I want you to hear what I'm
20 saying because this is addressed to you in the
21 most respectful manner. I thought I heard you say
22 that regardless of our unanimous vote a while ago,
23 to wait until after the Bar input, that you were
24 going to go ahead and work on it anyhow.

25 And I think you shouldn't do that, in all

1 candor. Because you're the Chairman of this
2 committee, and I don't think you ought to take
3 action contrary to this committee's desire.

4 I want to stress that I haven't perceived
5 from the other advocates' pleadings here that they
6 are against change. I simply heard them say that
7 they are strongly against what has been proposed
8 now. But we've invested a lot of our time, a lot
9 of our effort in something that we'd all like to
10 see something come out of. And I think we ought
11 to turn this to a constructive approach, and that
12 will be, if we listen to the lawyer. And there's
13 another aspect I've got to address; let me finish
14 up. Listen to the lawyer at the Bar Convention.
15 I think that's an absolute prerequisite to getting
16 anything done constructively.

17 Secondly, it must be stated that the
18 objection is not just coming from practicing
19 lawyers. I practice in as many courts in this
20 state as any lawyer I know of. I have heard
21 almost unanimously from the trial judges dissent
22 against what's coming out of the Administrative
23 Rules.

24 I think we should listen to these objections
25 and rather than just saying, "Well, it's no good;

1 let's just a abandon it," simply take that as a
2 constructive suggestion and go back and maybe take
3 the approach that Branson was suggesting, and that
4 is, address the specific problems.

5 Just because the problem is hard, it doesn't
6 mean that we're going to get frustrated and throw
7 up our hands. But I think the Chief Justice needs
8 input from us that he can effectively carry
9 through, because nobody has heard more than Chief
10 Justice Hill. If he makes an effort that falls
11 completely flat on his face, it's not just an
12 embarrassment, you know; it's a mandate.

13 And I think if we don't get that input from
14 the Bar at the Bar Convention, and listen to it,
15 and poll the judge, the judges that have the
16 problems, that experience problems, then we've
17 simply built a beautiful doll that maybe pleases
18 us or the Chief Justice, but neither the
19 practicing Bar nor the judges, and it won't pass.

20 CHAIRMAN SOULES: Anyone else? Okay.
21 Judge Thomas, you've got a report to make on these
22 earlier rules and the Rules of Civil Procedure.

23 JUDGE THOMAS: There are a couple of
24 things, Luke.

25 CHAIRMAN SOULES: Maybe you can direct

1 us to the pages. I'm not sure that I've got them
2 turned to the right page.

3 JUDGE THOMAS: Sure. We need to move
4 up to the ones that I think that I would like to
5 get a consensus of opinion from the committee.
6 And that really starts at Page 86 of Rule 8 where
7 we start talking about attorneys in charge. And
8 Pat Beard brought up yesterday morning the problem
9 of exactly what constitutes the attorney. Is it
10 the individual or is it the law firm?

11 And what I'm asking for is a consensus from
12 the group, recognizing I have a feeling I know
13 what everyone is going to say. Is it the law firm
14 or is it the attorney signing the pleadings? And
15 we need to resolve that before we can get into the
16 other issues of notice, where does notice go and
17 so forth, being the background behind the proposed
18 rules changes in Rule 8, 10, and so forth.

19 Right now we have a Rule 8 and we have a Rule
20 10. Rule 8, as presently written, is "leading
21 counsel" is defined. Rule 10, "attorney of
22 record" is defined. Rule 8, you will find on Page
23 86 some changes -- proposed changes on 86 in your
24 book as well as Page 104. Rule 10 proposed
25 changes you will find on Page 90 and Page 105 in

1 the book.

2 Obviously, all of this comes about as a
3 result of some confusion and some concern about
4 where notices are sent, which attorneys get
5 noticed, which ones get to play ball, and, of
6 course, the problem that Pat brought up yesterday,
7 and that is, if you're in trial some place else,
8 can they just call and say, "Well, it's your law
9 firm that was hired; somebody get your buns down
10 here and go to court"?

11 MR. SPARKS (EL PASO): I'd like a rule
12 that says they can't do that. But I don't know
13 how in the world -- you know, in the federal
14 courts and even in our state district courts, we
15 are required to file a certificate as to the
16 attorney responsible for that case. And this
17 appears to really conform that local rule. I
18 think it's a good rule, the one that is proposed
19 on Page 86.

20 CHAIRMAN SOULES: We had a letter from
21 Reese Harrison citing the Scopeland Enterprises
22 vs. Tindall (phonetic), January of 1985 case,
23 where the -- and then also stating one of his
24 personal experiences where the Court said, "Well,
25 if the law firm is on the pleading, somebody else

1 from the law firm can come try the case."

2 MR. BRANSON: How do you address the
3 problem, though, of one or two lawyers with an
4 active trial practice, perhaps, letting their
5 bulldog mouth overload their pekingese ass and
6 taking on a bunch more lawsuits than they ever get
7 tried, and always presenting that they're in trial
8 some place else when depositions need to be taken,
9 when trials need to occur? And from the
10 practicing lawyer's standpoint with the larger
11 firms, that's not an infrequent occurrence.

12 And the truth of the matter is, in the vast
13 majority of those cases, the lawyer who is "lead
14 counsel" really doesn't touch the file. The
15 associates and junior partners work the file up
16 and do 98 percent of the work.

17 CHAIRMAN SOULES: That may be part of
18 the frustration where these judges were coming
19 from in these particular cases, Frank.

20 MR. LOW: That is a problem, and I see
21 it a little different on procedure. But I know,
22 like in my firm, I'm the only person that handles
23 claims cases, and if they ask my partner and if
24 I'm in trial, they say "He's got to try it." I
25 just have to increase my malpractice insurance.

1 But I put my number on there when I sign it.

2 General Motors for a good while, until they
3 got smarter, wouldn't let anybody in the firm but
4 me try their cases, and it was presenting a real
5 problem. So, I think where you have a genuine
6 situation the courts and the lawyers just have to
7 deal with, where you've got a situation if the
8 Court finds it's being evasive to keep from going
9 to trial, that's something else, and the
10 individual courts have to deal with that.

11 But I think it would be wrong to say that a
12 particular client should not have the lawyer of
13 his preference because that's who he's hired. And
14 I think if the lawyer signs the pleadings and he
15 puts his State Bar card on there that that's truly
16 his case. Now, if they're Mickey Mousing around
17 with it, well, that's something else.

18 JUDGE THOMAS: Well, I think the
19 letter, Luke, that you refer to on Page 111, 112
20 and 113 in the book also points out an additional
21 problem, and that is, if you're going to consider
22 that it is "the law firm," quite often the notices
23 go to the law firm and you never see it.

24 MR. SPARKS (EL PASO): It takes three
25 days to get it to the right lawyer, the

1 memorandum.

2 JUDGE THOMAS: A three-day notice
3 motion has been sitting some place for four days.
4 So that's why I say that I think the issue of
5 definition of the attorney needs to be addressed
6 before we can really address the issues of where
7 the notices go.

8 CHAIRMAN SOULES: David, maybe you
9 could help us on this. I know some of the, of
10 course, big clients hire a law firm. Maybe they
11 hire Fulbright; they don't hire some individual in
12 Fulbright. And then whatever XYZ law firm, they
13 sign the pleading, XYZ law firm by one of the
14 lawyers. At that juncture the law firm has become
15 counsel of record, I guess, because that's the way
16 they signed it.

17 MR. BECK: That's not the way our
18 clerks treat it over there at the courthouse.
19 They look to the person who has signed the
20 pleading, and they list that person as the
21 attorney that they send all their notices to. So
22 it doesn't matter whether it's Fulbright and
23 Jaworski by, or I sign my name, attorney in
24 charge; as long as I sign that pleading, I get all
25 the notices.

1 MR. BEARD: Well, I hire a lot of
2 defense counsel for clients and I try to hire a
3 specific lawyer because I don't find a uniform --

4 CHAIRMAN SOULES: Well, those are two
5 different approaches in the way the pleadings are
6 signed and that's what I'm really trying to get
7 at. We can sign them individually. Our practice
8 is that the lawyer that's going to handle a case
9 or be responsible to see that it proceeds, signs
10 it and we put "of counsel" and the name of the
11 firm. But that's only there of counsel; it's not
12 of record on the signature line. But perhaps
13 General Motors doesn't want to hire an individual
14 lawyer in Fulbright; they want to hire Fulbright
15 itself. I'm just trying to get into how that
16 works.

17 MR. BECK: There are couple of
18 different problems, and I think the judge is
19 right. You start first with who is the attorney.
20 And the federal courts have long had a rule where
21 you had to designate the attorney in charge, and
22 that's never really caused us any problem at all.

23 You then get to the next step which is, what
24 happens when one attorney is always tied up in a
25 matter and you can't somehow get your case moving?

1 That's a separate problem. I know in Harris
2 County, as Judge Tunks knows, the way we help with
3 that is we passed a local rule which said that if
4 a lawyer is trying to get a case to trial and the
5 opposing counsel is unavailable because he is in
6 trial, you can use that excuse two times, and if
7 it comes up a third time, then the court can
8 require anybody in that law firm to try the
9 lawsuit. And as far as I know, it works fairly
10 well, doesn't it, Judge?

11 JUDGE TUNKS: Well, it has, except it
12 makes a lot of lawyers mad.

13 JUDGE THOMAS: I know one of the
14 problems, for instance, in family courts where you
15 have a series of hearings. Take the situation
16 where Harry Tindall in Houston has taken on a
17 Dallas case and hires local counsel. It is not at
18 all -- and I don't mean to indicate that Harry or
19 Fuller or any of these have played this game.

20 If you're trying to get it set for trial,
21 they don't yell and scream, "Harry Tindall is the
22 lawyer." And yet, when they are seeking relief,
23 Kuhns or Fuller or somebody from that firm can
24 come down on the motions for contempt. And I
25 think this is the frustration and the room for

1 abuse that we have to recognize goes on. Who is
2 seeking the relief?

3 MR. BECK: Can't that be handled on a
4 case-by-case basis, Judge?

5 JUDGE THOMAS: Sure.

6 MR. BECK: The judge in that case
7 saying, "Well, wait a minute, Mr. Kuhns was over
8 here two weeks ago, so he can come over here next
9 week."

10 MR. SPARKS (EL PASO): You know, we've
11 got a problem that I don't think we're facing.
12 We're looking at it from a procedural or
13 administration standpoint. We have to look at it,
14 as I find, more particularly on the plaintiff's,
15 but I certainly yield to it frequently. And that
16 is, you've got to look at it from a client's
17 standpoint. The client does, particularly, in a
18 case where they have retained a lawyer to file a
19 lawsuit. They have selected an attorney.

20 And I seem to be getting more and more legal
21 malpractice cases as each year goes on. And that,
22 to me, is a thread that's running through the sum
23 of them. And that is, I hired John Jones and I
24 show up at the courthouse and Tim Smith is there
25 to try the lawsuit. In particular, when you lose

1 it, you've got an additional problem.

2 The Houston rule may make some lawyers mad,
3 but at least it gives you a hedge of some time to
4 rearrange to where, when you have a particular
5 problem, that lawyer can arrange to handle that
6 particular client. I favor the approach like Rule
7 86 where a lawyer is designated to be responsible.

8
9 CHAIRMAN SOULES: This new Rule 8, of
10 course, as proposed does that, and also identifies
11 where pleadings and service is to be made. I
12 think that's probably what the old rule 8 was
13 intended to do. But it's not written in modern
14 language, if you want to put it that way, and it
15 doesn't really say what its intent was, and I
16 think, perhaps, the new Rule 8 as proposed does.

17 And new Rule 8 doesn't omit anything that the
18 old Rule 8 has. Everything that's in the old Rule
19 8 is restated, perhaps, in clearer language. Plus
20 the inference that the lead counsel is supposed to
21 be served and so forth is expressly stated in the
22 new Rule 8, although we changed "leading counsel"
23 to "attorney in charge," which is a more commonly
24 heard term. Is there any opposition to that?

25 JUSTICE WALLACE: I'd like to make a

1 suggestion on that. And the problem is, who's
2 going to be the attorney in charge if they don't
3 designate anybody? And just stating the rule, if
4 an attorney in charge is not designated, the
5 individual signing the original pleading of a
6 party shall be the attorney in charge.

7 So that's for the benefit of that great
8 majority of the Bar out there who is not going to
9 read these rules in the next three or four years
10 until they get caught on something like this.

11 And so there's no question in anybody's mind
12 that the first person that signed the pleading for
13 that are party is going to be the attorney in
14 charge until it's changed, and the rule tells you
15 how you can change it.

16 MR. SPARKS (EL PASO): You put that
17 after the first sentence, Judge?

18 JUSTICE WALLACE: Yes. After the
19 first paragraph, there in Rule 8 as it's now
20 written.

21 CHAIRMAN SOULES: On page 86. That's
22 a good suggestion. "If the attorney in charge is
23 not designated the attorney" --

24 JUSTICE WALLACE: -- "signing the
25 original pleading of a party shall be the

1 'attorney in charge.'

2 MR. SPARKS (EL PASO): Don't you think
3 it ought to go after the first sentence before the
4 word "thereafter"?

5 CHAIRMAN SOULES: Yes, that's where.

6 JUSTICE WALLACE: Yes.

7 CHAIRMAN SOULES: Okay. With that
8 change, how many favor this proposal on page 86 of
9 our material.

10 MR. SPARKS (SAN ANGELO): Luke, just
11 an observation before we vote on it.

12 CHAIRMAN SOULES: Sure.

13 MR. SPARKS (SAN ANGELO): In the
14 realities as you come to court, and I've heard
15 this hundreds of times in courts that have fast
16 moving dockets where the judges push very hard,
17 the defense counsel says, "You know, I'm sorry,
18 I'm in trial somewhere else." And the judge says,
19 "You've got other competent lawyers in your firm,"
20 you know, "get one of them down here" and you hash
21 it around.

22 I read the proposed Rule 8 change on Page 86
23 as giving the trial judge the authority because it
24 says "shall attend." I'm talking about the last
25 sentence of the first paragraph that the lead

1 lawyer in charge shall attend. And then you have
2 to read that to say, "or shall send a fully
3 authorized" --

4 And to me I'm reading that to say the trial
5 judge now has the authority to make a change of
6 counsel regardless of what the client wants,
7 whether it's an insurance company or a plaintiff's
8 lawyer. I mean, that's how I'm reading that
9 rule. And I think we need to know that that's
10 what's happening.

11 MR. BRANSON: Maybe a point of inquiry
12 might be in order. How do you perceive this rule
13 changes the existing law or the existing rules?

14 CHAIRMAN SOULES: Well, what it does
15 is it makes it clear that service is to go to the
16 attorney in charge. And the present Rule 8
17 doesn't say that, and there is a problem in that
18 if XYZ law firm signs a pleading by Luke Soules,
19 then the pleadings are sent to the law firm.
20 There's a contention that that service is
21 completed, even though it's not directed to my
22 attention.

23 And that's a problem that's been raised by
24 the lawyers who have written in to us. All
25 communications from the court or the counsel with

1 respect to the suit will be sent to the attorney
2 in charge. It says that. It's not elsewhere
3 stated.

4 MR. BRANSON: And that is the only
5 change you perceive, and that is, that all
6 correspondence would be addressed to what we've
7 historically called "lead counsel."

8 CHAIRMAN SOULES: Well, that and the
9 point that Sam Sparks has just identified, where
10 it says that, "the attorney in charge shall attend
11 or shall send a fully authorized representative to
12 all hearings, conferences, and the trial."

13 MR. SPARKS (EL PASO): Isn't that the
14 rule now? I mean, if you're hired, you either be
15 there or send somebody that can act?

16 CHAIRMAN SOULES: The rule doesn't say
17 that, but I certainly feel that -- well, I don't
18 know about the "fully authorized." The
19 authorization may not be full. It may be the
20 authorization only to a continuance not to proceed
21 with trial and you can move for a continuance.
22 But if the judge doesn't grant it, then you are to
23 announce "not ready." "Fully authorized" may be a
24 departure.

25 MR. SPARKS (SAN ANGELO): Well, it

1 says "trial" in this one.

2 CHAIRMAN SOULES: Well, you still need
3 to send a representative if the judge has
4 overruled your motion for continuance, you just
5 can't fail to show up.

6 MR. SPARKS (SAN ANGELO): Luke, the
7 reality of life is, basically, in a plaintiff's
8 practice, which I do. You know, I'm going to see
9 a client once. He's heard, tries his case; he
10 goes on.

11 The insurance lawyer on the other side,
12 whether he's with Hardy Gramley (phonetic) or
13 Fulbright & Jaworski or anybody else, wants to
14 maintain his relationship with Aetna or Hartford,
15 or Travelers or whoever he's doing. And if the
16 judge just says "You're not trying this case. You
17 will appoint somebody else, and I don't care if
18 you're in trial somewhere else," I think the fear
19 by the defense lawyers is they lose their client
20 because that is a repetitive client that goes on
21 down through time.

22 And it gets down to a basic question of, does
23 a client have a right to select his own lawyer or
24 shall he be forced to accept anybody within that
25 firm? And I don't care; I don't think it affects

1 my practice. But I think it's something that Sam
2 Sparks from El Paso, David Beck, they should be
3 thinking about that. Because I read this rule as
4 it says "shall attend hearings, conferences and
5 trial."

6 CHAIRMAN SOULES: Well, if we took out
7 the words "fully authorized," it really doesn't
8 change what the practice is, does it? On the
9 other hand, "fully authorized" may be construed to
10 mean that you've got to send somebody fully
11 authorized to proceed the trial.

12 I'm trying to hear a consensus, and I think I
13 hear that that's not what this committee wants, to
14 force a lawyer to send somebody fully authorized
15 to proceed the trial. But you've got to send a
16 representative anyway because at least you got to
17 have somebody there --

18 MR. BRANSON: Whether you're in a big
19 law firm or a small law firm, once you get more
20 than one lawyer in the firm you're going to have
21 some crossover on people that are working on
22 files, and particularly, once you get associates
23 in a firm with partners. And it's going to affect
24 everybody, whether you've got three associates or
25 300, I think.

1 MR. LOW: I was just going to say that
2 I don't know that the last -- it's automatic if
3 you just put a period after "such party appearing
4 and shall attend and send." Well, you're
5 obligated to attend and send, and it doesn't
6 mislead and say, "Well you've got to have a
7 representative."

8 I mean, you know, everybody knows if the
9 judge says you've got to do something, you've got
10 to do it, and you make a bill. We tell first the
11 attorney in charge who he is, but we don't give
12 him his charge, "shall attend" and "representative
13 conference," and everything. If you just stopped
14 and left that out, where would we be? And he's
15 responsible and then the professional's
16 responsibility follows thereafter. And the law
17 takes it's course, but we don't purport the court
18 to be putting the law in the rules.

19 MR. SPARKS (EL PASO): I second that
20 thought. I often wondered what "fully authorized"
21 is. You know, in the federal courts you are fully
22 authorized to dispose of the case. I never have
23 been fully authorized to dispose of a case, as far
24 as I know.

25 MR. BEARD: But I can tell you that

1 local counsel is getting to be a dangerous
2 animal. Because local counsel hasn't been doing
3 anything but, you know, the names on the pleadings
4 and then all of a sudden you say "go to trial;"
5 he's in trouble. And often, it worried me
6 sometimes that local counsel has about the
7 competence of lead counsel.

8 Anything that you can just say, "go to trial"
9 and local counsel goes to trial, he's not ready to
10 go to trial. He's over there telling him about a
11 jury or something.

12 CHAIRMAN SOULES: Especially when
13 you've been employed to just local counsel and to
14 keep your fees down.

15 MR. BEARD: That's right.

16 CHAIRMAN SOULES: And then you're in
17 trial. Well, the suggestion is then, that we
18 delete the language in the first paragraph of the
19 proposal that follows citations 21-B.

20 JUSTICE WALLACE: Are you running into
21 a problem if you delete that and say that the
22 attorney in charge is going to be responsible?
23 Are you going to run into a problem where, when
24 someone else goes over there, they can argue,
25 "Well, he didn't have authority because the rule

1 says the attorney in charge is in charge of this
2 case, shall be responsible?" And I'm asking; I'm
3 not saying you would. Will that create a
4 problem?

5 Well, the case we wrote on here not too long
6 ago out of San Angelo -- no, Odessa, I guess it
7 was. Some lawyer out of Dallas used an Odessa law
8 firm's letterhead and sent a pleading over. Well,
9 the clerk picked up the letterhead and showed the
10 Odessa lawyer -- sent notice to the Odessa lawyer
11 a dismissal, and the Odessa lawyer didn't know
12 anything about it and thought it must have been
13 sent to the wrong lawyer and threw it in the
14 wastebasket and the lawyer in Dallas was in bad
15 trouble.

16 Of course, the designation of attorney in
17 charge would have cleared that one up. But that's
18 the type of situation lawyers get into. And
19 they're going to look every way they can to get
20 out of it. And I know I would if I were in their
21 position. So, are you leaving an opening here for
22 the lawyer to come in and say, "I'm the attorney
23 in charge and, therefore, this guy came over and
24 agreed to so and so. The rules say I'm the one in
25 charge so therefore, it's not binding on him."

1 MR. BRANSON: Therefore, you could use
2 associates to work on any trial.

3 MR. LOW: But Judge, you've got to
4 delegate responsibility.

5 JUSTICE WALLACE: I realize that.

6 MR. LOW: And so, we all delegate it.
7 And this says "he shall be responsible." It
8 doesn't say that he can't delegate some
9 responsibility, but it doesn't require him,
10 personally, to send a representative. The law
11 requires that. He's responsible to see that his
12 name -- if the rules say that notice goes to the
13 person who was first on the pleadings; he's
14 responsible to see that that's the one.

15 And so his responsibility extends fully, but
16 it doesn't require him to send -- like in Frank's
17 case, if he's got a clerk getting a case ready,
18 that he doesn't have to go and try it if Frank is
19 in trial, or this rule doesn't require it.

20 MR. BRANSON: Wouldn't we accomplish
21 the same thing, Luke, if we just added the last
22 sentence to the currently existing Rule 8, and
23 that is, "All communications from the court or
24 other counsel with respect to a suit shall be sent
25 to the lead counsel"?

1 MR. SPARKS (SAN ANGELO): I don't see
2 how, because how do you determine who the attorney
3 first employed is? Rule 8 doesn't make any
4 sense. I mean, there's no way for anybody except
5 the client and the attorney, I guess, if you can
6 assume that he was first employed or second
7 employed.

8 MR. BRANSON: But the courts have been
9 grappling with that all along, and when a problem
10 came up, what they've been doing is just saying,
11 "You're going to have to appoint a lead counsel,"
12 and you've seen it.

13 MR. SPARKS (EL PASO): Sure, and
14 that's what Rule 8 does.

15 MR. BRANSON: But they don't make you
16 appoint a lead counsel until they get into a
17 problem.

18 MR. SPARKS (EL PASO): Well, we have
19 designated lead counsel over both state and
20 federal courts. We've always been in, Frank. We
21 don't have that problem.

22 MR. BRANSON: I don't think I've ever
23 had -- maybe half-dozen times, somebody asked me
24 to designate. And that's usually when you get
25 into an argument over who's going to do

1 something. Usually when two of you want to
2 cross-examine the same witness is generally when
3 it becomes a problem.

4 JUSTICE WALLACE: One problem this
5 would continue to address, too, is on the clerk's
6 office. Who do you send notice to, what
7 attorneys? You've got half a dozen different
8 names appearing throughout the file. How do they
9 determine which one they should notify?

10 MR. SPARKS (EL PASO): In light of
11 that recent case, it sure would be helpful if they
12 notified the right one.

13 MR. BRANSON: But how do they handle
14 the question you raised, Judge, and that is, lead
15 counsel or counsel in charge has been designated
16 as Jim Williams, and an associate in Jim Williams'
17 law firm enters into an agreement with another
18 party?

19 JUSTICE WALLACE: I think this last
20 sentence, Frank, says, in effect, that if the
21 attorney in charge sends another lawyer over
22 there, he's responsible for whatever that lawyer
23 agrees to.

24 MR. BRANSON: The way it's written
25 currently.

1 JUSTICE WALLACE: No, the suggested
2 change on Page 86.

3 MR. LOW: If you had a rule that just
4 said that any pleading filed -- we now have to put
5 our state bar in numbers. Somebody has to put by
6 his name, "attorney in charge." If you had that,
7 you wouldn't even question who the attorney in
8 charge is. No matter how many names are on there,
9 if you had one of them, you know, designated when
10 he filed the pleading as "attorney in charge",
11 then you wouldn't have any questions.

12 PROFESSOR EDGAR: But then, Buddy, the
13 clerk is going to have to look through and find
14 out which pleading has that designation on it.

15 MR. LOW: I know. But apparently,
16 when they file, Hadley, they put it on the docket.
17 That's where they pick it up. They don't go to
18 the pleadings. And on the docket, it would be
19 very easy to put an asterisk by that. It wouldn't
20 be much trouble. The docket sheet is where they
21 pick up who to mail to.

22 MR. SPARKS (EL PASO): This rule would
23 really help them because in El Paso State Court,
24 they put the first name of our firm on the
25 docket. And it turns out that's all right in our

1 case because the first name of our firm is head of
2 the trial lawyers. But had it been a business
3 lawyer, it would have been bad.

4 I move for the adoption of proposed Rule 8
5 cutting off after the word "suit" and
6 eliminating --

7 MR. BRANSON: Or how about the
8 "parties"?

9 JUDGE THOMAS: "As to such party."

10 MR. SPARKS (EL PASO): Yes. And
11 eliminating the phrase "and shall attend or send a
12 fully authorized representative to all hearings,
13 conferences and trials."

14 CHAIRMAN SOULES: Now, is that going
15 to get an automatic continuance when the attorney
16 in charge can't show up? They just come over and
17 say, "He's in charge."

18 MR. SPARKS (SAN ANGELO): It's going
19 to be just like the law is now.

20 MR. SPARKS (EL PASO): I can't believe
21 in that. I want to practice in the court that
22 says that.

23 MR. BRANSON: But isn't that exactly
24 what the part we're cutting out is designed to do?
25 And that is, keep the attorney in charge from

1 being able to say it's an automatic continuance.

2 CHAIRMAN SOULES: That's what it's
3 for.

4 MR. BRANSON: The part that we're
5 cutting out gives someone a vehicle to make that
6 argument. And if you leave it in, it's not
7 there.

8 CHAIRMAN SOULES: That's right. In
9 other words, there's two alternatives, leave it in
10 and drop out the "fully authorized," because
11 that's probably beyond what any motion hearing
12 would require, or to put a period after "party"
13 and delete it all, or leave it in except for the
14 words "fully authorized."

15 MR. BECK: The trouble with the
16 language is that if you included your opposition
17 to actually use that to try to force the
18 representative to be sent over, you know, that
19 ought not to be the way it works.

20 I mean, the attorney who is handling the case
21 ought to try it. If there's an abusive situation,
22 then I think the trial judge can handle that and
23 require the representative to be there. But you
24 don't want somebody to be able, when you're in
25 trial, to say, "Well now, fine. But this rule

1 says that if Luke is unavailable, by God, I can
2 require somebody in his firm to come over." And
3 that ought not to be the rule.

4 CHAIRMAN SOULES: That's the issue
5 exactly, and that's what we're going to vote on.
6 And we've hashed it, I think. Sam, do you have
7 anything else on that point?

8 MR. SPARKS (EL PASO): For example,
9 we've got one of our district courts that has all
10 motions for continuance Friday morning, a week
11 before the Monday selection of the jury. And if
12 the lawyer wants to argue a motion for
13 continuance, right now I don't have to go. I can
14 find out at 9 o'clock whether the motion was
15 granted or not. This would require me to send
16 somebody over there. Whereas my practice right
17 now is not to go at all.

18 CHAIRMAN SOULES: Okay.

19 MR. SPARKS (EL PASO): And I'm for
20 deletion.

21 CHAIRMAN SOULES: Okay. The motion is
22 that -- before we do that, though, what Buddy was
23 talking about there, just doing it in the
24 pleadings is -- I have a concern. This says "each
25 party shall." Can we just say, "On the occasion

1 of a party's first appearance through counsel, the
2 attorney in charge shall be designated in
3 writing"? That would give us the option to do it
4 on the pleadings.

5 This may say that you've got to comply with
6 attorney to show an authority; in other words,
7 have your client's own signature on something to
8 designate you, because it says "party" and they've
9 talked about counsel. We've, of course, hashed
10 that over the last couple days. But does it have
11 to be this way? "On the occasion of first
12 appearance by counsel, the attorney in charge" --

13 MR. BECK: "The attorney in charge
14 shall be designated."

15 CHAIRMAN SOULES: "Shall be
16 designated."

17 MR. BRANSON: But who is going to
18 designate it with a party?

19 CHAIRMAN SOULES: Well, the lawyer
20 designates himself.

21 MR. LOW: In other words, you sign,
22 and say you take a case out in Marshall and, you
23 know, you're the lead -- and you sign the petition
24 that's got Scotty's name on there, but under your
25 name, you've got "attorney in charge."

1 CHAIRMAN SOULES: Just say, "It shall
2 be designated in writing" and leave it open how
3 that gets done.

4 MR. SPARKS (SAN ANGELO): So, on the
5 original petition, instead of putting "of counsel"
6 under there or "counsel for the plaintiff," you
7 just put "attorney in charge"?

8 CHAIRMAN SOULES: That's right.

9 PROFESSOR EDGAR: You can put
10 "attorney for plaintiff" and then say "attorney in
11 charge" underneath it or something.

12 MR. BRANSON: I would move an
13 amendment to Sam's motion, who to mail it, that
14 is, rather than stopping the party, we merely
15 drop-out "fully authorized." That way you get
16 away from the argument that they're talking about
17 to continue.

18 CHAIRMAN SOULES: Is there a second
19 for the amendment?

20 MR. BRANSON: Pardon?

21 CHAIRMAN SOULES: Is there a second
22 for that amendment? Okay. That fails for lack of
23 a second.

24 MR. SPARKS (EL PASO): Luke, let me
25 say that my motion -- I don't think I stated it,

1 but it intended to have Judge Wallace's second
2 sentence in it.

3 CHAIRMAN SOULES: Sure. Let me read
4 it as I've got it now. "On the occasion of a
5 party's first appearance --"

6 PROFESSOR EDGAR: "Through counsel."

7 CHAIRMAN SOULES: "-- through counsel,
8 the attorney in charge for such party shall be
9 designated in writing. If the attorney in charge
10 is not so designated, the attorney signing the
11 original pleading of a party shall be the attorney
12 in charge."

13 MR. LOW: Maybe more than one signed
14 "the attorney."

15 CHAIRMAN SOULES: What's that Buddy?

16 MR. LOW: Sometimes we'll have a
17 couple of lawyers actually sign, you know. Would
18 you want all attorneys or the first? Because I've
19 seen pleadings where there will be -- Tony and I
20 always sign together if we've got a case
21 together.

22 MR. BRANSON: Wouldn't one of them
23 have to sign as attorney in charge?

24 MR. LOW: I understand. But, see, if
25 you don't -- this deals with, if you don't, then

1 who is it?

2 MR. MCCONNICO: First.

3 MR. LOW: Well, that's what I'm
4 saying. Whose name appears first?

5 MR. BRANSON: You can go back and
6 change that according to this rule.

7 PROFESSOR EDGAR: It seems to me,
8 though, that you shouldn't set up a rule and say
9 it shall be done, but if it isn't done, then so
10 and so.

11 MR. MCCONNICO: You don't have any
12 choice.

13 CHAIRMAN SOULES: Try this: "If the
14 attorney in charge is not so designated, the
15 attorney first appearing in the signatures on the
16 the original pleading of the parties shall be the
17 attorney in charge." The top signature. Okay.
18 At least that's an arbitrary rule and people can
19 look at it and see.

20 JUSTICE WALLACE: Really, you'd be
21 surprised at how many -- after this rule, if it's
22 adopted, has been in effect for five years, you'll
23 be surprised at how many of them won't bother to
24 designate attorney in charge on the pleadings.

25 The lawyers in practice for 20 years are

1 going to continue to sign their pleadings just
2 like they have for the last 20 years. And you're
3 back with the problem with the clerk's office.
4 Who is in charge?

5 CHAIRMAN SOULES: So we'll start on
6 that. "On the occasion of the parties first
7 appearance through counsel, the attorney in charge
8 for such party shall be designated in writing. If
9 the attorney in charge is not so designated, the
10 attorney first appearing in the signatures of
11 counsel on the original pleading of the party
12 shall be the attorney in charge."

13 PROFESSOR EDGAR: Just say, "the
14 signature of the counsel who first appears."

15 MR. SPARKS (SAN ANGELO): I think we
16 are dealing with the English, and Hadley has got a
17 point. You can just say, "On the occasion of the
18 party's first appearance through the counsel, the
19 attorney first signing shall be the attorney in
20 charge; unless another attorney is specifically
21 appointed."

22 MR. MCCONNICO: Designated.

23 MR. SPARKS (SAN ANGELO): Designated.

24 You've got a "shall" followed by --

25 MR. MCCONNICO: You can clean it up.

1 MR. BRANSON: Most Bar for many, many
2 years are not going to pick that change up, and
3 they're going to continue to sign it not realizing
4 they're designated attorneys in charge.

5 CHAIRMAN SOULES: Well, let's just get
6 the guidelines from Judge Thomas on what we see
7 and she can work on the language. But if that's
8 what we're saying, you can designate, and if not,
9 it's the attorney whose signature first appears.
10 And then thereafter, there's no change in that
11 down to the word "party" in the fifth line. The
12 balance of that would be deleted in the motion.
13 And then we would have the first sentence of
14 second paragraph. Well, that's the only sentence
15 that's there now. Okay. How many in favor of
16 that?

17 JUDGE THOMAS: And I would suggest
18 that instead of "will," put "shall" in that one
19 sentence.

20 CHAIRMAN SOULES: Okay. Judge, we're
21 going to leave it to you to rewrite this for our
22 next meeting in clear language, easier understood
23 language. With those suggestions then, are we in
24 favor of Rule 8 as proposed? Those in favor show
25 by hands. Opposed? Okay. That's unanimous.

1 PROFESSOR EDGAR: Let me just raise a
2 question, Luke. Now, this is an example. Now, we
3 have just given Judge Thomas some direction on how
4 to draft this rule. She drafts it, and then the
5 next time it comes before us, we have some members
6 present who weren't here this time. And then we
7 have to sit down and rehash it again and we may
8 not ever get anything done.

9 And I just suggest that we establish a ground
10 rule that once, in principle, a rule is resolved,
11 that we don't go back and try to reinvent the
12 wheel again. Otherwise, we'll never get anything
13 finally out of this committee.

14 MR. LOW: In other words, that we vote
15 to accept whatever she writes if it meets that
16 principle.

17 MR. MCCONNICO: The principle.

18 PROFESSOR EDGAR: That's right.
19 Otherwise, we'll never get anything done. And
20 we're just getting bogged down more and more and
21 more and more. And I suggest that we --

22 MR. MCCONNICO: Is that a motion?

23 PROFESSOR EDGAR: Yes, it is.

24 MR. MCCONNICO: I second it.

25 CHAIRMAN SOULES: Having been on this

1 committee many years, I just say to you this: The
2 Supreme Court wants to hear all the debate it can
3 on rules changes. And if somebody shows up next
4 time that's got a hell of an idea or a real
5 substantive point to make that counters the action
6 of this committee at a prior time, my perception
7 of the way the committee has always been run and
8 asked to do its business is that the Supreme Court
9 would want to hear that. And we have gotten a
10 tremendous amount of work done here this time than
11 we have in the past. I've never been at a meeting
12 where a speaker or person who wanted input was
13 ruled out of order because of a prior vote.

14 MR. LOW: Let them speak. The input
15 goes on, but we've already voted.

16 PROFESSOR EDGAR: They can go ahead
17 and talk into the record all they want to and the
18 Court can read the record. But I'm just talking
19 about trying to move business, Luke; that's all.

20 CHAIRMAN SOULES: I don't see that
21 it's -- well, we can have a resolution. But how
22 do we not react to a really good point? We moved
23 business yesterday all day long.

24 PROFESSOR EDGAR: I know, but nothing,
25 though, that we did yesterday is going to go to

1 the Supreme Court in the form that will ultimately
2 go -- I mean, we're rehashing everything.

3 You see, it's going to come back to the floor
4 of the committee in another book later on. I
5 don't want to cut off debate, certainly. But it
6 seems to me that if we, as a committee, are going
7 to move business through the committee to the
8 Court, we have to adopt some kind of internal rule
9 that would prohibit it being rehashed again and
10 again. And I don't mean to cut anybody off.

11 CHAIRMAN SOULES: All right. Well,
12 it's been moved and seconded that we --

13 MR. SPARKS (SAN ANGELO): In a sense
14 this is like almost suspending the rules and let's
15 us do it another way, right?

16 CHAIRMAN SOULES: How many feel like a
17 subsequent review should be limited to whether or
18 not the rewrite meets the committee's past
19 action? How many feel that the debate should be
20 open for rewrite at the next one even if it does
21 delay? It looks like there's a vote there, 5. I
22 don't know whether I stated your action. You
23 state it the way you want it.

24 PROFESSOR EDGAR: Well, I move that
25 once we have deliberated a rule and we have

1 instructed the draft to incorporate the changes
2 which we feel should be implemented, that there be
3 no further discussion at a subsequent meeting on
4 the merits of the rule that we acted upon at the
5 prior meeting.

6 CHAIRMAN SOULES: If that rule passes,
7 then what we did last time in response to Franklin
8 Jones' proposal, which changed it dramatically,
9 could not even have been heard. Because we gave
10 Franklin Jones a mandate to write a rule that did
11 a certain thing. And then next time we debated
12 two or three hours about that, and that mandate
13 was withdrawn.

14 MR. LOW: That's right, completely.

15 CHAIRMAN SOULES: So, anyway, there's
16 a motion. And do you still have a second on that,
17 Steve?

18 MR. MCCONNICO: No. That's not really
19 the way I understood it, Hadley, what I was
20 seconding. Because I didn't see that we wouldn't
21 debate the merits. I thought the merits could
22 come back, but what -- voting, you know, principle
23 about the rule. I mean, I don't want to limit the
24 debate.

25 CHAIRMAN SOULES: Well, what's the

1 difference between the principle and the merits?

2 MR. MCCONNICO: Well, what I'm saying
3 is, here's the way I just heard what happened --

4 PROFESSOR EDGAR: I'll withdraw the
5 motion. Let's go on about our business. We've
6 got too much other stuff to do.

7 CHAIRMAN SOULES: Next item.

8 JUDGE THOMAS: All right. The next
9 item of concern since the present Rule 8, as we
10 have just talked in principle, would now talk
11 about the attorney in charge. It is proposed that
12 Rule 10, the present Rule 10 in the rules, be
13 amended and actually repealed and inserted therein
14 as a provision to withdraw counsel.

15 There are two different proposals in your
16 book. One on Page 90 and one on Page 105. One of
17 the problems that I see -- one of the ones that
18 particularly stands out, on Page 90, would be this
19 requirement that any substitution of counsel be
20 signed by the client, which is the proposed rule
21 in the book.

22 You will see on Page 105 that withdrawal of
23 counsel would be upon motion showing good cause or
24 upon presentation of a substitution, so forth,
25 with just a statement that it is with the approval

1 of the client and will not cause a delay.

2 MR. SPARKS (SAN ANGELO): Luke, I've
3 got a small problem with that. You go to trial
4 and you've made a settlement offer, and you turn
5 around to your client and say, "I recommend you
6 take that" because you believe in it, and a client
7 doesn't see the liability problems, and they think
8 the case is worth a lot more than that, and they
9 say, "You're fired."

10 I mean, you're standing there at the
11 courthouse. How can I promise the Court there's
12 no delay? My client doesn't want me trying the
13 case. There are some problems.

14 CHAIRMAN SOULES: We've got a recent
15 Supreme Court case, and I can't call it by name,
16 where there was, on the eve of trial, the client
17 fired his lawyer and hired another lawyer. And a
18 motion for continuance was filed. And it was
19 shown that the lawyer first representing the
20 client and the client were at extreme odds, and
21 the only inference that could be drawn from that
22 was that the representation of that client in that
23 case would be affected by their differences. And
24 the client's choosing of another lawyer was
25 appropriate, under the circumstances.

1 The trial judge put the case to trial. The
2 Appellate Court reversed and said that the trial
3 judge should have granted a continuance to permit
4 the second counsel to be prepared for trial that
5 one time. And almost stated that -- well, if you
6 read it, it almost says that a client is entitled
7 to do that one time. I mean, you don't really
8 look deeply into the relationship between the
9 lawyer and his first client or the lawyer and his
10 second client on the first time that comes up
11 because the presumption is that it's more or less
12 done in good faith.

13 Now, if it happens again, and the opinion
14 goes on to talk about how this can be abused, then
15 you closely scrutinize them because you may have a
16 client who has heard that this works and who just
17 picks a new lawyer on the eve of every trial and
18 raises hell with his last lawyer.

19 But the way this is written, the last
20 sentence on 105 -- 105 may be better written. It
21 seems to me like it probably is. But the last
22 line contradicts that case and could probably be
23 met with our -- what we've done in our other
24 instances in these changes that the substitution
25 is not being made for delay only, but that justice

1 may be done. If you have to show that, I think
2 there's nothing wrong with that part of it.

3 PROFESSOR EDGAR: Well, on the one
4 hand, you're dealing with the withdrawal of the
5 attorney, and then on the other hand, you're
6 dealing with a termination of the attorney-client
7 relationship by the client. And somehow I can
8 draw a distinction between -- if the attorney
9 withdraws in that context, just with withdrawal
10 context, that there should be no delay -- might be
11 required. But if there is a termination, a
12 unilateral determination, of the attorney-client
13 relationship by the client, then it seems to me we
14 could deal with that separately.

15 CHAIRMAN SOULES: Well, there may be a
16 unilateral withdrawal of the lawyer because he has
17 been put in such an ethic situation. His client
18 still wants him to go forward, but he has been put
19 in a situation where he just can't do it.

20 PROFESSOR EDGAR: I know, but there's
21 a termination of -- I know what they're saying.

22 CHAIRMAN SOULES: But this is the only
23 place you can get off the pleadings, right here in
24 Rule 10. There's not a termination rule.

25 MR. BRANSON: Let's say the attorney

1 determines somehow --

2 CHAIRMAN SOULES: And you do withdraw
3 from the representation whether you're forced to
4 or elect to or however it occurs.

5 MR. BRANSON: Somehow ethically he
6 can't proceed with the trial. You've got to have
7 some --

8 MR. BEARD: There's no reason why the
9 Court should do anything if the parties sign on to
10 an agreed order. All those requirements where
11 there are no problems you just -- I don't know.

12 MR. LOW: If you left it out, it
13 wouldn't make any difference; you just go on.

14 PROFESSOR EDGAR: Wouldn't that fall
15 under Subdivision A, though? If we have the
16 lawyer and the client that just can't get along or
17 there's an ethical problem, wouldn't that be the
18 good cause situation?

19 MR. BRANSON: How do you review that
20 on --

21 CHAIRMAN SOULES: That one I just gave
22 got reviewed. It is an appellate opinion.

23 MR. BRANSON: Well, is it abusive
24 discretion on the trial court for refusing to let
25 the lawyer out?

1 CHAIRMAN SOULES: I guess it was from
2 abusive discretion standard. It got to you-all,
3 didn't it?

4 JUSTICE WALLACE: Yes.

5 CHAIRMAN SOULES: It has to be an
6 abusive discretion to get there.

7 MR. BEARD: Well, a lot of
8 substitution counsel comes -- a lawyer decides
9 they'll represent the three parties and he decides
10 there is a conflict. So they get another lawyer
11 so you just have a substitution to agree on, sign
12 it and go on.

13 MR. BRANSON: Why do we want the
14 presiding judge to pose the condition rather than
15 the trial judge?

16 JUSTICE WALLACE: I think they're
17 talking about trial judge.

18 MR. BRANSON: We need to be careful
19 about that.

20 JUSTICE WALLACE: Oh, yes.

21 MR. LOW: I think we ought to be
22 careful in all the rules to have "judge presiding"
23 and not "presiding judge."

24 JUSTICE WALLACE: Particularly when
25 you're capitalizing "presiding judge" there.

1 CHAIRMAN SOULES: How about just
2 "imposed by the Court"?

3 MR. SPARKS (EL PASO): Yes.

4 CHAIRMAN SOULES: Okay.

5 "Representation not to withdraw is sought for
6 delay only." Okay. With that, how many favor the
7 rule as proposed and subject to Judge Thomas'
8 rewrite?

9 MR. BRANSON: We're talking about the
10 one on 105?

11 CHAIRMAN SOULES: 105, that's right.
12 Opposed? That's unanimously approved.

13 MR. SPARKS (EL PASO): Let me ask you,
14 in the rewrite, should you address the "attorney
15 in charge" problem and just simply say, "The
16 substituted shall be the attorney in charge"?
17 Because Rule 8, as we've talked about it, really
18 doesn't cover it.

19 CHAIRMAN SOULES: Let's just leave "in
20 charge" where it appears both times.

21 PROFESSOR EDGAR: And then say, "Under
22 the state bar number of the substitute attorney,
23 who shall become the attorney in charge."

24 MR. SPARKS (EL PASO): I think you
25 ought to leave out the "in charge" where it's

1 knocked out because I don't think the rule makes
2 sense. It would be a conflict with the rules.
3 All you have to do is, getting out of the attorney
4 in charge under Rule 8, just file another
5 certificate and somebody else is the attorney in
6 charge. But the substitute attorney who signs on
7 should be the attorney in charge, and you can
8 apply 8 if he wants to change.

9 CHAIRMAN SOULES: I see the problem
10 there, and I think what we need is a sentence that
11 says, "If the attorney in charge is the attorney
12 that withdraws, then the attorney substituted must
13 become the attorney in charge."

14 MR. SPARKS (EL PASO): I agree with
15 that.

16 CHAIRMAN SOULES: All right. Then
17 another attorney in charge must be designated
18 because it might be some co-counsel that's already
19 there. "If the attorney in charge is the attorney
20 who withdraws, then another attorney in charge
21 must be designated." Does that get at that
22 problem?

23 MR. SPARKS (EL PASO): Yes.

24 CHAIRMAN SOULES: We'd need that in
25 there, too, Judge Thomas.

1 JUDGE THOMAS: Okay.

2 JUSTICE WALLACE: All right. The one
3 who substituted will be the attorney in charge
4 unless otherwise designated.

5 CHAIRMAN SOULES: Well, suppose it's a
6 co-counsel who withdraws.

7 JUSTICE WALLACE: The attorney in
8 charge is what we're talking about here.

9 CHAIRMAN SOULES: Actually, the rule
10 reads, "with any attorney" -- Judge, we're over
11 here on Page 105. It's written a little bit more
12 broadly.

13 JUSTICE WALLACE: Yes. They struck
14 out "in charge." I see, okay.

15 CHAIRMAN SOULES: So any lawyer who
16 gets out, another one can get in. For good cause
17 a lawyer can get out without putting another one
18 in. But if it's the attorney in charge who
19 withdraws, then another -- let's just put then
20 another -- "if the attorney in charge withdraws,
21 another attorney must be designated as attorney in
22 charge."

23 That would speak to something that is not
24 here. And that is, if no new counsel is brought
25 in. It could be a counsel already there. "If the

1 attorney withdrawing is the attorney in charge,
2 another counsel must be designated as attorney in
3 charge, designated of record with notice to the
4 other parties." Okay. We'll get that transcript
5 to you.

6 Now, with those changes is everybody still in
7 favor of the change? Any opposition? Okay. That
8 still stands unanimous. Okay. Judge, what's
9 next?

10 JUDGE THOMAS: All right. Go back, if
11 you would, to Page 94. And this is a proposed new
12 rule -- and under the new, as we have made some
13 amendments today, the number obviously would not
14 be 10-A. But attorney vacations, which is, I
15 know, the -- for instance, the Dallas courts are
16 trying to deal with at the present time with a
17 local rule. And that would be to assure an
18 attorney that he or she could designate a vacation
19 period not to exceed four weeks in either June,
20 July or August, and you get to go on vacation
21 without any further hassle with the Court.

22 MR. SPARKS (EL PASO): It's a trap. I
23 move that we reject proposed Rule 10-A. Every
24 local court I practice in has local rules on
25 vacations and you work it out. If you put

1 something in the rules, I think it traps as much
2 as it gives freedom.

3 MR. BEARD: I second it.

4 CHAIRMAN SOULES: Moved and seconded
5 that proposed 10-A be rejected. Is there any
6 further discussion? Those in favor show by hands.
7 Opposed? That is unanimously rejected.

8 JUDGE THOMAS: All right, moving to
9 Page 98. I would invite you to review this
10 proposed 10-B, and that is "Conflicts In Trial
11 Settings." And one editorial comment is, I
12 certainly would not like to see number 1 go into
13 effect. I see number 3, for instance, to be
14 really sort of a codification of practice.

15 MR. MCCONNICO: Judge, what's the
16 history of this proposed rule?

17 JUDGE THOMAS: Actually, this comes
18 about from the administrative judges. And the
19 problem being in the larger areas, the attorneys
20 working one court against the other. And "I can't
21 go to court; I'm in thus and so." And it really
22 is creating a lot of problems, I understand, in
23 the larger areas. I don't know about the smaller
24 counties.

25 MR. SPARKS (EL PASO): This, again, is

1 a real problem for judges, in this Paragraph 4.
2 But I just don't see how we can handle a rule like
3 that, a rule that's not going to do anything, in
4 my judgment, but make it worse. And this rule
5 really doesn't do much.

6 MR. BEARD: I'm like Sam, I think
7 that's a problem that there's really no way to
8 draw a rule of the courts for abuses -- they've
9 got all sorts of things they can do. And I move
10 we reject this proposal.

11 MR. BRANSON: We might want to look at
12 something. And I, personally, had a very
13 unfortunate experience along these lines earlier
14 in my practice. One of the senior partners, who
15 had a comparable trial docket to mine, herniated a
16 disk in his back, and I inherited the six-month
17 period, his docket and mine, too. He was having
18 to announce ready on Monday mornings for about
19 that period of time on about 40 lawsuits every
20 Monday morning. Went to trial on one Monday in a
21 district court in Dallas, and it happened to be
22 the district court in Greenville had docket call
23 that Monday, so I sent an associate over to
24 announce that I was in trial, only to have my case
25 dismissed because I wasn't at docket call.

1 And when the trial judge that I was in with
2 called and said we've been in trial here for a
3 half a day, the judge then suggested that I
4 probably ought to have grievance proceedings
5 brought for having too many cases. I don't know
6 how you'd manage that, but it certainly was an
7 uncomfortable situation at the time.

8 PROFESSOR EDGAR: Well, isn't this
9 something that Administrative Rules could more
10 effectively deal with than the Rules of Civil
11 Procedure?

12 MR. SPARKS (EL PASO): Good judges can
13 deal with it.

14 PROFESSOR EDGAR: I mean, I'm talking
15 about, for example, comity. Couldn't the
16 presiding judge contact the local federal judges
17 and try and work out some type of comity in trial
18 settings rather than having something like that in
19 the Rules of Civil Procedure?

20 MR. SPARKS (EL PASO): I second Pat's
21 motion.

22 CHAIRMAN SOULES: The motion having
23 been moved and seconded that this be rejected.
24 Any further discussion? Those in favor show by
25 hands. Opposed? It is unanimously rejected.

1 JUDGE THOMAS: That's it for today.

2 CHAIRMAN SOULES: That's all that you
3 have, Judge?

4 JUDGE THOMAS: There's one other, but
5 I'll work on it. It's one that came in like last
6 week, and I can't find my letter.

7 CHAIRMAN SOULES: Here's one on Rule
8 3-A.

9 JUDGE THOMAS: Okay. Going back to
10 Page 82. There are actually two proposed changes
11 to 3-A. One appears on Page 82, and one appears
12 on Page 103.

13 The version on Page 82 coming from the
14 Counsel of Administrative Judges, it seems to me,
15 what they've done is they have said, "Okay. You
16 folks can make your local rules. You will first
17 send them to the administrative -- the presiding
18 judge of the administrative district, and you will
19 do it on or before a certain day each year. The
20 presiding judge will submit, in writing, either
21 support or opposition to the rules to the Supreme
22 Court on or before a certain day."

23 CHAIRMAN SOULES: On this, are we in a
24 position more or less of having to wait on the
25 action on the Administrative Rules?

1 MR. BEARD: I move we table that.

2 CHAIRMAN SOULES: Now, that's not the
3 case on Page 103, which is a little different.
4 The only thing Page 103 adds is that local rules,
5 after they have all been approved and done like
6 Rule 3-A now does, isn't it Judge, that they have
7 to be published for 30 days and made available to
8 counsel?

9 JUDGE THOMAS: Exactly.

10 CHAIRMAN SOULES: Any opposition to
11 those changes? Those in favor of those changes
12 show by hand.

13 MR. BRANSON: Will you give us just a
14 second?

15 CHAIRMAN SOULES: Sure. Absolutely.

16 MR. SPARKS (SAN ANGELO): I don't see
17 the changes.

18 CHAIRMAN SOULES: It's just that
19 Paragraphs 3 and 4 are added.

20 JUDGE THOMAS: It just says that it
21 will not become effective until at least 30 days
22 after it's published.

23 MR. BRANSON: Would it be possible to
24 just put in an automatic kicker where copies of
25 the local rules are automatically furnished to

1 out-of-county lawyers that become involved with
2 litigation? This sure would expedite a lot of
3 things.

4 PROFESSOR EDGAR: How are you going to
5 get it mailed? I mean, are you going to put that
6 burden on the clerk of the court?

7 MR. BRANSON: Yes. Somebody deals
8 with the filing. If you've got a file mark on an
9 out-of-county lawyer, just send a copy of the
10 local rules. See, because what happens is, you've
11 got a copy of the local rules and they've been
12 amended. And you're dealing under amended set.
13 Then you're dealing under amended set. Then you're
14 attempting to act with your old set. And if
15 you're not in that county all the time, you
16 probably wouldn't know about the changes and you
17 think you've covered your backside and the
18 client's backside by originally requesting a set
19 of rules.

20 PROFESSOR EDGAR: I understand that.
21 But are you going to ask the clerk then to go
22 through all of the cases on file to see what
23 out-of-county lawyers have cases pending in the
24 court?

25 MR. BRANSON: Well, won't the clerk at

1 the time of filing know?

2 PROFESSOR EDGAR: I mean, I'm trying
3 to figure out how you implement it, Frank. That's
4 all I'm asking. How is the clerk going to know
5 that you have a case on file without going through
6 all the cases to see?

7 MR. BRANSON: How about the first time
8 the clerk mails something to the lawyer? I mean,
9 that's an easy time to check; they're having to
10 address envelopes anyway.

11 CHAIRMAN SOULES: We're going to have
12 problems with the clerk, Frank, if we require them
13 to read the pleadings and decide whether or not
14 they need to send out rules, I think; I'm not
15 sure.

16 MR. BRANSON: Maybe no one else has
17 encountered that problem. We've encountered it a
18 time or two. And we thought we were diligent in
19 acting under the set of rules we had and they
20 weren't over a year or two old.

21 PROFESSOR EDGAR: Would it be
22 practical to have it every time a local rule is
23 changed to something to be published in Bar
24 Journal?

25 MR. MCCONNICO: That would not be

1 practical.

2 PROFESSOR EDGAR: But I'm trying to
3 think of a way, though, to give everybody notice
4 of changes in local rules. And I certainly think
5 it should be done. I think you ought to have fair
6 notice of changes. I'm just wondering how you can
7 do it.

8 CHAIRMAN SOULES: About the only way
9 you can do it is request it whenever you send in
10 your pleadings.

11 MR. BEARD: 3-A is changed by those
12 proposed Administrative Rules. It's just another
13 conflict we have, as they are now.

14 CHAIRMAN SOULES: Well, not 105. I
15 don't think that --

16 MR. BEARD: Well, the proposed rule,
17 the presiding judge must approve all local rules
18 and all the courts in the county are supposed to
19 get together to -- the conflict.

20 CHAIRMAN SOULES: Pat, not with what's
21 on Page 103. Because it doesn't give all that
22 schematic about how it finally gets to the Supreme
23 Court. It just says it's got to be approved by
24 the Supreme Court, and it's not going to be
25 approved by the Supreme Court until it goes

1 through the Administrative Rules if those are ever
2 adopted. Now, the one that's over here on 90 --

3 JUSTICE WALLACE: I think the Supreme
4 Court can very easily handle these unknown changes
5 in local rules because we can just set a policy,
6 we will approve local rules effective such and
7 such a date. And all that accumulates up and then
8 they will be approved and everybody will know
9 they've been approved until the next date that we
10 approve local rules there won't be any.

11 CHAIRMAN SOULES: For example, January
12 1 of even years or something like that.

13 JUSTICE WALLACE: Yes, like we're
14 talking about on rules.

15 MR. BRANSON: That's a good idea.
16 That's a good practical suggestion. With that in
17 mind, I don't see any problem.

18 CHAIRMAN SOULES: Okay. Those in
19 favor of the changes suggested on Page 103 to Rule
20 3-A, show by hands. Opposed? That's unanimously
21 adopted.

22 JUDGE THOMAS: That's it.

23 CHAIRMAN SOULES: There's a Rule 12
24 over here for disposition of exhibits. Judge, why
25 don't we just leave that for you review all this?

1 There's quite a letter from Ray Hardy that goes
2 from 106 to 110.

3 JUDGE THOMAS: It is all dealing with
4 the matters that we took up on where notices go
5 and so forth.

6 CHAIRMAN SOULES: Well, we haven't
7 dealt with this disposition of exhibits part.

8 JUDGE THOMAS: Yes, that's why I was
9 asking Edgar earlier. I thought that probably
10 what we would want to do would be to handle
11 exhibits much like we handle the disposition,
12 including other things.

13 CHAIRMAN SOULES: Will you work with
14 Hadley then?

15 JUDGE THOMAS: Sure.

16 CHAIRMAN SOULES: And get some sort of
17 proposal on that for our next meeting. If you can
18 get these proposals to me, you know, as early as
19 you can, say 30 days. If you can get it to me by
20 the end of July or middle of August, then I can
21 get them in one of these books.

22 CHAIRMAN SOULES: Did we cover the
23 proposed change to Rule 13?

24 JUDGE THOMAS: Well, what the Mesquite
25 attorney is asking on Page 116, Rule 13 be amended

1 to provide for contempt in cases where pleadings
2 are filed for the purposes of securing a delay of
3 the trial and of any hearing of the case.

4 JUSTICE WALLACE: That's contempt in
5 the presence of the court. He can deal with it
6 right then and there.

7 MR. SPARKS (EL PASO): Didn't we
8 handle that yesterday, too, on 18-A?

9 JUDGE THOMAS: Well, yes.

10 MR. BRANSON: What does Rule 2 of the
11 Federal Rules say? Does anybody know?

12 CHAIRMAN SOULES: Rule 13 deals with,
13 if you do all these things for the purpose of
14 securing and delaying the trial for cause. He
15 just wants that expanded to, not only trial of
16 cause, but also any hearing in the cause, instead
17 of just the trial of the cause. And really, Rule
18 13 is another one of the old rules that probably
19 never has been amended. I don't know how you can
20 bring a fictitious suit for the purpose of
21 delaying a cause.

22 MR. BRANSON: I was going to say, it
23 sounds to me like any time you try to change the
24 existing law, you're in violation of Rule 13.

25 CHAIRMAN SOULES: But that's not what

1 he's saying. Do we want to expand the application
2 of this rule in any hearing or just leave it
3 alone?

4 MR. BRANSON: Without regard to his
5 recommendation, is there a need, in all candor, to
6 look at Rule 13?

7 JUDGE THOMAS: Well, see my position
8 would be that Rule 13 doesn't really do anything
9 for us anyway. We have the inherent power, as I
10 understand it, by contempt.

11 JUSTICE WALLACE: I mean, you can
12 deal with it summarily right then and there if
13 he's out of line.

14 JUDGE THOMAS: We have the new rules
15 on attorneys in contempt and how you handle those.

16 CHAIRMAN SOULES: Okay. Is there a
17 motion to reject this Rule 13 suggestion? It's
18 been moved by Frank Branson and seconded by Judge
19 Thomas. We reject the proposal to have Rule 13 as
20 found on Page 116. Those who favor rejection?
21 Opposed? Okay. That's unanimously rejected.

22 MR. BRANSON: Would it be worthwhile
23 if we look at 13 to maybe just kick it around for
24 a minute, Luke?

25 CHAIRMAN SOULES: Well, Frank, let's

1 try to get through with what we've got here on the
2 docket, if you will. I mean, if you want to
3 rewrite something about that -- I realize it's
4 kind of an unusual rule, but let's try to get
5 through all of Judge Thomas' docket because we
6 wanted to -- I don't know if we'll ever get to 277
7 and 279 again at this meeting.

8 MR. BRANSON: Okay. I'll withdraw
9 it.

10 CHAIRMAN SOULES: I'm just trying to
11 get on with what is on the docket. Let's see,
12 what is this suggestion on heritage?

13 PROFESSOR EDGAR: That goes back to
14 the supersedeas bond matter we discussed earlier.

15 CHAIRMAN SOULES: Well, this 14-C,
16 though, this is not just supersedeas.

17 MR. BRANSON: But he says which, in
18 turn, could be used to supersede a judgment, and
19 then he goes on to talking about supersedeas
20 judgments, the whole problem.

21 CHAIRMAN SOULES: Okay. So we've
22 rejected this submission by Jim Kronzer on Pages
23 118 and 119?

24 PROFESSOR EDGAR: In the sense that he
25 recommended we consider something similar to

1 proposed Rule 364-A, which was rejected this
2 morning, the answer is "yes."

3 CHAIRMAN SOULES: And that was
4 rejected 8 to 4, as I understand it. I was not
5 here.

6 MR. BRANSON: Yes. Luke, could we
7 take just a minute and look at a housekeeping
8 problem?

9 CHAIRMAN SOULES: Yes, sir.

10 MR. BRANSON: I notice we're down here
11 at 20 minutes to 12 on the third day of this
12 meeting, and our number has diminished to much
13 less than we've had any other time. In light of
14 Hadley's recommendation earlier that we -- and
15 there's some merit to the proposition, that what
16 we're doing is one set of members of this
17 committee who are present at one meeting are
18 making recommendations. And the next time the
19 committee meets, a different majority is present
20 and additional recommendations are made. Might
21 we, perhaps, look at the issue of whether we
22 either want to recommended, which would encourage
23 people to remain at the meetings?

24 CHAIRMAN SOULES: The only thing, the
25 Committee on Administration of Justice up until

1 the early 80's and for a period before that -- I
2 don't know when it started -- became a very poorly
3 attended session. It was an honor to be on it,
4 but you didn't go to it and they didn't do any
5 business. And I'll just say that was the way it
6 was, because I was there about three years and
7 went to the meetings.

8 When the meetings became more frequent and
9 the Chair refused to entertain motions to
10 challenge lack of quorum and business started
11 rolling through that committee, attendance picked
12 up. And I think it's still good. The only thing
13 we can do, of course, is just keep having sessions
14 and hope people will be here.

15 But the sense of it that we would change what
16 we would listen to has been voted on.

17 MR. BRANSON: Let me give you an
18 example. We're now about to address 277.

19 CHAIRMAN SOULES: No. I don't know if
20 we're ever going to get there.

21 MR. BRANSON: But assume we did, Luke.
22 That was discussed, generally, in very heated
23 discussions before most of the full committee.
24 Now, what we're dealing with today are really
25 recommendations that represent a majority of the

1 whole committee.

2 And this group came down on those issues with
3 a slightly different vote, which is certainly
4 possible. We would then, by majority present on a
5 subsequent date, change the wishes of the whole.
6 And I'm not saying it's right or wrong. It's just
7 a housekeeping problem that might be worth
8 addressing, particularly, in light of Hadley's
9 previous motions. Is there any feel from the
10 Chair or any other members of the committee?

11 CHAIRMAN SOULES: The only feeling I
12 have is, we can only work with the people that are
13 here. And those that are not here -- and some of
14 them have very good reasons that I know of. And I
15 imagine others have very good reasons that you-all
16 know of. But we are going to tend to our business
17 when the sessions have been declared to be in
18 session. And I'm not trying to be arbitrary about
19 that, Frank; I just don't know any other way to do
20 it.

21 MR. BRANSON: Well, I'm just asking --

22 CHAIRMAN SOULES: I think at any time
23 that somebody feels that we don't have a
24 representative group for a specific matter, and
25 the specifics of that are brought to the attention

1 -- and a consensus -- like Franklin Jones and Jim
2 Kronzer are not here. They were very active, the
3 two of them and others on the charge issues. And
4 if the committee wants to -- because I'm sure they
5 both have good reasons for not being here. I say,
6 let's wait until next and give them another chance
7 to come and we table by vote any individual
8 items. I think that's certainly something that
9 the Chair would have to entertain, but we can
10 hardly entertain the foregoing of business.

11 MR. BRANSON: That handles the
12 problem.

13 CHAIRMAN SOULES: Does that handle it
14 for you?

15 MR. BRANSON: Yes.

16 CHAIRMAN SOULES: Okay. Maybe that's
17 the motion that you would have, and that we table
18 to the charge issues until next time; I don't
19 know. I mean, I'm not trying to suggest a motion,
20 but Hadley, I know, would like to get on with it.
21 What is the consensus? Should we go on to other
22 matters or should we turn to those at this
23 juncture?

24 PROFESSOR EDGAR: David Beck asked me
25 earlier -- we didn't take a break, he just asked

1 me if I thought we were going to take them up, and
2 I said I really didn't think we were. And he
3 said, "Well, I sure would stay if we were."

4 So I would suggest that we go on to other
5 matters if we can, and defer any consideration of
6 those until we do have a larger committee.
7 Because this is a very sensitive area, and I don't
8 think that we ought to try and solve those more
9 important problems if you can assign relative
10 areas of importance without a larger
11 representation.

12 CHAIRMAN SOULES: Which is easier for
13 people, Saturday morning? I'm trying to figure
14 out when in our September sessions we're going to
15 have the most people here. Of course, that's
16 reading the crystal ball. Do you think we'll have
17 more people here Friday morning or Saturday
18 morning?

19 MR. NIX: Friday morning.

20 MR. SPARKS (EL PASO): We've never had
21 a good turn out on Saturday morning, never.

22 MR. SPARKS (SAN ANGELO): Luke, I
23 don't think that answers the problem. I think you
24 said it right on the head. Because what I see
25 happening -- the Task Force Rules, we sat here and

1 talked about those all day Thursday. First thing
2 I hear -- you got a revelation on the way down
3 here. I mean, these things are hashed over and
4 over and over.

5 Now, again, are you going to say there's more
6 people here on Friday mornings, we're going to
7 take up 277. I'll guarantee you that Saturday
8 morning it will be talked about again. The answer
9 is attendance of the meeting. I think you've said
10 that, and I agree with you.

11 CHAIRMAN SOULES: I want to get a
12 schedule on 277 and 279 at the point in time where
13 those few of us that are left feel like we're
14 going to have the most people. And I'll put it on
15 the agenda first thing either Saturday morning or
16 Friday morning so that we can get to it next
17 time. We had other matters that were pretty much
18 imposed on us for scheduling-wise it this time.

19 MR. SPARKS (EL PASO): You'll have
20 more here Friday.

21 CHAIRMAN SOULES: -- has been delayed
22 three times, and we had rules we had to get to and
23 the Administrative Rules and now we're here. How
24 many feel that that should be set first thing
25 Friday morning, the charge? All right. On

1 September the 12th.

2 MR. BRANSON: Luke, it might be
3 better to set it about 10 o'clock on Friday
4 morning because what happens is the same thing
5 that happened this time. Some of us were here at
6 8:30 and some people had airplanes that were late
7 getting here and that has historically been the
8 way -- generally, most people arrive by
9 mid-morning on the first day.

10 CHAIRMAN SOULES: Give me this
11 leeway. Justice Pope, of course, is still one of
12 our representatives. He is inactive, and
13 deservedly so in many cases. And he could not be
14 here today at this time because of a conflict.

15 I will, with your permission, call him and
16 ask him when he can be here and then say that
17 whatever we're doing, if he can be here at all, at
18 that time and on that day. Maybe that's the best
19 way to do it, that we're going to take it up while
20 he's here and let him speak to it at noon. Is
21 that okay?

22 PROFESSOR EDGAR: Sure.

23 CHAIRMAN SOULES: Okay. And I'll try
24 to get it, though, on Friday so that -- I think,
25 the consensus is that we'll have more people here

1 Friday.

2 Okay. What else, Judge. We've got 27-A or
3 B. Are those in your bailiwick?

4 JUDGE THOMAS: No.

5 CHAIRMAN SOULES: Okay. We've covered
6 all those with Sam's report anyway. Now, let's go
7 to -- Sam, I'm trying to get to 215. It's a
8 suggestion by Judge Phillips. And is that the one
9 we acted on where he just wanted to enter an order
10 compelling discovery in the sanctions?

11 MR. SPARKS (EL PASO): Yes.

12 CHAIRMAN SOULES: So we've acted on
13 that.

14 MR. SPARKS (EL PASO): Yes. And
15 wasn't that just rejected?

16 CHAIRMAN SOULES: It was. We've
17 covered all Judge Thomas' rules, and all of Sam's
18 rules. And Franklin's we're going to delay
19 unless --

20 PROFESSOR BLAKELY: Mr. Chairman,
21 you're not assuming that you're finished with Item
22 6, the Evidence Committee?

23 CHAIRMAN SOULES: No. And that's
24 right.

25 PROFESSOR BLAKELY: There's one tiny

1 little item.

2 CHAIRMAN SOULES: Let's cover that.

3 PROFESSOR BLAKELY: All right. This
4 begins on Page 657. This deals with 3737-h. The
5 1985 legislature rewrote 3737-h and put it in the
6 Civil Practice Remedies Code. It made no changes
7 in substance; it simply rewrote the form as part
8 of the legislature's continuing codification
9 process and it does repeal 3737-h.

10 At the same time, the same legislature
11 amended 3737-h as if it were alive and well,
12 changing notice times and changing the
13 qualifications of the counter-affiant; it upped
14 the qualifications. Mr. Gary Beckworth wrote in,
15 and on page 657 I've quoted the key paragraph from
16 his letter. He says, "It appears that the
17 repealer in the amendment pursuant to, so and so,
18 does not preserve for causes filed after September
19 1 of the authority of Section 1(a)."

20 Well, insofar as 3737-h basically is
21 concerned, it's now still alive over in the Civil
22 Practice and Remedies Code. The legislative
23 action that ups the qualifications of the
24 counter-affiant and that changes the notice time
25 -- lengthens the notice time, must be construed

1 with the Civil Practices and Remedies Code rewrite
2 and it would prevail.

3 So, in essence, 3737-h is still on the books
4 as a part of the Civil Practice and Remedies Code,
5 but must be read with the legislative amendment
6 with higher requirements that superimpose.

7 So I think the legislature has attended to
8 Mr. Beckworth's concerns. His letter indicates
9 that this might be a part of the Rules of
10 Evidence. The Rules of Evidence Committee does
11 not want 3737-h in the Rules of Evidence because
12 it deals with sufficiency of evidence. And our
13 effort has been to limit the Rules of Evidence to
14 admissibility and one from sufficiency.

15 So I recommend that this committee tell the
16 Supreme Court that we feel that the legislature
17 has attended to Mr. Beckworth's concerns. And
18 this detailed analysis that I put in over here on
19 659 and 660 explains all of that in more detail.
20 So I move that this committee notify the Supreme
21 Court. We feel that the Court should take no
22 particular action on that.

23 CHAIRMAN SOULES: Second?

24 PROFESSOR EDGAR: Second.

25 CHAIRMAN SOULES: Discussion? All in

1 favor show by hands. Opposed? That's unanimously
2 rejected. That is, the suggestion to be made is
3 unanimously rejected. And the Court will be
4 employing this. The Legislature, in our judgment,
5 has handled the problem.

6 Pat, why don't we cover some of your rules.
7 We're scheduled to be here until 1 o'clock. Can
8 we take five minutes or ten? Let's recess until
9 noon and then we'll spend an hour on Pat Beard's
10 area.

11
12 (Brief recess.)

13
14 MR. BEARD: Turn to Page 503.

15 CHAIRMAN SOULES: The exotics of
16 extraordinary risks. Page 503.

17 MR. BEARD: We have Rules 657, 621-A
18 and 696. The only changes are to change the
19 referencing to revise the Civil Statutes to the
20 new Texas Civil Practice and Remedies Code. I
21 move that we adopt these amendments in all three
22 of those rules.

23 CHAIRMAN SOULES: That's 657 on 503.

24 MR. BEARD: And 621-A which follows
25 and 696.

1 MR. MCCONNICO: Second.

2 JUDGE TUNKS: What page is that?

3 CHAIRMAN SOULES: Page 503, 4, and 5,
4 isn't it?

5 MR. BEARD: Right. 503, 4, 5, and 6.

6 CHAIRMAN SOULES: Any discussion?

7 Those in favor, show hands. Those are adopted
8 unanimously.

9 MR. BEARD: Next change here is a
10 proposed new Rule 37, which was suggested by Jay
11 Jogelson in Dallas, which I drafted.

12 John O'Quinn opposed this following the
13 federal statute on interlocutory appeals on
14 questions which might be resolved by an appellate
15 ruling.

16 It is my recommendation that we reject this
17 proposed rule. If an interlocutory question which
18 would dispose of the case is involved, that would
19 mean that it's a novel question that the Supreme
20 Court has not acted on.

21 The statute would not give the Supreme Court
22 any jurisdiction except on a conflict question.
23 If it's a novel question there wouldn't be any
24 real conflict. So I see nothing to be gained by
25 taking the appeal to the Court of Appeals to make

1 the ruling to then dispose of the case and then go
2 back down and enter an order and then have to go
3 all the way back up again. And, now --

4 CHAIRMAN SOULES: You may not have
5 jurisdiction in the Court of Appeals for that
6 anyway under the statute.

7 MR. BEARD: Well, it's my opinion that
8 we have the power to adopt the rules to give
9 appeals on interlocutory orders.

10 CHAIRMAN SOULES: Okay.

11 MR. BEARD: There are those who
12 disagree with me about that, but I think we do.
13 But, nevertheless, there's nothing to be
14 accomplished when we really don't dispose of the
15 case. So I move that we reject.

16 PROFESSOR EDGAR: I second the motion.

17 CHAIRMAN SOULES: Any discussion?
18 Those who favor rejecting this, show by hands.
19 Opposed? That is unanimously rejected.

20 MR. BEARD: The next proposal to amend
21 621-A, Rule 627.

22 CHAIRMAN SOULES: That starts on Page
23 513.

24 MR. BEARD: Page 513. And this is the
25 discovery -- to stop discovery after the rendition

1 of a judgment. Under our present Rules, as soon
2 as a judgment is rendered, the prevailing party,
3 the plaintiff, I guess it would be in most cases,
4 has the right to begin discovery, unless the
5 supersedeas bond is posted.

6 I wrote to my committee that I was opposed to
7 the proposed amendment to change and it was my
8 opinion that we should leave the rule as it is,
9 and for the committee to advise me if they
10 disagreed. I heard from no members of the
11 committee. So I move that Mr. Pace's proposed
12 changes be rejected.

13 PROFESSOR BLAKELY: Seconded.

14 CHAIRMAN SOULES: The effect of this
15 is to permit discovery immediately following
16 judgment before motion for new trial or that sort
17 of thing has been ruled on. And that's what the
18 rules are now.

19 MR. BEARD: That's what the rules are
20 now.

21 CHAIRMAN SOULES: And our vote would
22 be to leave that like it is, not to change it as
23 requested. How many feel that the practice as it
24 is now should be retained? Show by hand. How
25 many feel that this change should be adopted? All

1 right. The change is rejected unanimously.

2 MR. BEARD: Let me get over to the
3 next -- repeat some of the back up. There have
4 been several suggestions to change the rules
5 concerning temporary restraining orders. Judge
6 Thomas has referred to that discussion about
7 something here, and that is the Court enters the
8 TRO and can't find the defendant to serve him
9 so --

10 PROFESSOR BLAKELY: Excuse me, Pat,
11 what page.

12 MR. BEARD: It starts on page 565.

13 CHAIRMAN SOULES: 565, okay.

14 MR. BEARD: One of the suggestions was
15 that the TRO remain in effect and that you have
16 regular docket calls on TROs. It goes back to
17 really, I suppose, more of a big city problem.

18 It would appear to me that if you can't get
19 the defendant served with a TRO, there's not all
20 that much necessity for that TRO because you can't
21 find him, and he's going to be acting -- or
22 whatever he's going to do anyway.

23 I realize that in domestic relation cases if
24 you get the TRO and lay it on him, that might
25 prevent him from going and beating up his wife or

1 what have you. I don't know of any way to have a
2 uniform rule throughout Texas because these
3 multi-county districts have no way to come back to
4 have a hearing on a regular docket call to take
5 care of TROs and domestic relation cases.

6 So in that effect, I just gave up on any
7 practical way to do it. And it's my
8 recommendation that we leave the rules as they are
9 with respect to TRO's and they would expire. If
10 you don't serve --

11 CHAIRMAN SOULES: Don't make any
12 special exceptions for family matters is requested
13 here.

14 MR. BEARD: I don't know how to do it
15 in a family matter. You've got to have a time in
16 which it's going to be heard, and you can't do
17 that -- maybe Dallas or Houston can do that and
18 have a judge available to hear all those TROs.
19 There's no way to do that in most of the state.

20 CHAIRMAN SOULES: The Committee on
21 Administration of Justice voted to reject these
22 proposed changes of 680 and 683 that are contained
23 here, except the Committee on Administration of
24 Justice voted to change the 10 days to 14 days
25

1 because 10 days -- if you get a TRO on Friday --
2 let's see, how do you count the days?

3 I think you have to have the hearing the
4 following Friday because you can't even make it to
5 Monday and no one knows, really, whether the 10th
6 day expires if it's Sunday or if it's extended to
7 the next day, which is neither a Saturday, Sunday
8 or a legal holiday as some things get extended.

9 And if you have a time period in the TRO
10 that's 14 days, any weekday that you enter that
11 order on or sign the order, it's going to fall on
12 a weekday on the 14th day, and that makes sense.

13 MR. BEARD: That may be acceptable in
14 domestic relation cases, but I'm opposed to
15 extending any time to let TROs. It needs to be
16 heard.

17 CHAIRMAN SOULES: Well, 10 to 14 days
18 only -- just so we don't run into this question of
19 exactly what day is the 10th day. We know what
20 day is the 14th day if the thing is signed on a
21 weekday. In other words, it would only add 4
22 days, Pat, it doesn't add anything else.

23 MR. BEARD: I am philosophically
24 opposed to extending that time when you have those
25 TROs without notice. I think they can be heard

1 because the courts tend to, you know, extend them
2 and do all sorts of things anyway.

3 CHAIRMAN SOULES: Well, shall we vote
4 on everything except whether we go from 14 to 10,
5 because that's the only thing that was recommended
6 by the COAJ, or do we just want to vote it all
7 down? Let me just say, first -- let me take a
8 vote. How many would reject these proposals
9 except, perhaps, for extending 10 to 14? We'll
10 take a vote on that.

11 MR. BRANSON: Could I hear from Judge
12 Thomas on how -- whether or not she thinks
13 anything can be done in the DR courts or needs to
14 be done different?

15 PROFESSOR EDGAR: I'd like to hear
16 from Judge Thomas, too.

17 JUDGE THOMAS: As I understand the
18 position of the counsel to be, and all of this
19 originated out of the family law counsel is, if
20 they really had their wishes, I think what they
21 would want is the family law matters actually
22 exempted from the rule. I personally am not
23 particularly in favor of that, but would be in
24 favor of an additional four days.

25 The problems are really in the smaller

1 counties because the larger metropolitan areas we
2 have our temporary restraining order dockets
3 almost daily anyway. So it's not a problem in
4 Dallas or Fort Worth, Houston.

5 CHAIRMAN SOULES: Those who would
6 reject everything but the extension of time and
7 then we'll get a vote on that. You may vote to
8 reject that, too, but those who reject everything
9 but the extension of time as suggested for 680 and
10 683 show by hands. Okay. Those who are in favor
11 of adopting those? Those are rejected
12 unanimously.

13 Okay. On the issue of changing 10 to 14
14 days, how many favor changing to 14 days? How
15 many would keep the 10 days, would want to keep
16 the 10 days? 5 to 3. So 10 to 14 days passes 5
17 to 3.

18 PROFESSOR EDGAR: Let's go back just
19 briefly to Page 543 for just a minute.

20 CHAIRMAN SOULES: All right.

21 PROFESSOR EDGAR: This is rule 621
22 which we are voting to retain. It refers to
23 Article 3773. Is that now part of a remedies code
24 or anything? Should that reference be recodified
25 in any way? I guess maybe you'll know.

1 PROFESSOR BLAKELY: No, I don't.

2 PROFESSOR EDGAR: I'm just wondering
3 while we're cleaning that up if Rule 621-A makes
4 reference to Article 3773-A VATS. And I'm just
5 wondering if that statutory reference should be
6 changed.

7 MR. BEARD: I don't know. Really, I
8 did not look at it.

9 CHAIRMAN SOULES: We might check it.
10 It's probably a 10-year statute, isn't it?

11 PROFESSOR EDGAR: I don't know, but
12 nearly everything has been changed. And it just
13 seems to me that --

14 CHAIRMAN SOULES: Would you check
15 that, Pat?

16 MR. BEARD: Yes. Wicker sent those
17 things in and I just put them in there without
18 ever, you know, double checking it myself. I was
19 assuming he got them all.

20 CHAIRMAN SOULES: Okay. Let's see.
21 That gets us to what page, Pat?

22 MR. BEARD: Now, we go to Page 579.
23 Under the present rule 685 the language is, "Upon
24 the grant of a temporary restraining order the
25 party to whom it is granted shall file his

1 petition, therefor." And the question that was
2 raised is another big city problem, I guess, and
3 that is that you can go select your judge first to
4 get your TRO before you file it. And we've lived
5 with this rule for a long time, and as far as I'm
6 concerned, I would reject the proposed change and
7 leave it just like it is.

8 MR. BRANSON: Second.

9 CHAIRMAN SOULES: Moved and seconded.
10 Any further discussion? Those who would reject
11 the proposed change to Rule 685 show by hands,
12 please.

13 PROFESSOR EDGAR: Well, Keltner raises
14 a question here, and I don't know if it's a real
15 one or not. But at the bottom of Page 579, that
16 this perhaps might result in a situation where you
17 seek it and have it refused and then you go
18 somewhere else.

19 MR. BEARD: Well, I think that can
20 very well occur. I don't object to that.

21 CHAIRMAN SOULES: And the discussion
22 of COAJ was, you've got only 10 now. If we can
23 get the change to the Supreme Court 14 days, any
24 party can file a motion to dissolve -- I mean, you
25 can get back into court quickly if you need be and

1 that -- you know, maybe it's not as big of an evil
2 as it should be because if you start trying to
3 restrict which judge can hear these you may not
4 get the meritorious ones acted on.

5 Really, this is not something that we're
6 trying to foster, that is, go from one judge to
7 another until you finally get your orders signed.
8 But in order to have enough freedom to get an
9 order signed that you may need to get signed,
10 that's just one of evils that can be present in
11 the event of abuse or preference.

12 MR. BEARD: Outside of domestic
13 relations, you have to post a bond, you take a
14 certain risk. In the big city you don't know what
15 court your ending up with. I just wouldn't
16 change it.

17 CHAIRMAN SOULES: Well, it was the
18 talk; I mean, it was discussed. Okay. So that's
19 unanimously rejected. And I got the vote.

20 MR. BEARD: I believe that, as far as
21 I know, are all the matters that my subcommittee
22 --

23 CHAIRMAN SOULES: Let's see. Well,
24 we've got Wicker's --

25 MR. BEARD: Those are already taken

1 care of. You repeated some of this.

2 CHAIRMAN SOULES: We did?

3 MR. BEARD: Yes. We've got several
4 things that are repeated. Those are matters that
5 have already been covered. I'll have to go back
6 and see about this reference. But those cover all
7 the matters of my subcommittee.

8 CHAIRMAN SOULES: All right. What
9 about these on 598 and 599? Is that somebody
10 else's? These are the 7 -- yes, these are Jim
11 Kronzer's rules.

12 All right. Is there any other business?

13 PROFESSOR EDGAR: I would like just,
14 very briefly, to refer the committee, for no
15 action, but simply for informational purposes, to
16 the letter which you were given when you arrived
17 under cover from Fulbright and Jaworski from David
18 Beck, which was the report which was assigned to
19 David to redraft the Rules 277, 290, whatever they
20 are, charge rules.

21 And showing you how the wisdom of committee
22 action over individual thought is a wise thing, I
23 have to point out to you that I have to take
24 advantage of something that -- a motion which I
25 proposed was defeated a while ago. Because in

1 going back and redrafting Rule 277, as a result of
2 this committee's decision at our last meeting, I
3 felt that we had created a real nightmare for
4 ourselves, in that there might be some kinds of
5 cases which we could not submit broadly; you
6 couldn't submit by a general charge or a checklist
7 or by limiting instructions on a broad form, such
8 as worker's compensation.

9 And so I asked David to include the sentence
10 that appears here on the first page of Rule 277, a
11 little below the center of the page saying, "only
12 if required by the substantive law, such as
13 worker's compensation is the submission of
14 separate questions permitted." That shouldn't be
15 "submitted"; it should be "permitted." That's a
16 typo. Now, that is a change.

17 And my thought was that for us to sit here in
18 a committee and say that broad form checklist
19 limiting instructions would automatically submit
20 every conceivable kind of case, may be
21 presumptuous. And I felt that we should leave
22 some type of escape valve; a very severe stringent
23 escape valve. But if it's required by the
24 substantive law, then, perhaps the separate
25 question is going to be necessary, and I don't

1 know what language should be used.

2 I don't have any pride of authorship, but I
3 thought of worker's compensation and I've talked
4 to a number of lawyers. In fact, I attended the
5 subcommittee meeting of Pat in jury charge Volume
6 2 the other day for one purpose, to ask them
7 about this problem. And they unanimously told me
8 that they did not think that you could submit a
9 comp case either on a broad form, Nemos vs.
10 Montez-type (phonetic) submission or a general
11 charge or a checklist. And they thought that this
12 language might be necessary because in trying --
13 they have a responsibility to try and prepare some
14 worker's comp charges for a revision of Volume 2.
15 And if they can only prepare them based upon the
16 guidelines we're giving them in Rule 277, they
17 don't know how to do it.

18 Now, also, I've taken a look at the charge in
19 the Pennzoil case. Now, that was submitted on
20 separate questions. And I don't profess to know
21 enough about that particular area of the law to
22 say that you could submit it on a general charge
23 or a broad form or by checklist. I don't think
24 you can, but all I'm saying is that, we need to
25 think very carefully and allow some wiggle room

1 here and make it tight. I mean, we certainly
2 don't want courts to be able to submit cases by
3 separate questions, unless they just absolutely
4 require to do so.

5 MR. NIX: Wiggle room, such as the
6 language that you've talked about?

7 PROFESSOR EDGAR: Yes. We need to
8 have some type of escape valve, Harold, that's all
9 I'm saying.

10 MR. NIX: I understand. I certainly
11 agree with that.

12 PROFESSOR EDGAR: There may not be any
13 areas of substantive law that require separate
14 questions, but if there are then I think that we
15 need to provide for it. That's all I'm saying.
16 This is a very substantial addition to what we
17 approved last time. And because of the few people
18 here, I certainly don't think that we should
19 consider it today, but I did feel like I could
20 call it to your attention now so that you could be
21 thinking about it when we talk about it in
22 September.

23 MR. BRANSON: Hadley, couldn't you
24 handle a comp case, for example, by a general
25 charge with special interrogatories following it?

1 PROFESSOR EDGAR: But once you have
2 special interrogatories, though, then your
3 submitting separate questions.

4 MR. BRANSON: Well, but the truth of
5 the matter is you're getting -- as I have
6 encountered special interrogatories in the federal
7 court. You go ahead and get your charge answered,
8 in a general charge, and then the Court follows it
9 for it's own edification, ordinarily, with special
10 questions to allow the Judge to draw judgment.

11 Well, the judge has said total -- the jury
12 has said total and permanent from the beginning,
13 or they've said permanent, partial; or they've
14 said no injury. And then the Court could go back
15 and by special interrogatories and get the
16 beginning dates -- any date of total, the
17 beginning date of partial, that type thing.

18 PROFESSOR EDGAR: Yes, but you see
19 then you're not submitting on the broad form, nor
20 are you submitting by checklist or by limiting
21 instructions.

22 MR. BRANSON: Why couldn't you draw a
23 checklist that would do that, though?

24 PROFESSOR EDGAR: Let me just say
25 this: I talked to Franklin about this the other

1 day and he told me he was going to be unable to be
2 here. I told him what I wanted to include, and he
3 said, "I've tried to prepare a worker's comp case
4 on a general charge and I've got to confess to you
5 that I don't know how to do it," he said that.

6 MR. NIX: I did the same thing
7 recently, Hadley, and I just simply couldn't do it
8 either, frankly.

9 PROFESSOR EDGAR: And all I'm saying
10 is that, whether a worker's comp case -- and maybe
11 we shouldn't include such as worker's compensation
12 here, but it just seems to me that we need to
13 recognize that there might be some kinds of cases
14 in which the substantive law will not permit the
15 court to submit the way that we're proposing it be
16 done. And we need to provide some type of
17 relief. That's all I'm saying.

18 MR. BRANSON: Let me ask you a
19 question, and it may not be relevant, but what's
20 the problem? Why can't you -- it's been a long
21 time since I tried a comp case, but it seems to me
22 like if you put the definitions of total and
23 temporary in and ask early on and define all that
24 in the general charge and then said if you have
25 found an injury, then do you find it to produce

1 any disability, permanent; or if not permanent,
2 did it produce temporary on the ending dates?

3 Why can't you put all that in the general
4 charge and then close it with some checklist-type
5 questions? That's almost what a short form is
6 anyway.

7 MR. NIX: You could do that, but
8 that's not really what I'm considering to be a
9 general charge.

10 PROFESSOR EDGAR: Me neither. Once
11 you start including special interrogatories then
12 you're really not talking about a general charge.

13 MR. BRANSON: But you're not talking
14 about something that encourages the trial court to
15 go back to single issue submission, either.

16 MR. NIX: Yes. Your point is
17 well-taken, Frank, but it is something -- however,
18 Hadley's point is, too, and it's something we all
19 agree that we need to look at before --

20 PROFESSOR EDGAR: All I'm saying is
21 that we need to think very carefully in thinking
22 that we have covered all conceivable types of
23 cases. And I don't know this much about trust or
24 a title, either. I do know that's a statutory
25 form of action, and I don't know whether some

1 types of cases you might have to ask separate
2 questions.

3 MR. NIX: I don't know either.

4 MR. BEARD: Well, any time that your
5 theory of the law is wrong in the way you charge
6 the jury, the antitrust cases that clash with the
7 Fifth Circuit reverses over and over under the
8 general charge because the charge in the law was
9 wrong and they couldn't tell what the net effect
10 of the answers were, go back and try again.

11 MR. BRANSON: But if your charge on
12 the law is wrong, it's going to be the same thing
13 in special issues.

14 MR. BEARD: Not necessarily in an
15 antitrust case.

16 MR. MCCONNICO: I think what Hadley is
17 saying is, there's just no way we can foresee all
18 the ways these cases are going to be submitted,
19 and consequently we've got to have some wiggle
20 room and just make it restricted.

21 CHAIRMAN SOULES: That makes sense.

22 PROFESSOR EDGAR: I just simply wanted
23 to call that to the committee's attention to
24 consider at the next meeting.

25 CHAIRMAN SOULES: That makes sense. I

1 CHAIRMAN SOULES: That makes sense. I
2 guess one last matter, Bill Dorsaneo wrote to
3 Justice Wallace and indicated that the Appellate
4 Rules had a couple of very small changes that
5 needed to be done. Just, in effect, typos.

6 JUSTICE WALLACE: That second
7 paragraph, Luke, West Publishing caught that and
8 called and told me to make that correction. I
9 told my secretary to get in touch with the guy at
10 West and see if they could not get those other
11 corrections made. And I don't know what luck
12 she's had, but I think we may have gotten that
13 thing taken care of.

14 CHAIRMAN SOULES: Okay. So we put a
15 copy of that in everybody's file and I'm sure
16 everybody has approved them. Is there any dissent
17 from approving these suggested by Bill? Okay.
18 That's unanimous. And West hopefully has the
19 directive all ready on that.

20 All right. Thanks for raising that, Hadley.
21 It is an important consideration. We'll certainly
22 have that before the committee. That's in the
23 draft that David provided. And that will be in
24 our materials and where that appears is behind his
25 cover letter. That would be the same as Rule 277

1 in about the middle of page the. Language again
2 is, "only if required by the substantive, such as
3 worker's compensation, is a submission of separate
4 questions permitted."

5 PROFESSOR EDGAR: Yes. And there was
6 really another question, too, that David and I had
7 and that's on Page 3.

8 He thought when he was given the charge by
9 the Chairman, that he was to take this first
10 paragraph on Page 3 and place it in another rule
11 because it really doesn't concern, necessarily,
12 the submission in cases but the form of the
13 submission.

14 But then when he and I went back and looked
15 at the minutes, they read kind of like there was a
16 general suggestion that it should be done. And
17 then somebody raised a question, and then the tide
18 flowed the other way. And there never was a
19 specific direction to him to take and try and put
20 that somewhere else.

21 And so I suggested that he just kind of put a
22 bracket around it and call it to the committee's
23 attention that they really didn't resolve what
24 they wanted to be done, in that regard.

25 CHAIRMAN SOULES: Would you be able to

1 present that to the committee at the next
2 meeting?

3 PROFESSOR EDGAR: Yes, you bet.

4 CHAIRMAN SOULES: Is there any other
5 business?

6 Well, thanks to all of you for being here.
7 It's 12:30 and we're adjourned until 8:30 in the
8 morning on September the 12th, 1986; that's a
9 Friday. We'll work until 5:30 that day and have
10 breaks and then resume at 8:30 Saturday morning
11 and might work past 1 o'clock on Saturday the
12 13th.

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(End of proceeding.)

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1 STATE OF TEXAS ><

2 COUNTY OF TRAVIS ><

3

4 We, Elizabeth Tello and Chavela V. Bates,
5 Certified Shorthand Reporters in and for the
6 County of Travis, State of Texas, do hereby
7 certify that the foregoing typewritten pages
8 contain a true and correct transcription of our
9 shorthand notes of the proceedings taken upon the
10 occasion set forth in the caption hereof, as
11 reduced to typewriting by computer-aided
12 transcription under our direction.

13

14 WITNESS OUR HANDS AND SEAL OF THIS OFFICE, this
15 the _____ day of June, 1986.

16

17

18 _____
Elizabeth Tello, Court Reporter
316 W. 12th Street, Suite 315
19 Austin, Texas 78701 512-474-5427

20 Notary Public Expires 07-13-86
CSR #2387 Expires 12-31-87

21

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