

1 SUPREME COURT ADVISORY BOARD MEETING
2 Held at 1414 Colorado
3 Austin, Texas 78701
4 November 8, 1986

(VOLUME III)

5 APPEARANCES

6 MR. LUTHER H. SOULES, III, Chairman,
7 Supreme Court Advisory Committee, Soules & Reed,
8 800 Milam Building, San Antonio, Texas 78205

9 PROFESSOR NEWELL H. BLAKELY, University of
10 Houston Law Center, 4800 Calhoun Road, Houston,
11 Texas 77004

12 MR. FRANK BRANSON, Allianz Financial
13 Centre, LB 133, Dallas, Texas 75201

14 PROFESSOR WILLIAM V. DORSANEO, III,
15 Southern Methodist University, Dallas, Texas 75275

16 PROFESSOR J. H. EDGAR, School of Law,
17 Texas Tech University, P.O. Box 4030, Lubbock,
18 Texas 79409

19 MR. RUSSELL H. MCMAINS, Edwards, McMains,
20 Constant & Terry, 1400 Texas Commerce Plaza, P.O.
21 Drawer 480, Corpus Christi, Texas 78403

22 MR. CHARLES (LEFTY) MORRIS, Morris, Craven
23 & Sulak, 600 Congress Avenue #2350, Austin, Texas
24 78701

25 MR. TOM L. RAGLAND, Clark, Gorin, Ragland
& Mangrum, P.O. Box 239, Waco, Texas 76703

MR. ANTHONY J. SADBERRY, Sullivan, King
and Sabom, 50005 Woodway, Suite 300, Houston,
Texas 77056

MR. BROADUS A. SPIVEY, Spivey, Grigg,
Kelly & Knisely, A P.C., 812 W. 11th Street, P.O.
Box 2011, Austin, Texas 78768-2011

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

MR. HARRY TINDALL, Tindall & Foster, 2801
Texas Commerce Tower, Houston, Texas 77002

HONORABLE BERT H. TUNKS, Abraham, Watkins,
Nichols, Ballard, Onstad & Friend, 800 Commerce
Street, Houston, Texas 77002

HONORABLE JAMES P. WALLACE, Justice,
Supreme Court, Supreme Court Bldg., P.O. Box 12248
Capitol Station, Austin, Texas 78767

CHAVELA V. BATES
Certified Shorthand Reporter
and Notary Public

VICKI THOMAS
Certified Shorthand Reporter
and Notary Public

SUPREME COURT ADVISORY COMMITTEE

TRANSCRIPT OF PROCEEDINGS

NOVEMBER 8, 1986

VOLUME III

<u>Subject</u>	<u>Page Number(s)</u>
TRCP 7	147 - 148
TRCP 8	147
TRCP 10	148 - 149
TRCP 11	149 - 150
TRCP 13	103 - 108
TRCP 16	150 - 151
TRCP 18a	152 - 155
TRCP 30	155 - 159
TRCP 87	159 - 162
TRCP 145	162 - 168
TRCP 161	168
TRCP 163	168
TRCP 165(a)	169
TRCP 168	169
TRCP 169	6 - 57
TRCP 182(a)	129 - 131
TRCP 184	57 - 62, 71 - 7
TRCP 202	64 - 68
TRCP 206	69 - 70, 170 -
TRCP 207	171 - 173
TRCP 215	50 - 57, 173

TRCP 215(a)	103 - 108
TRCP 216	73 - 78
TRCP 224	79 - 80
TRCP 247	80 - 85
TRCP 250	80 - 85
TRCP 264	85 - 90
TRCP 265(a)	90 - 92
TRCP 273 thru 277	174 - 176
TRCP 295	176 - 179
TRCP 296, 297, 306c	92 - 99
TRCP 301	179
TRCP 321	179 - 180
TRCP 324	179
TRCP 329	62 - 63
TRCP 523 thru 591	99 - 103
TRCP 601(b)	129 - 131
TRCP 621a	5 - 6
TRCP 685	3 - 5
TRAP 120	126 - 129
TRAP 121(h)	108 - 126

1 SUPREME COURT ADIVISORY

2 BOARD MEETING

3 November 8, 1986

4

5

6 CHAIRMAN SOULES: We just handed out a
7 handout. This first item, 685, we've talked about
8 this before. The reason it's coming back again is
9 that it was sent here and to the COAJ. We have
10 acted on it and rejected it. That doesn't mean we
11 can't take it up again. And then they acted on it
12 -- or at least it's come back again from them.
13 Does anyone have any feeling we need to reconsider
14 our former action of rejecting this suggestion?

14

MR. RAGLAND: I move we reject it.

15

CHAIRMAN SOULES: Okay. Moved.

16

Seconded?

17

JUDGE TUNKS: Second.

18

19

CHAIRMAN SOULES: All in favor show by
20 hand of rejecting it. Opposed? Okay. That's --
21 let me see the hands again wanting to reject.
22 There is a vote against. Those who reject.
23 Five. And those who want the rule. One.

23

24

PROFESSOR EDGAR: Luke, attached to
25 the back of that --

25

CHAIRMAN SOULES: The next --

1 PROFESSOR EDGAR: Go ahead.

2 CHAIRMAN SOULES: The next thing we
3 have is Jerry Wicker's suggestion on changing --

4 PROFESSOR DORSANEO: We pick them
5 anyway. We just file them first.

6 MR. BRANSON: He was teasing Dorsaneo
7 about being the majority of one.

8 CHAIRMAN SOULES: Oh, in San Antonio
9 it doesn't make any difference because every judge
10 sits in every court, so it makes no difference
11 where you file.

12 MR. TINDALL: No, but he's talking
13 about the practice of going straight to the judge
14 before you file it.

15 CHAIRMAN SOULES: It still doesn't
16 make any difference in San Antonio.

17 PROFESSOR DORSANEO: Nobody does that
18 anywhere, do they?

19 MR. TINDALL: Well, that's what he's
20 talking about in his letter.

21 PROFESSOR DORSANEO: I know. But that
22 doesn't happen anywhere. That's why he wants to
23 have the rule say what happens.

24 CHAIRMAN SOULES: Actually a judge
25 shouldn't grant a TRO until the clerk's filed it,

1 but that trial court can handle that. They can if
2 they want to.

3 MR. TINDALL: The practice is commonly
4 done. It's -- you find the Judge wherever you
5 find him and get him to grant it and then you file
6 it later.

7 CHAIRMAN SOULES: The Judge can file
8 too. The clerk doesn't have to file.

9 Okay. On these suggestions of Jeremy Wicker
10 for 621 --

11 MR. RAGLAND: What page are you on,
12 Luke?

13 PROFESSOR EDGAR: Look at the very
14 last page of the handout.

15 CHAIRMAN SOULES: The last page of
16 this handout, page 18. It was 18 of his letter
17 but, this is 621 and it just changes a cite in our
18 rule from a Civil Statute to a Civil Practice
19 Remedies Code. Any opposition to that?

20 PROFESSOR DORSANEO: May I take a look
21 at 621(a), please?

22 CHAIRMAN SOULES: Okay.

23 PROFESSOR DORSANEO: Because there are
24 two statutes.

25 PROFESSOR EDGAR: 3773 is the only one

1 referred to in 621.

2 PROFESSOR DORSANEO: I know, but there
3 are two statutes that deal with this problem of
4 dormancy. And I want to make sure that, in fact,
5 the current rule makes the right reference.

6 PROFESSOR SOULES: It's on page 226 of
7 your purple book.

8 MR. TINDALL: That 3773 is simply that
9 10-year statute, isn't it? Vitality of a
10 judgment.

11 PROFESSOR DORSANEO: Uh-huh. I think
12 it will be all right.

13 CHAIRMAN SOULES: Okay. No
14 opposition? That's unanimously approved. Now,
15 let's go to 169 and the matter that we were
16 talking about yesterday, which is the -- what page
17 is that?

18 PROFESSOR EDGAR: 160 -- oh.

19 CHAIRMAN SOULES: In the materials.

20 PROFESSOR EDGAR: I don't know.

21 CHAIRMAN SOULES: Page 148 in the
22 agenda materials. Mr. Sulak, Lefty's -- I don't
23 know how to say his partner's name. I've been
24 mispronouncing it. And Tom Ragland, where is he?

25 MR. RAGLAND: Right here.

1 CHAIRMAN SOULES: Tom, excuse me, I
2 didn't see you there. You changed seats from
3 yesterday. You had comments you wanted to make
4 about Mr. Sulak's suggestion. Those are in order
5 now.

6 MR. RAGLAND: All right. It seems to
7 me -- I've got two complaints about the method of
8 placing the burden of proof and the burden of
9 proof itself. Those are my two complaints. In
10 the first place, as the rule is presently written,
11 there's practically no burden on the person who is
12 trying to withdraw the admission. The rule states
13 that it may be withdrawn or permit -- the Court
14 may permit withdrawal when the presentation of the
15 merits of the action will be subserved thereby.

16 Now, I can't think of any argument that
17 wouldn't meet that burden of proof. You just say,
18 you know, I want to because I need to. And then
19 it goes on and places a very difficult burden on
20 the person who has been relying on these
21 admissions for any given length of time by stating
22 that the party who obtained admission fails to
23 satisfy the Court that withdrawal or amendment
24 would prejudice him in maintaining his action of
25 the merit.

1 Fails to satisfy the Court is probably a
2 burden that can't be met if the Court just says
3 I'm not satisfied. I mean, there is just no rule
4 for appellate review or anything else there that I
5 can see. It just looks like to me those two
6 things ought to be re-worded to place the burden
7 on the person who is seeking to withdraw the
8 admission to show some good grounds for it and
9 then go further to show that the person who has
10 been relying on these admissions won't be
11 prejudiced in some fashion and not put the burden
12 on the person who has been relying on them.

13 I don't have any specific language that I'm
14 going to suggest, but that's my complaint about
15 that portion of the rule.

16 MR. MCMAINS: Luke, we adopted
17 yesterday, did we not, the provision with relation
18 to 166(b)?

19 CHAIRMAN SOULES: Yes, that's
20 already --

21 MR. MCMAINS: Time limits. So, we
22 fixed that problem.

23 CHAIRMAN SOULES: That's taken care
24 of.

25 MR. MCMAINS: I suggest that we shift

1 the burden of proof to the movant, which I think
2 under 166(b), is where it generally is for any
3 kind of delay in supplementation.

4 What's the provision with regards to the
5 experts within 30 days? Don't we have a --

6 CHAIRMAN SOULES: It's 30 days.

7 MR. MCMAINS: No, no. But, I mean,
8 isn't there a provision in there for allowance of
9 doing it otherwise within the 30-day period, but
10 you've got a higher burden?

11 CHAIRMAN SOULES: Right.

12 MR. MCMAINS: It's a pretty
13 substantial burden, I think, according to Judge
14 Guittard's opinion.

15 CHAIRMAN SOULES: It is. And I'm not
16 even sure it's all in the rules --

17 MR. TINDALL: Well, this puts the
18 burden on the party seeking to change it.

19 MR. MCMAINS: It doesn't. It says the
20 burden on the party seeking to change the rules,
21 merely that the merits will be subserved. And
22 then it -- the burden then shifts to the other
23 side to show that it used prejudice.

24 MR. TINDALL: Well, I understand, but
25 you've got a heavy burden going in to show that

1 the admission was in error. You've got to
2 demonstrate that to the Court or he won't let you
3 amend.

4 MR. MCMAINS: No, I'm not -- I don't
5 read the rule as being all that restricted.

6 MR. BRANSON: Here's what happens so
7 many times in practice. One side gets a request
8 for admissions in, and rather than take the time
9 to adequately investigate in order to answer the
10 questions, they just give it to a paralegal and
11 sit down and answer them. And then they start
12 preparing their case a year from then and realize
13 that they didn't do their investigation at the
14 time they answered the requests for admissions.
15 And the other party has been relying on them.

16 And I think if you strengthen up the rule and
17 put some teeth into it, it will require the
18 parties to do their investigation at the time they
19 receive the requests for admission so that you
20 don't get nonbased reliance which is what seems to
21 have distressed Tim. And certainly anybody that's
22 been in practice a long time has been down at the
23 courthouse where his opponent did just that to
24 him.

25 And it's really, if you relied on it, quite

1 an inconvenience. I move we change the burden to
2 the movant and strengthen it some, and Tim's
3 recommendation looks pretty good to me.

4 CHAIRMAN SOULES: What we've got right
5 now, though, is that admissions may be
6 supplemented by a party seasonably, I believe, is
7 the word.

8 MR. MORRIS: Well, really you can't
9 supplement an admission. You either admit it or
10 deny it.

11 CHAIRMAN SOULES: Well, there's a lot
12 more to it than that. 169 puts a lot of burden on
13 explaining why you can't admit or deny --

14 MR. RAGLAND: Well, but they've
15 already admitted it, Luke.

16 MR. MORRIS: But if you admitted or
17 denied it, there's really no way to supplement
18 that.

19 CHAIRMAN SOULES: Well, you could
20 admit part and deny part. You can --

21 MR. RAGLAND: But that's a withdrawal
22 of the admissions that's already been made and
23 then coming back under the rule to either admit or
24 explain why they can't. And that's a problem.

25 CHAIRMAN SOULES: That's the statement

1 that I'm trying to make right now, that there are
2 circumstances under which an admission is subject
3 to being supplemented. And that is taken care of
4 in 166b(5). But there is no -- there's nothing on
5 withdrawal other than in 169(2). And what I'm --
6 do we need this "or amendment," because isn't
7 amendment and supplement -- is that -- are those
8 the same or are they different?

9 PROFESSOR DORSANEO: As I can see,
10 "withdrawal" is eliminating the admission and
11 "amendment" would be replacing it with a denial.

12 CHAIRMAN SOULES: So, "amendment"
13 would have a meaning different from
14 "supplementation."

15 PROFESSOR DORSANEO: As I've always
16 understood it, "withdrawal" leaves you with no
17 response and "amendment" is changing an admission
18 to a denial or a denial to an admission.

19 CHAIRMAN SOULES: That makes sense.
20 Okay. So, may permit withdrawal or amendment --

21 MR. BRANSON: Now, wait a minute. I
22 don't understand why the duties to supplement
23 changes Tim's problem. I mean --

24 CHAIRMAN SOULES: It probably doesn't.

25 MR. BRANSON: I mean, I don't -- I

1 think you're taking us off on a rabbit trail
2 there, Luke. I don't -- I think just because they
3 supplement it, it doesn't change the burden on
4 them. I mean, as far as I'm concerned, they had a
5 duty to supplement or answer it right in the first
6 place.

7 CHAIRMAN SOULES: Well, I'm not
8 attempting to take you on a rabbit trail. I'm
9 trying to determine whether the word "amendment"
10 -- I'm going to -- I'm in agreement that we need
11 to do something about the situation for parties
12 attempting to withdraw an admission, and that was
13 Tim's problem.

14 MR. BRANSON: Right.

15 CHAIRMAN SOULES: I'm there with you.
16 I'm trying now to determine whether we also need
17 to do something about a situation different from
18 his where there is an amendment, or is that the
19 same as a supplement?

20 Bill has convinced me that the amendment and
21 supplement are not the same. And we're fixing to
22 write a rule that not only speaks to Sulak's
23 problem, but is also going to speak to thousands
24 of other problems faced in the practice. And
25 that's what I'm trying to do. I'm not trying to

1 go on a rabbit trial. I'm trying to put a
2 complete fix, if we can.

3 MR. BRANSON: The only place we
4 encounter amend and supplement, or that I do, is
5 in pleadings. And, that is, you have supplemental
6 pleadings which merely add to existing pleadings
7 or amended pleadings which replace it.

8 CHAIRMAN SOULES: 166b(5) is a very
9 broad rule. And it's been the subject of a lot of
10 appellate work lately open supplementing --

11 MR. BRANSON: But would you deal with
12 supplement as a term of art as it's been used in
13 pleadings historically?

14 CHAIRMAN SOULES: No. That's not what
15 it means.

16 MR. BRANSON: How do we know that's
17 not what it means?

18 CHAIRMAN SOULES: What?

19 MR. BRANSON: How do we know that's
20 not what it means?

21 CHAIRMAN SOULES: Because, for
22 example, in the HEB case, a witness was refused
23 the right to testify because the party who had
24 answered interrogatories and named that individual
25 and said he was somewhere in Missouri had the

1 party in the courthouse in San Antonio to testify
2 for trial and had never supplemented his
3 interrogatory answers to show that, in fact, that
4 party had been in Dallas and they knew it for the
5 past six months. That's what they're talking
6 about supplementing discovery responses. I mean,
7 that's one case. And the judge held that that
8 individual could not testify. That was a plain
9 fact witness that was not an expert.

10 In other words, everything you can find out
11 that's different from your discovery responses
12 prior to trial you must disclose by
13 supplementation. You've got to do it for
14 depositions. You've got to do it for admissions.
15 You've got to do it for documents. You've got to
16 do it for interrogatories. Before '84, you only
17 had to supplement interrogatories. Since '84, you
18 had to supplement all discovery.

19 MR. BRANSON: But in that -- in that
20 Lefty's right. You're not asked to give
21 dissertations in requests for admissions. You're
22 asked either to answer "yes" or "no."

23 CHAIRMAN SOULES: That's not right.

24 MR. BRANSON: Well, certainly, there
25 can be circumstances in which you will need an

1 explanation. But ordinarily, a request for
2 admission is an admit or deny position.

3 CHAIRMAN SOULES: Well, you do what
4 the rule says, and the rule says a lot more than
5 that. And the reason that you -- that the rule
6 says a lot more is that everybody used to read
7 them so technically that every admission got
8 denied for one reason or another. And the rule
9 says you can't deny, but you can explain if you're
10 in these circumstances. That's what made them a
11 lot more useful tool.

12 MR. RAGLAND: I think, as I understand
13 it, they can only explain why they can either
14 admit or deny.

15 MR. BRANSON: Admit or deny. And once
16 they've taken a position, gotten off the fence and
17 either admitted or denied, any change of that
18 position from an admit to deny or vice versa has
19 to be an amendment.

20 CHAIRMAN SOULES: Okay, I'm with you
21 now. After the discussion we had on whether
22 admission and supplementation was the same, I
23 agree that it's not the same. And when we talk
24 about withdrawal or amendment of the admission,
25 we're talking about something that's not under the

1 purview of 166b(5).

2 MR. BRANSON: Right.

3 CHAIRMAN SOULES: And we do need to
4 fix it here. If we're going to do anything -- I
5 mean, it has to be addressed here. It is
6 addressed here. We're talking now about changing
7 it.

8 MR. BRANSON: What's wrong with the
9 suggestion Tim makes? What would be wrong with
10 the suggestion he makes on 149?

11 CHAIRMAN SOULES: Well, let's see.

12 MR. TINDALL: Do you want the same
13 amendment, Frank, on interrogatories? You relied
14 on an answer to an interrogatory. They can amend
15 those without those heavy burdens.

16 MR. BRANSON: Well, in
17 interrogatories, you're not generally dealing with
18 a "yes" or "no" position. And, generally, you're
19 dealing with tell me an answer to something. The
20 answers need to be supplemented periodically and
21 on occasion to supplement active changes of
22 interrogatories.

23 MR. TINDALL: But, you can amend and
24 really be caught short. I mean, if we're going to
25 get tough on letting people change any of these

1 answers to all forms of discovery, I'm just
2 saying, then we ought to apply the same burden on
3 interrogatories. They're not going to let you
4 change your interrog.

5 MR. MCMAINS: That is in the rule.

6 MR. MORRIS: It requires a showing of
7 good cause.

8 MR. TINDALL: It's not the same burden
9 we're talking about putting on admissions.

10 MR. MCMAINS: The burden is greater in
11 my judgment.

12 MR. TINDALL: Pardon?

13 MR. MCMAINS: The burden is greater on
14 interrogatories right now.

15 MR. TINDALL: It is right now, but
16 we're going to make it even tougher on
17 admissions --

18 MR. BRANSON: Well, but shouldn't it
19 really be when you're asking someone under oath
20 whether the answer to a question is "yes" or "no,"
21 and they give you a direct answer under oath that
22 it's one --

23 PROFESSOR DORSANEO: Not under oath.

24 MR. BRANSON: -- and they attempt to
25 change it, I think it ought to be a heavy burden.

1 MR. MCMAINS: The interrogatory rule,
2 right now, in terms of the compliance Rule 215 on
3 Abuse of Discovery in Section 5 which deals with a
4 failure to supplement has the burden now, which
5 says that you shall not be entitled to present
6 evidence on the issue unless the Court finds that
7 good cause sufficient to require admission
8 exists.

9 Now, that's a hell of a lesser burden than on
10 the admission practice. And the admission
11 practice is much more pernicious because with that
12 admission in place, even 30 days prior to trial,
13 it has discouraged you from conducting any
14 discovery at all on that issue. It's been
15 unnecessary.

16 Now, it is absurd to take the position, in my
17 judgment, that that is not a more gregious
18 result. If somebody wants to answer an evasive
19 interrogatory or whatever, you know that you're
20 going to have to prove that issue. It has not
21 taken the issue out of the case. Now, you have
22 the issue out of the case until 30 days before
23 trial and you're operating under a pretrial order
24 or just the general parameters of discovery, all
25 of a sudden you've got this request to put this

1 issue back in the case and you don't have any time
2 to do any kind of other discovery.

3 CHAIRMAN SOULES: Lefty.

4 MR. MORRIS: Let me give you an
5 example in the case that Tim was involved in that
6 led up to this letter.

7 He had a litigation where these people had
8 admitted that they were in a partnership. Well,
9 as a result of that, he didn't get the records,
10 their books, their bank accounts, I mean, because
11 he was dealing with a partnership. And he gets up
12 at trial and they say, this was wrong, we really
13 weren't partners, and we want to change this
14 admission. And a request for admission, when you
15 have that in place, then that obviates the need
16 for proof. Very often in interrogatories it's
17 used for proof. You'll read it into evidence.

18 So, to me, the distinction is that these are
19 so much more compelling and have such greater
20 significance that you should have a heavy burden
21 to change. You're, in essence, changing a theory
22 in your case when you change an admission.

23 CHAIRMAN SOULES: Tom, I know you're
24 speaking the same way, so let's try to balance
25 this back. Does anybody feel differently?

1 MR. RAGLAND: Well, I understand, but
2 I want to voice a distinction I think we're
3 overlooking, and that's the role of the two
4 discovery tools here. One is interrogatories on
5 the one hand and requests for admissions on the
6 other, and as I understand they play an entirely
7 different roles.

8 Interrogatory is basically a discovery
9 mechanism which may or may not be admissible. It
10 may or may not be considered by the Court, but
11 only if it is properly introduced.

12 Now, a request for admission, as I view it,
13 is -- the role of that is to fix the issues in the
14 case. And those admissions are relied on not only
15 by the party who received them, but the Court. As
16 I understand the cases, a Court can take judicial
17 notice of that and make rulings based on those
18 admissions that are on file.

19 And, therefore, I think that anyone who wants
20 to change those ought to be able to convince not
21 only the party who received the admission, but the
22 Court who is not playing pass with the rules. And
23 it ought to be a more strenuous burden on other
24 discovery matters.

25 CHAIRMAN SOULES: Well, we've had --

1 it comes back and we've discussed this matter, I
2 think -- Bill, maybe you recall with me that we've
3 discussed something about this burden of escape on
4 requests to admit before. And part of the ease of
5 it was to try to get parties to respond to
6 admissions with admissions.

7 So, without the fear that they were
8 absolutely entrapped when they did so if they
9 found out later that they had made a mistake. And
10 I don't care what the test is, but we ought to
11 keep in mind that a broader use of admissions does
12 help the trial practice if we can encourage that
13 they be used instead of suppressed for fear of
14 real terrible consequences, inescapable
15 consequences. We probably need to give that some
16 consideration.

17 MR. BRANSON: You've got that escape
18 clause which it says, basically, as I interpret
19 the merits would be subserved is that an unjust
20 result would be reached.

21 CHAIRMAN SOULES: If that's good
22 enough. I just want to be sure that we have the
23 other side of it in mind when we draw whatever the
24 test is and we're going to use wherever we place
25 the burden.

1 MR. BRANSON: Is there some definition
2 of art for subserviating the merits of the case
3 other than unjust results? And that's what I've
4 always assumed it meant.

5 PROFESSOR EDGAR: How would you
6 propose, Lefty, to what -- by what standard would
7 you require the party attempting to withdraw to
8 meet?

9 MR. MORRIS: Well, you know, I haven't
10 thought this out nearly as much as Tim, and I'm
11 just reading his letter. Of course, I discussed
12 it with him briefly. But I think what he proposed
13 is excellent, and that is, that the person who
14 wants to make the change in the admission, should
15 be able to show -- should show that, you know, go
16 ahead and keep it; the merits will be subserved,
17 but also show that the other side will not be
18 prejudiced and that good cause exists for the
19 amendment or withdrawal.

20 It seems to me like it's not too heavy a
21 burden to show that I have good cause to change
22 this. This has happened since we made this
23 admission. We've discovered this additional
24 information that we didn't know then or something,
25 you know. In other words, set up some burden.

